Response to Comments on
State Wetland Definition and Procedures for Discharges of Dredged or Fill Materials to Waters of the State, Version 1

[Proposed for Inclusion in the Water Quality Control Plans for Inland Surface Waters and Enclosed Bays and Estuaries and Ocean Waters of California]

STATE WATER RESOURCES CONTROL BOARD

July 21, 2017

1. State Supplemental Dredge or Fill Guidelines

Comment Number	Representative Comment	Response
3.1, 3.35	**3.35:** Compounding the prospect of conflict and confusion, the proposed state Guidelines delete critical definitions and explanations of the term 'special aquatic sites' that appear in the federal Guidelines. (Proposed Program 15; Comparison 3, 5, 8, 9.) That term is central to the meaning and application of the Guidelines.	Although the definition of "special aquatic sites" is retained in the State Supplemental Dredge or Fill Guidelines, the cross-reference document released in June 2016 incorrectly indicated that the definition was deleted. The cross-reference document has been updated. The portions of Subpart E – Potential Impacts on Special Aquatic Sites that describe special aquatic sites that exist in California have been retained.
3.0, 44.2	**3.0:** The state Guidelines also call for the boards to determine that a discharge will not cause or contribute to significant degradation of waters of the state. (Proposed Program 6.) The State Guidelines omit, however, the pertinent provisions of the federal Guidelines elaborating on the meaning and the finding of significant degradation, and the State Guidelines do not otherwise define or explain 'significant degradation' in this context. Will the boards define that term in keeping with the federal Guidelines or devise some new, different meaning? Will the boards defer the USACE's findings regarding significant degradation? In the event of conflicting decisions by the boards and the USACE, how will that conflict be resolved?	Findings of significant degradation related to a proposed discharge of dredged or fill material will be based on State Supplemental Guidelines Subpart B (Compliance with the Guidelines), section 230.10(c), which lists the environmental effects to be considered. These effects are the same as listed in the federal Guidelines without alteration. The State Supplemental Guidelines did not retain the entirety of subparts C through F, and accordingly omitted the references to those subparts in section 2301.10(c). Per the State Supplemental Guidelines, the permitting authority is not required to make factual determinations in writing with the specificity that is required by the federal guidelines. Instead, the permitting authority is not limited in what information it may use to determine whether a discharge of dredged or fill material will cause or contribute to significant degradation of waters of the state. The list of illustrative examples set forth in subparts C through F may be informative for the analysis for any given project, but the permitting authority is not required to evaluate the specific considerations outlined in subparts C through F, and the permitting authority may also consider other factors, such as issues raised during the CEQA analysis. Likewise, the State Supplemental Guidelines do not include Subpart G, which relates to evaluation and testing methods. Instead, the need for testing of dredged or fill material will be evaluated by the permitting authority based on available information about the impacted waterbody, including applicable contaminant research, TMDLS, chemical and biological reports, CEQA analysis, and the composition of the dredged or fill material itself.
3.32	The state Guidelines simply differ from, and in some respects	In creating the State Supplemental Dredge or Fill Guidelines, the approach

1. State Supplemental Dredge or Fill Guidelines

Comment Number	Representative Comment	Response
	conflict with, the federal Guidelines. The deletion of Guidelines section 230.7 pertaining to general permits and the expansion of the alternatives analysis to cover NWPs is the most obvious such change. As the Staff Report fails to acknowledge this change as a policy choice, it does not endeavor to explain or justify it as one. If the State Board, for instance, does not like the NWP program for some reason, it should forthrightly say so and enable the public to understand and review the issue.	used was generally to limit changes to: (1) omissions of portions of the guidelines that a. provided illustrative examples or other non-binding descriptions; or b. did not reflect state practice or conflicted with state law; or c. were redundant with the Procedures; and (2) global changes to change federal terms to the state equivalent. Section 230.7, General Permits, was struck from the State Supplemental Dredge or Fill Guidelines because the State Water Board requirements for reviewing, noticing and issuing general orders are set forth under division 7 of the Water Code and division 3, title 23 of the California Code of Regulations. Section IV.C. of the Procedures includes additional information about general orders issued by the Water Boards under these authorities. This deletion does not affect the Corps' authority to issue nationwide permits (NWP), nor does it change the Water Boards' approach to certification of NWP. The Water Boards support and certify many NWP. Specifically, the Water Boards certify a subset of Corps' NWPs that are exempt from review under the California Environmental Quality Act (CEQA) through a general order. Other NWPs are certified through an individual 401 Water Quality Certification in part because of the need to conduct a CEQA analysis.
3.36	Moreover, the proposed state Guidelines deletes a critical section (230.5) of the federal Guidelines prescribing the procedures to be followed in applying the Guidelines.	Section 230.5 outlines general procedures to be followed by the Corps. This section was omitted from the State Supplemental Dredge or Fill Guidelines because it was illustrative and did not outline actual requirements.
24.7	Mixing zones are an important part of water quality regulation and this definition should be inserted into Appendix A between Lines 525 and 526, as follows: **(m) The term mixing zone means a limited volume of water serving as a zone of initial dilution in the immediate vicinity of a discharge point where receiving water quality may not meet quality standards or other requirements otherwise applicable to the receiving water. The mixing zone should be considered as a place where effluents are**	The definition of mixing zone was not included in the State Supplemental Guidelines because that term is not used in the Procedures. See also response to comment 3.0. Also, note that the mixing zone definition, recommended for inclusion by the commenter, conflicts with state definitions. State Water Board definitions of mixing zones can be found in Porter-Cologne Water Quality Control Act, Section 13391.5 and in the Water Quality Control Plan for Enclosed Bays and Estuaries.

