



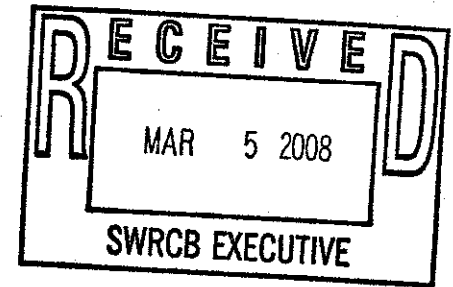
# CALIFORNIA FARM BUREAU FEDERATION

NATURAL RESOURCES AND ENVIRONMENTAL DIVISION

2300 RIVER PLAZA DRIVE, SACRAMENTO, CA 95833-3293 · PHONE (916) 561-5665 · FAX (916) 561-5691

3/18/08 Bd. Mtg. Item 11  
Wetlands & Riparian Areas  
Deadline: 3/5/08 by 12 p.m.

March 5, 2008



Jeanie Townsend, Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814

Re: Comment Letter—Proposed Board Resolution to Develop a Policy to Protect  
Wetlands and Riparian Areas, March 18, 2008 Agenda – Item # 11

Dear Ms. Townsend,

The California Farm Bureau Federation (“Farm Bureau”) is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the State of California and to find solutions to the problems of the farm, the farm home and the rural community. Farm Bureau is California’s largest farm organization, comprised of 53 county Farm Bureaus currently representing approximately 91,000 members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California’s resources.

Farm Bureau appreciates the opportunity to provide comments on the State Water Resource Control Board’s consideration of a resolution to develop a policy to protect wetlands and riparian areas. These comments supplement our previous CEQA Scoping Comments submitted on April 18, 2007 in advance of the Board’s initial hearing on this item on April 24, 2007. Additionally, Farm Bureau joined a coalition letter on March 6, 2008, expressing some of its concerns for the proposed Wetland and Riparian Area Protection Policy, and has concurrently joined a coalition letter of this date. As an individual entity, the Farm Bureau is pleased to present additional comments.

## **1. The Proposed Policy Should Not Exceed the Scope of Federal Jurisdiction Lost in *SWANCC***

As previously expressed, Farm Bureau recognizes the Board’s jurisdiction to control water quality impacts from activities in isolated wetlands no longer regulated by the federal Clean Water Act in the wake of the United States Supreme Court’s 2001 decision in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of*

*Engineers ("SWANCC") and the 2006 decision in Rapanos v. United States. However, several of the past proposed alternatives surpass the scope of federal jurisdiction lost due to "SWANCC" and these appear to be implicated in Phase 2 and Phase 3 of the draft resolution. This could exceed the Board's regulatory authority and venture into areas never regulated by the U.S. Army Corps of Engineers. The Board should limit its actions and the scope of the policy to those recommendations outlined in the Board's "2004 Workplan: Filling the Gaps in Wetlands Protection" and subsequent guidance provided by the Regional Water Quality Control Boards and should not go as far regulating vast areas of riparian upland.*

## **2. The Proposed Policy Should Not Contain Duplicative Regulation**

Latter phases of policy development in the draft resolution may contain significant risk of regulatory overlap and duplication. Many of the activities and impacts sought to be regulated are currently directly or indirectly regulated through local governments, federal and state agencies, and the Regional Boards. For example, several alternatives seek to infringe upon the regulatory authority of the Department of Fish and Game ("DFG"). Through its section 1600 Streambed Alteration Program, DFG already regulates those upland riparian areas the Board now seeks to regulate. Such duplicative regulation is both inefficient and unnecessary. Thus, any adoption of a statewide policy to protect wetland and riparian areas needs to avoid duplicative regulation.

## **3. The Proposed Policy Should Not Intrude Upon Local Land Use Authority**

Latter phases of policy development in the draft resolution may exceed the Board's regulatory authority and may intrude on local land use authority. Phases 2 and 3 may regulate activities such as land and vegetation clearing and hydromodification. Such activities are traditional land use activities and are out of the purview of state water quality regulatory authority. By overly expanding the coverage of regulation in the proposed policy, the Board may impermissibly intrude upon and conflict with local, state, and federal land use and development authority.

## **4. Phases 2 and 3 Are Overly Expansive and May Impermissibly Regulate Activities Beyond State Water Quality Regulatory Authority**

The Board proposes to develop the Wetland and Riparian Area Protection Policy in three phases. Phase 1's proposal of a wetland regulatory mechanism based on 404 (b)(1) guidelines correctly adheres to the overall intent of the Wetland and Riparian Area Protection Policy – to fill in any possible "SWANCC" gaps and to regulate those areas no longer within federal jurisdiction of the Clean Water Act. Unlike Phase 1, Phases 2 and 3 are overreaching and overbroad. Phases 2 and 3 expand traditional state water quality regulatory authority, intrude on traditional land use authority of local governments, and

Letter to Jeanie Townsend

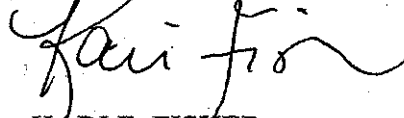
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risk duplicative regulation. The Board should amend Phases 2 and 3 to include only those activities within the Board's regulatory authority.

Thank you for the opportunity to provide our comments and concerns. We look forward to further involvement and discussion with the Board on this proposal.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Kari Fisher".

KARI E. FISHER  
Associate Counsel

KEF