

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2019-0015**

AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR OCEAN WATERS OF CALIFORNIA AND THE WATER QUALITY CONTROL PLAN FOR INLAND SURFACE WATERS, ENCLOSED BAYS, AND ESTUARIES OF CALIFORNIA TO ESTABLISH A STATE WETLAND DEFINITION AND PROCEDURES FOR DISCHARGES OF DREDGED OR FILL MATERIAL TO WATERS OF THE STATE

WHEREAS:

1. Wetlands provide environmental and economic benefits to the people of California, including flood and stormwater control, surface and groundwater supply, fish and wildlife habitat, erosion control, pollution treatment, nutrient cycling, and public enjoyment. Wetlands ameliorate the effects of global climate change by providing floodwater storage, sequestering carbon, and maintaining vulnerable plant and animal communities. Many of these invaluable areas statewide have been lost to fill and development. Presently, wetlands are threatened by impacts from increasing population growth, land development, sea level rise, and climate change.
2. The State Water Resources Control Board (State Water Board) and the Regional Water Quality Control Boards (Regional Water Boards and collectively with the State Water Board, Water Boards) are committed to increasing the quantity, quality, and diversity of wetlands in California. This commitment is consistent with Executive Order W-59-93, California Wetlands Conservation Policy, commonly referred to as the “No Net Loss Policy” for wetlands, which aims to “[e]nsure no overall net loss and achieve a long-term net gain in the quantity, quality, and permanence of wetlands acreage and values in California in a manner that fosters creativity, stewardship and respect for private property.”
3. In 2008, the State Water Board adopted [Resolution No. 2008-0026](#), which directs State Water Board staff to complete three phases of work that are designed to ensure protection of the vital beneficial services provided by wetlands and riparian areas. The State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State (Procedures) are designed to address Phase I, which includes the State Water Board’s consideration of:
 - a. a wetland definition that would reliably define the diverse array of California wetlands based on the United States Army Corps of Engineers’ wetland delineation methods to the extent feasible,
 - b. a wetland regulatory mechanism based on the 404(b)(1) guidelines (40 C.F.R. parts 230-233) that includes a watershed focus, and
 - c. an assessment method for collecting wetland data to monitor progress toward wetland protection and to evaluate program development.
4. In California, the discharge of dredged or fill material to waters of the state may be regulated by the Federal Water Pollution Control Act Amendments of 1972, as amended (Clean Water Act) (33 U.S.C. § 1251 et seq.), and the Porter-Cologne Water Quality Control Act (Porter-Cologne Act) (Wat. Code, Div. 7, § 13000 et seq.). Under the Porter-

Cologne Act, discharges of dredged or fill material to waters of the state are subject to waste discharge requirements or waivers thereof. Under the Clean Water Act, applicants for a federal license or permit for an activity that may result in a discharge of dredged or fill material to waters of the United States must obtain a certification from the state that the discharge will comply with certain provisions of the Clean Water Act and set forth any other appropriate requirement of state law.

5. As set forth in Resolution No. 2008-0026, although the state has historically relied primarily on requirements in the Clean Water Act to protect wetlands, U.S. Supreme Court rulings reducing the jurisdiction of the Clean Water Act over wetland areas by limiting the definition of “waters of the United States” have necessitated the use of California’s independent authorities under the Porter-Cologne Act to protect these vital resources.
6. The State Water Board is authorized to adopt a state policy for water quality control. (Water Code § 13140.)
7. The State Water Board is authorized to revise and adopt water quality control plans for waters for which water quality standards are required by the federal Clean Water Act. (Water Code § 13170.)
8. Pursuant to Water Code section 13170, a water quality control plan adopted by the State Water Board supersedes a water quality control plan adopted by a Regional Water Board, to the extent any conflict exists for the same waters.
9. The staff report developed for the Procedures, titled, “Staff Report, Including the Substitute Environmental Documentation, State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State” (hereafter Staff Report), is a technical document that describes the necessity and scope of the Procedures and contains the environmental documentation required by the State Water Board’s certified regulatory program regulations (Cal. Code Regs., tit. 23, § 3720 et seq.) to comply with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The Staff Report is an integral part of this State Water Board action and was considered and accepted by the State Water Board before taking action on the Procedures.
10. In developing, considering, and adopting the Procedures, the State Water Board complied with the applicable procedural requirements applicable to actions taken under Water Code sections 13140 and 13170 and provided additional public participation opportunities to afford the public with a reasonable opportunity to participate in the consideration of the Procedures, which included:
 - a. Staff held CEQA scoping meetings in 2008 and 2011 to solicit input from public agencies and members of the public.
 - b. On June 17, 2016, staff publicly released the draft Procedures and Staff Report.
 - c. The State Water Board held a public hearing on the draft Procedures on July 19, 2016. In addition, State Water Board staff held two public workshops.