1. State Supplemental Dredge or Fill Guidelines

Comment Number	Representative Comment	Response
	treated.	
14.10, 24.71, 36.4	**14.10:** In addition, the Draft Policy does not specifically incorporate certain important provisions associated with preparation of alternatives analyses under the CWA Section 404(b)(I) Guidelines. For instance, federal guidance provides a general rule that the level of analysis shall be commensurate with impacts to the aquatic environment, which is not referenced in the Draft Policy. Such provisions from the federal Guidelines have been omitted in Appendix A of the Draft Policy. (See Section 230.10 (the provision that compliance evaluation procedures will vary to reflect the potential for adverse impacts on the aquatic ecosystem posed by the discharge is omitted).)	Language about level of analysis being commensurate with impacts was deleted from section 230.10 in the State Supplemental Guidelines because similar language was already in place. Specifically language was already in the guidelines section 230.6(b). Additional clarification has been added to the alternatives analysis in section IV.A.1.h of the revised Procedures.
24.69	To make this document more useful, it would be helpful to have the two parts of the Amendments (Parts I V and the State Supplemental Dredged or Fill Guidelines) revised so that they are consistent or, at the very least, include a table that identifies where the inconsistencies exist. This would eliminate the need to compare Parts whenever reviewing the document.	The State Supplemental Dredge or Fill Guidelines are consistent with, and do not conflict with, the Procedures. In the event that there are any unforeseen implied inconsistencies, the State Supplemental Dredge or Fill Guidelines shall be applied in a manner most consistent with the Procedures.
25.6, 36.9	**25.6:** The draft Permitting Procedures gives the Regional Boards independent authority to require a 404(b)(1) alternative analysis (under somewhat modified Guidelines) and to evaluate the adequacy of the alternatives analysis. This may result in the preparation of two 404(b)(1) alternatives analyses; one for the Corps and one for the Regional Boards. It may also result in two different LEDPA determinations. Similarly, it gives the Regional Boards independent authority to interpret the Corps' mitigation rule and decide if a mitigation plan provides adequate financial assurances, etc. Again, potentially resulting in conflicting determinations by the Corps and Boards and requiring applicants to provide duplicative financial assurances.	An applicant will be expected to submit materials that are submitted to the Corps when the Corps requires and alternatives analysis for a complete application. It is encouraged that applicants engage the Water Boards before the application process to ensure that a proposed alternative does not violate state water quality standards. As drafted, the proposed Procedures require that Water Board staff defer to the Corps in cases in which the Corps requires an alternatives analysis, unless the Water Boards were not provided an opportunity to consult during the development of an alternatives analysis, the alternatives analysis does not adequately address issues raised during consultation, or the proposed alternatives do not comply with water quality standards. Deference to the Corps is intended to reduce duplication of requirements from both agencies not create regulatory conflicts.

