

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

**STAFF SUMMARY REPORT: Elizabeth
Morrison and Agnes Farres
MEETING DATE: February 11, 2026**

ITEM: 10

**401 Certification Program: Update on the Clean Water Act Section 401 Water
Quality Certification Program – Informational Item**

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DISCUSSION

This item covers:

- Clean Water Act Section 401 Water Quality Certification Program update
- Bay Restoration Regulatory Integration Team (BRRIT) update

Clean Water Act Section 401 Water Quality Certification Program

Our Creek, Wetland, and Bay Habitat Protection Program reviews and authorizes discharges of dredge and fill material to creeks, wetlands, other waters, and the Bay. Typical projects include stream maintenance for flood management, Bay navigational dredging, Bay shoreline wetland restoration for climate change adaptation, fill for new development and redevelopment or infrastructure, outfalls, bridges, culverts, and bank stabilization. The Water Board has the authority to regulate these discharges under section 401 of the Clean Water Act and the Porter-Cologne Water Quality Control Act (Porter-Cologne).

Clean Water Act section 401 water quality certifications (Certifications) are issued to applicants for a federal license or permit for activities that may result in a discharge into waters of the United States (U.S.), including, but not limited to, the discharge of dredged or fill material. The State certifies that the discharge into waters of the State will comply with applicable effluent limitations and state water quality standards. Waste discharge requirements under Porter-Cologne are issued for discharges of dredged or fill material to waters of the State. Most projects receive a Certification and Waste Discharge Requirements. However, when a project only contains waters of the State, we only issue Waste Discharge Requirements, or authorize the project under existing General Waste Discharge Requirements.

In April 2019, the State Water Board adopted the [State Wetland Definition and Procedures for the Discharge of Dredged or Fill Material to Waters of the State](#) (Procedures). The Procedures outline the steps for the submittal, review, and approval of applications for Certification and Waste Discharge Requirements for dredge or fill activities. While we need to efficiently review and authorize project applications, we also

need to ensure that the projects will not impact state water quality standards. A project needs to demonstrate avoidance and minimization of impacts to waters of the State, and, if appropriate, provide compensatory mitigation for any impacts.

To facilitate project review and approval we have developed several general permits, which cover certain activities, including stream maintenance, port and utility operation and maintenance, voluntary habitat restoration, and the Statewide Restoration General Order. In 2025 we authorized 225 projects and currently have 1,100 active projects in the Program.

For projects that need to provide compensatory mitigation for impacts to waters of the State, our policy encourages projects to provide on-site mitigation. If on-site mitigation is not feasible, projects can purchase credits from a mitigation bank or In-Lieu Fee Program. Mitigation banks and In-Lieu Fee Programs are areas of land on which a bank sponsor proposes to preserve, restore, create, and/or enhance, and then manage and maintain, wetlands and waters of the U.S. and State, and special status species habitat. They are particularly useful for projects with small impacts where on-site mitigation is not feasible.

In February 2025 we approved the Halo Ranch Mitigation Bank, for a total of four mitigation banks now operating in our Region. There are three In-Lieu Fee Programs operating in our Region, we approved the San Francisco Bay In-Lieu Fee Program in April 2025, and the East Contra Costa County In-Lieu Fee Program was executed in November 2025.

On May 25, 2023, the U.S. Supreme Court issued its ruling in *Sackett v. Environmental Protection Agency* (2023) 598 U.S. 651 (Sackett), holding the CWA's definition of waters of the U.S. extends to only those "wetlands with a continuous surface connection to bodies that are 'waters of the United States' in their own right," so that they are "indistinguishable" from those waters. The decision narrowed the criteria by which certain wetlands and waterways qualify as waters of the U.S., with several types of wetlands and other waters no longer qualifying as waters of the U.S., and therefore no longer require a Certification. However, these wetlands and other waters are still considered waters of the State and are covered under Porter-Cologne.

With the Sackett decision a project that no longer requires Certification will need to apply for Waste Discharge Requirements for the discharge of dredge or fill material into waters of the State. There are Statewide General Waste Discharge Requirements (Order No. 2004-0004-DWQ) for discharges to waters deemed to be outside of federal jurisdiction. However, these General Waste Discharge Requirements have a limit of no more than two-tenth (0.2) of an acre and 400 linear feet for impacts to waters of the State. We anticipate a substantial increase in the coming years for projects requiring individual Waste Discharge Requirements. In 2025 we brought four dredge or fill projects before the Board for individual Waste Discharge Requirements.

On January 15, 2026, the U.S. EPA published a [proposed rule](#) to revise the existing Clean Water Act section 401 water quality certification regulations. The proposed rule

would revise several procedural and substantive aspects of the current regulations. We are evaluating the rule's potential effects on our Program.

Bay Restoration Regulatory Integration Team (BRRIT)

Staff presented an informational item at the March 2024 Board meeting on the Bay Restoration Regulatory Integration Team (BRRIT). The BRRIT was formed in August 2019 with the primary goal of improving the permitting process for multi-benefit habitat restoration projects and associated flood management and public access infrastructure in San Francisco Bay, including along the shoreline of the nine Bay Area counties. It is made up of dedicated staff from the six state and federal regulatory agencies with jurisdiction over habitat restoration projects in the Bay: the Water Board, California Department of Fish and Wildlife, U.S. Army Corps of Engineers, NOAA's National Marine Fisheries Service, U.S. Fish and Wildlife Service, and San Francisco Bay Conservation and Development Commission. U.S. EPA also participates as an ad hoc member. The key to successful permitting through the BRRIT is engaging in the pre-application process, where project proponents receive early review and guidance.

Project proponents are encouraged to coordinate with the BRRIT as early and as often as needed. This pre-application process helps to identify potential issues early in the project's design and planning process and identify additional information the agencies will need before project proponents submit permit applications. Based on the BRRIT's experience so far, projects that have gone through the pre-application process are submitting more-complete applications, which helps the agencies issue permits in a more-timely manner. Participating in the BRRIT's pre-application process is the most important thing project proponents can do to improve permitting timelines and outcomes.

The BRRIT has reviewed a total of 37 projects, with 16 projects fully permitted by all agencies, six projects in the permit application phase, and 15 projects in the pre-application phase. Of the 16 projects permitted, eight projects have completed construction. To date, the BRRIT agencies have issued a total of 125 permits and other authorizations since the BRRIT was formed in 2019.

The BRRIT was established via a multi-agency memorandum of understanding that includes agency performance criteria. The BRRIT is meeting its performance criteria, with all agencies responding to permit applications within 30 days and meeting their agency-specific permitting timelines. The BRRIT regularly coordinates with project proponents to ensure it can authorize projects in time to meet project construction schedules and that it is meeting the goal of improving the permitting process. Overall, the BRRIT is also receiving positive feedback from online surveys.

The BRRIT also includes the management-level Policy and Management Committee, comprised of management representatives from each of the six BRRIT agencies, and U.S. EPA, and which considers opportunities to support policy improvements to facilitate more-effective and -efficient restoration projects.

We will continue to work to support restoration projects, including by identifying additional efficiencies in the project design, review, and authorization process, communicating with restoration project proponents about their needs, and reviewing our ongoing work for opportunities for improvement.