- d. The public comment period ran from June 17, 2016, through August 18, 2016.
 - e. On July 21, 2017, State Water Board staff released a revised draft Procedures, Staff Report, and [Responses to Comments](#) received on the 2016 version of the draft Procedures.
 - f. The State Water Board held a public hearing on the revised draft Procedures on September 6, 2017. In addition, State Water Board staff held two public workshops.
 - g. The comment period ran from July 21, 2017, through September 18, 2017.
 - h. On January 3, 2019, the State Water Board distributed and posted the proposed final Procedures, the proposed final Staff Report, and written responses to comments received on the 2017 version of the revised draft Procedures.
 - i. State Water Board staff held one public workshop in January 2019.
 - j. State Water Board held one Board workshop in January 2019.
 - k. State Water Board staff held one public workshop in February 2019.
 - l. State Water Board held one Board workshop in March 2019.
 - m. The State Water Board received oral comments at its April 2, 2019 adoption meeting.
11. The Staff Report contains a description of the project; a completed environmental checklist; an identification of any significant or potentially significant adverse impacts of the project; an analysis of reasonable alternatives to the project and mitigation measures; and an environmental analysis of the reasonably foreseeable methods of compliance, including a reasonable range of environmental, economic, and technical factors over a range of population and geographic areas. (Cal. Code Regs., tit. 23, § 3777, subds. (a)-(c).)
12. The State Water Board is the lead agency with respect to the adoption of the Procedures. In preparing the environmental analysis pertaining to the reasonably foreseeable methods of compliance, the State Water Board is “not required to conduct a site-specific project level analysis of the methods of compliance, which CEQA may otherwise require of those agencies who are responsible for complying with the plan or policy when they determine the manner in which they will comply.” (Id., § 3777, subd. (c).) Project-level analysis is expected to be conducted by the appropriate public agency prior to implementation of project-specific methods if any additional methods are required to comply with the Procedures. The environmental analysis assumes that the project-specific methods of compliance, if any, would be designed, installed, and maintained following all applicable state and local laws, regulations, and ordinances.
13. The Final Substitute Environmental Documentation consists of the Staff Report (including documents referenced therein), the comments and responses to comments on the Staff Report and the Procedures, the environmental checklist, and this resolution.

14. Consistent with the tribal consultation requirements established by the Governor's Executive Order No. B-10-11 (September 19, 2011) and Assembly Bill 52 (Gatto) (Stats. 2014, ch. 532) that ensure tribal governments have the opportunity to provide meaningful input in the development of regulations, rules, policies, or projects that may affect Native American Tribes, the State Water Board provided notice of the opportunity for consultation to tribal governments.
15. The scientific portions of the Procedures underwent external scientific peer review as required by Health and Safety Code section 57004, as discussed in Chapter 4.4 of the Staff Report. [Peer review of the wetland definition and delineation methods](#) was completed in 2011.
16. The wetland definition and wetland delineation methods were based on the recommendations of the Technical Advisory Team, which was convened by the State Water Board in accordance with Resolution No. 2008-0026.
17. The adoption of the Procedures is consistent with the conditions established in the State Antidegradation Policy ([State Water Board Resolution 68-16](#)) and the federal Antidegradation Policy (40 C.F.R. § 131.12), in that the Procedures are not anticipated to authorize degradation of water quality.
18. As specified in the Procedures, the Procedures would become effective nine months after approval by the Office of Administrative Law (OAL).
19. The Central Valley Regional Water Quality Control Board has convened a working group to develop a strategy for managed wetlands. The outcome of that strategy will consider procedures for the regulation of water quality in managed wetlands. These Procedures are intended to be implemented with recognition of the longstanding state policy that the continued protection, restoration, and enhancement of managed wetlands is critical to the State's public trust wildlife resources.
20. The State Water Board expects that the Water Boards' staff will consult and coordinate with other public agencies, including the Army Corps of Engineers for projects that affect waters of the United States, when developing orders, including during the development of an alternatives analysis or compensatory mitigation requirements.
21. Water Board staff and agricultural landowners are encouraged to consult with the Natural Resources Conservation Service (NRCS) regarding delineation of wetlands on agricultural lands and any other information that is relevant to the application of the Procedures to agricultural lands.

THEREFORE, BE IT RESOLVED THAT:

The State Water Board

1. Approves and adopts the [Substitute Environmental Documentation](#), which was prepared in accordance with the provisions applicable to the State Water Board's certified exempt regulatory programs, California Code of Regulations, title 23, sections 3777 through 3779.

2. Adopts the Procedures, which are specifically titled, “[State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State](#),” after considering the entire administrative record, including all oral testimony and written comments received.
3. Authorizes the Executive Director or designee to submit the Procedures and the administrative record to OAL for review and approval and to U.S. EPA for informational purposes.
4. Authorizes the Executive Director or designee to make minor, non-substantive modifications to the language of the Procedures and the supporting documentation if State Water Board staff or OAL determines that such changes are needed for clarity or consistency, and inform the State Water Board of any such changes.
5. Directs staff, upon approval by OAL, to file a Notice of Decision with the Secretary for Natural Resources and transmit payment of the applicable fee as may be required to the Department of Fish and Wildlife pursuant to Fish and Game Code section 711.4.
6. Directs staff to work with stakeholders, relevant state agencies, and scientific organizations to develop best practices for conducting a climate change analysis as required by the Procedures.
7. Directs staff to develop implementation guidance for potential applicants and conduct staff training prior to the effective date of the Procedures. Staff will solicit informal input from stakeholders prior to finalizing the guidance.
8. Directs staff, in consultation with stakeholders, to provide annual progress reports to the Board regarding implementation issues, including updates regarding application processing timelines and environmental performance measures.

CERTIFICATION


The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on April 2, 2019.

AYE: Chair E. Joaquin Esquivel
Vice Chair Dorene D’Adamo
Board Member Tam M. Doduc
Board Member Sean Maguire
Board Member Laurel Firestone

NAY: None

ABSENT: None

ABSTAIN: None



Jeanine Townsend
Clerk to the Board