1. State Supplemental Dredge or Fill Guidelines

Comment Number	Representative Comment	Response
41.55	USACE recommends the State modify these sections [Procedures, Section IV.B.5. (e); Appendix A: 230.93(k), 230.93(K)(ii), 230.94 (c)(1)(i), 230.94 (c)(1)(ii)] of the proposed Procedures and Appendix A to be consistent, and require either that the final mitigation plan be submitted prior to the issuance of a permit, or prior to commencing work in waters of the State.	Appendix A, section 230.93(k)(2)(ii) has been revised to include "the final **or draft** mitigation plan…". This subsection now comports with 230.94 Appendix A as noted by the commenter, and section IV.B.5.(e) of the Procedures which provides that if a final plan is not approved prior to the issuance of the certification, it must be approved by amendment prior to commencing work in waters of the state.
41.52	Appendix A: State Supplemental Dredged or Fill Guidelines: Section 230.10(c): Appendix A retains the requirement of 40 C.F.R. § 230.10(c) of the EPA's Section 404(b)(1) Guidelines related to significant degradation. However, the determination of significant degradation made by USACE under section 404 of the CWA is based upon the factual determinations, evaluations, and tests identified in EPA's Section 404(b)(1) Guidelines. The State has proposed elimination of these methods for determining significant degradation. Therefore, it is not clear how a determination of significant degradation would be made by the State. See comment 7(g)(1) above related to deference to USACE in the application of the Section 404(b)(1) Guidelines for activities subject to section 404 of the CWA.	Please see response to comment 3.0 (above).
28.27, 28.0	Appendix A: While it is commendable that the SWRCB wants to incorporate many sections of the Federal 404(b)(1) Guidelines (Federal Guidelines) into the State Guidelines, it is often confusing how these relate to Orders being issued by the SWRCB. The Federal Guidelines cover several permit types including, Individual, General, and Nationwide Permits. In some instances, for example, specific sections related to General Permits are retained in the State Guidelines but in others it is deleted.	All references to the word 'Permit" have been changed to "Order" in the State Supplemental Guidelines. Appendix A has been further revised to remove the second paragraph in subsections 230.6(a) and the entire subsection 230.6 (d). The latter subsections in particular conflict with requirements for prescribing general orders issued by the Water Boards pursuant to section IV.C. of the Procedures. Section IV.A and IV.B. apply to only individual Orders.
10.5	The required use of 'machinery and techniques that are especially designed to reduce damage to wetlands' (Section 230.74) could result in the mandated use of special machinery over hand tools, which would be costly and time-consuming with little environmental benefit. The Sanitation Districts suggest making	Appendix A of the proposed Procedures was included to align state practices with federal practices, to the extent practicable. The State Water Board elects to retain the language as drafted in an effort to remain in alignment with federal requirements.

1. State Supplemental Dredge or Fill Guidelines

Comment Number	Representative Comment	Response
	the following change to Section 230.74: (c) Using machinery and techniques that ~~**are especially designed to reduce damage to wetlands**~~ **minimize damage to wetlands to the extent practicable**.	
14.20, 24.72	**14.20:** In an apparent conflict with the proposed wetland definition, Appendix A, Subpart E section 230.41 of the Draft Policy ('State Supplemental Dredge and Fill Guidelines') defines wetlands to include a 'prevalence' of vegetation. Footnote 3 of the Draft Policy states that 'Appendix A will be applied in a manner consistent with sections I through V of these procedures.'	Comment noted. The State Supplemental Guidelines have been revised to refer to the state definition of wetlands in section 230.41.
21.10	The following comments are for consideration primarily if the above proposed changes to the EREP definition are not incorporated into the draft Procedures. If the definition is changed, then the following comments may not apply. 'Beneficial wetland conservation projects' are those projects that currently do not fit into the draft EREP definition, but would fit with our above proposed definition. Many beneficial wetland conservation projects have elements that are critical to their success, but may not allow them to fit under the current EREP definition. Page 6 lines 209-210 state the need to demonstrate that a sequence of actions has been taken first to avoid, then to minimize, and lastly to compensate for adverse impacts to waters of the state. Guidance on the specific requirements to document the actions taken to first avoid then minimize, and lastly compensate for impacts to wetlands of the state would help clarify what is specifically needed. We strongly suggest exempting all beneficial wetland conservation projects even if they do not fit entirely under the definition of an EREP from this requirement.	The definition of Ecological Restoration and Enhancement Projects (EREP) has been revised to include private, state and federal projects. Private projects must be conducted pursuant an agreement with an agency. The types of restoration projects that may qualify as an EREP have been broadened as well. EREP projects are exempt from the alternatives analysis and compensatory mitigation requirements. Guidance on avoidance, minimization and compensatory mitigation is found in the State Supplemental Guidelines-Appendix A. To document avoidance, the applicant must comply with subpart B, section 230.10(a) of the State Supplemental Guidelines; minimization methods are reviewed in subpart H; and compensatory mitigation requirements are in subpart J. In section IV.B. of the Procedures, there is additional information about submitting an alternative analysis. All applicants at a minimum must provide a statement of how project impacts to aquatic resources are avoided and minimized.
36.3	While the idea of combining processes to simplify and expedite permits sounds like a good goal, the practicalities of that task make it almost impossible. Combining the two processes is complicated by jurisdictional and procedural difference in state	Federal processes can only be undertaken by federal agencies, and similarly, state processes by state agencies. The Procedures do not combine federal and state processes, but rather align state practices with federal practices, to the extent practicable. Appendix A of the Procedures, describe

