

**STATE WATER RESOURCES CONTROL BOARD
BOARD HEARING SESSION – DIVISION OF WATER QUALITY
JULY 19, 2016**

ITEM 6

SUBJECT

THE BOARD WILL HOLD A PUBLIC HEARING ON THE PROPOSED AMENDMENTS TO THE CALIFORNIA OCEAN PLAN, AND THE INLAND SURFACE WATERS, ENCLOSED BAYS, AND ESTUARIES OF CALIFORNIA PLAN TO INCLUDE PROCEDURES FOR DISCHARGES OF DREDGED OR FILL MATERIALS TO WATERS OF THE STATE (FORMERLY KNOWN AS THE WETLAND POLICY).

DISCUSSION

The State Water Resources Control Board (State Water Board) is proposing amendments to two statewide water quality control plans, the California Ocean Plan, and the Inland Surface Waters, Enclosed Bays and Estuaries Plan (proposed Amendments). The proposed Amendments will address several important issues. First, there is a need to strengthen protections for waters of the state that are no longer protected under the Clean Water Act (CWA) due to the U.S. Supreme Court decisions. Second, there is inconsistency across the Water Boards in requirements for discharges of dredged or fill material into waters of the state, including wetlands. There is no single accepted definition of wetlands at the state level, and the Water Boards may have different requirements and levels of analysis with regard to the issuance of dredge or fill Orders. Third, current regulations have not been adequate to prevent losses in the quantity and quality of wetlands in California, where there have been especially profound losses of wetlands.

Background:

Under the CWA, in order to discharge dredged or fill material into waters of the United States, applicants must obtain a CWA section 404 permit from the U.S. Army Corps of Engineers (Corps) and a section 401 water quality certification (401 certification) from the State Water Board or one of nine Regional Water Quality Control Boards (collectively, Water Boards) verifying that the project will comply with state water quality standards. In California, the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.) (Porter-Cologne Act) requires that any discharge that could impact waters of the state, including waters that are not under federal jurisdiction, be permitted through waste discharge requirements. 401 certifications issued by the Water Boards also serve as waste discharge requirements under State Water Board [Water Quality Order 2003-0017-DWQ](#).

Relatively recent United States Supreme Court decisions (Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers, 2001 and Rapanos v. United States 2006) have reduced the jurisdiction of the Clean Water Act over wetland areas by limiting the definition of “waters of the United States.” These decisions necessitate the use of the Water Board’s independent authorities under the Porter-Cologne Act to protect these vital resources.

In 2008, the State Water Board adopted [Resolution No. 2008-0026](#), which directed staff to develop a policy that would include a wetland definition and dredged or fill procedures modeled after federal regulations (i.e., CWA section 404(b)(1) guidelines). The proposed Amendments address a number of the key directives of the State Water Board resolution.

Proposed Plan Amendment Description:

The proposed Amendments consist of the following main components: (1) a statewide wetland definition (2) wetland delineation procedures and (3) procedures for regulation of discharges of dredged or fill material that applies to all waters of the state (including wetlands).

The statewide wetland definition is intended to provide clear and consistent direction for determining whether an aquatic feature is a wetland. The definition recognizes the diversity of wetlands in this state created by the varied climate, geologic, and cultural influences. It can also be translated into a standard field-based set of delineation procedures to identify the extent of the wetland area. This definition does not change the meaning of “waters of the state” as it pertains to the Water Boards’ jurisdictional authority pursuant to the Porter-Cologne Act, nor does it modify the current authorities of the Water Boards to protect water quality. Rather, a statewide wetland definition would provide consistent identification standards for an important class of waters of the state that are sometimes difficult to identify in the field, and for which current policy does not provide adequate guidance. It is important to note, however, that regardless of whether an aquatic feature meets the wetland definition criteria, it may not qualify as a jurisdictional water of the state under the authority of the Water Boards. Whether a wetland feature is also a jurisdictional wetland under the authority of the Water Boards must be decided on a case-by-case basis by Water Board staff, as is presently the case. In other words, the adoption of the wetland definition under this proposed Plan does not automatically extend the Water Board’s jurisdiction to every aquatic feature meeting the definition.

The proposed Amendments would also improve consistency by adopting statewide wetland delineation procedures that incorporate the established procedures developed by the Corps. Finally, the proposed amendments provide procedures for the application submittal and review requirements for the regulation of discharges of dredged or fill material into all waters of the state. The Water Boards would require an applicant to comply with the proposed “State Supplemental Dredge and Fill Guidelines (State Guidelines)” included in Appendix A of the proposed Amendments. The State Guidelines were developed by extracting relevant portions of the federal CWA section 404(b)(1) Guidelines and modifying those only as necessary to fit California’s legal framework.

POLICY ISSUE

This is a hearing to receive public comment on the proposed amendments. Direction from the Board is also requested, however, no decisions regarding the amendments themselves are proposed at this time.

FISCAL IMPACT

There will be no fiscal impact at this time.

REGIONAL BOARD IMPACT

There will be no Regional Board impact at this time.

STAFF RECOMMENDATION

No staff recommendation will be made at this time, as the policy issue solely pertains to a hearing to receive public comment.

State Water Board action on this item will assist the Water Boards in reaching Goals 1, 2, 3, 4, 6, 7 of the Strategic Plan Update: 2008-2012. In particular, approval of this item will assist in fulfilling Objective 4.1.: Prepare, as a part of the California Water Plan, a comprehensive California Water Quality Plan to help guide the State's water management activities, including protection and restoration of water quality through the integration of statewide policies and plans, regional water quality control plans (Basin Plans), and the potential effects of climate change on water quality and supply