1. State Supplemental Dredge or Fill Guidelines

Comment Number	Representative Comment	Response
	and federal law and by the fact that Water Board staff is not trained in the federal processes. It is absurd for the State Board to try to promulgate itself a role a separate federal process. While this is presented as a minor change, it would be a significant and substantive change in 401 Water Quality Certifications rules and processes. That would be analogous to the State of California to adopting Sharia Law without any experience with or understanding of those laws and their underpinnings in religion and culture.	how the Water Boards will align with federal requirements, thereby reducing regulatory redundancy. Due to jurisdictional and procedural differences, some modifications were necessary. See also response to comment 3.32. Finally, as discussed in the staff report, sections 6 and 11, the Water Boards currently require some level of avoidance, minimization and compensatory mitigation in certifying projects. The Procedures will ensure that these requirements are applied consistently with the Corps, and, as importantly, across the Water Boards.
36.4	The introduction of the Preliminary Draft Procedures for Discharges of Dredged or Fill Materials to Waters of the State (June 17, 2016 Final Draft, v1) states "The dredged or fill procedures include elements of the Clean Water Act Section 404(b)(1) Guidelines, thereby bringing uniformity to Water Boards' regulation of discharges of dredged or fill material to all waters of the state." That is not correct since the Water Boards have excluded fundamental elements of the federal regulation and procedures that they do not like.	Changes or deletions made to the federal 404(b)(1) Guidelines were made to remove redundancy (especially where sufficiently described in the procedures) and to account for other state requirements. For example, definitions in the federal 404(b)(1) Guidelines that conflict with definitions found in other state regulations were struck from the state supplemental guidelines.
41.19	Line 82: The proposed Procedures indicate that Appendix A contains relevant portions of the Section 404(b)(1) Guidelines, 40 C.F.R. Part 230, promulgated by EPA in 1980. Please note these regulations were modified in 2008 and 2015, however, the 2015 revisions are not currently being implemented.	Comment noted.
41.46	Appendix A: State Supplemental Dredged or Fill Guidelines: USACE recommends the State defer to USACE in all applications of the Section 404(b)(1) Guidelines for discharges of dredged and/or fill material into waters of the United States subject to section 404 of the CWA, and recommends the State identify that the proposed guidelines in Appendix A apply solely to discharges of dredged and/or fill material into non-Federal waters.	As stated in the staff report, two primary objectives of the Procedures are to "establish a uniform regulatory approach consistent with the federal CWA section 404 program" and "strengthen regulatory effectiveness."(section 6.1 Project Objectives). The State Water Board developed the Procedures, therefore, not to enact measures in reliance on the Corps, but instead to develop a more effective regulatory program pursuant to its authorities under the Water Code. Even so, the State Board recognizes in the Procedures the need to defer to the Corps for wetland jurisdictional determinations and evaluations of project alternatives for

1. State Supplemental Dredge or Fill Guidelines

Comment Number	Representative Comment	Response
		projects that impact waters of the United States. In so doing, the Water Boards seek to avoid the case where these requirements are applied differently by the Water Boards and the Corps adding to costly project delays.
41.47	Appendix A: State Supplemental Dredged or Fill Guidelines: Please note that the Section 404(b)(1) Guidelines were issued by the EPA, not USACE, although USACE must ensure compliance with the Section 404(b)(1) Guidelines in the evaluation of proposed activities subject to section 404 of the CWA.	Appendix A has been revised to reflect that the Section 404(b)(1) guidelines were issued by EPA.
41.48	Appendix A: State Supplemental Dredged or Fill Guidelines: Appendix A differs substantially from the comparison document that was provided online.	The cross-reference document released in June 2016 contained a number of errors. The cross-reference document has been updated.
41.49	Appendix A: State Supplemental Dredged or Fill Guidelines: Appendix A provides discussions of General Permits and Individual Permits issued by the permitting authority. However, the proposed Procedures identify general orders and individual orders issued by the permitting authority. General orders are defined differently (Lines 350-354) than General Permits issued by USACE in accordance with 33 U.S.C. § Page 112 Of 145 1344(e) and the USACE's implementing regulations. Individual orders are undefined in the proposed Procedures. However, pursuant to USACE regulations, the term 'individual permit' means a Department of the Army authorization that is issued following a case-by-case evaluation of a specific project involving the proposed discharge(s) in accordance with the procedures of Part 323 and Part 325 and a determination that the proposed discharge is in the public interest pursuant to 33 C.F.R. Part 320. Therefore, it is not clear why General Permits and Individual Permits are utilized throughout Appendix A.	Please see response to comment # 28.27 (above).
41.50	Section 230.6: This section refers to the permitting authority making findings of compliance; however, it's unclear what specific	Findings of compliance with the Guidelines will be based on the requirements in subpart B. The need for testing of dredged or fill material

1. State Supplemental Dredge or Fill Guidelines

Comment Number	Representative Comment	Response
	findings the permitting authority is to make. In addition, this section indicates that extensive testing is generally not intended or expected for routine cases. However, the State has proposed elimination of Subpart G of the Section 404(b)(1) Guidelines for determining when testing is necessary. Therefore, it is not clear how a determination regarding testing would be made by the State, and any associated testing requirements to make such a determination.	will be evaluated by the permitting authority based on available information about the impacted waterbody, including applicable contaminant research, TMDLS, chemical and biological reports, CEQA analysis, and the composition of the dredged or fill material itself.
41.51	Appendix A: State Supplemental Dredged or Fill Guidelines: Section 230.10(a)(1)(i) and (ii): These sections mention ocean waters separate from waters of the State. The proposed Procedures, however, do not define or distinguish ocean waters from waters of the State. Under the CWA, navigable water means the waters of the United States, including the territorial seas. 33 U.S.C. § 1362(7). The term 'ocean' means any portion of the high seas beyond the contiguous zone. 33 U.S.C. § 1362(1 0). It is the USACE's understanding and belief that waters under State jurisdiction does not extend beyond the limit of the territorial seas. That being the case, it is unclear why the State retained the reference to ocean waters in Appendix A.	The reference to “ocean waters” as cited in this comment was retained to be consistent with 404(b)(1) Guideline language; however, ocean waters are waters of the state. Ocean Waters, as defined in the Water Quality Control Plan for Enclosed Bays and Estuaries, are territorial marine waters of the state as defined by California law to the extent these waters are outside of enclosed bays, estuaries, and coastal lagoons. Discharges to ocean waters are regulated in accordance with the State Water Boards California Ocean Plan.
41.53	Section 230.92, Definitions; 'In-lieu fee program instrument,' and 'Instrument': The State has proposed to eliminate all reference to the process for approving mitigation bank and in-lieu fee programs currently identified in the USACE Regulations at 33 C.F.R. Part 332, and the Section 404(b)(1) Guidelines at 40 C.F.R. Part 230, Subpart J, and has also proposed to eliminate the definition of 'mitigation banking instrument.' Therefore, it is not clear why the definition of 'in-lieu fee program instrument' or 'instrument' have been retained in Appendix A.	The definitions of in-lieu fee program instrument and instrument have been retained in the State Supplemental Dredged or Fill Guidelines because the terms are used elsewhere in the Appendix outside of the cited sections that have been struck. The definition for the term “mitigation banking instrument”, previously deleted as noted by the commenter, has been added back in as it is also used elsewhere in the Appendix (section 230.92).
41.54	Appendix A: State Supplemental Dredged or Fill Guidelines: Section 230.92, Watershed approach: USACE recommends the State retain the existing definition of watershed approach as	The definition of a watershed approach, as drafted in Section V. of the Procedures, has been modified slightly from the definition provided for in the 404(b)(1) Guidelines to emphasize an analytical focus on the

1. State Supplemental Dredge or Fill Guidelines

Comment Number	Representative Comment	Response
	defined in USACE regulations at 33 C.F.R. § 332.2, and the Section 404(b)(1) Guidelines at 40 C.F.R. § 230.92	abundance, diversity and condition of aquatic resources in the watershed; however, the same general concepts apply.
42.4	Consistency with Federal standards: We encourage the State Board to maintain consistency with all federal definitions and standards in the Clean Water Act and the Compensatory Mitigation Rule, but particularly with regard to (b) Mitigation sequencing which pursuant to the Clean Water Act requires that appropriate and practicable steps be taken to avoid and minimize. While the sequence is the same under the Section lV.B.1. of the proposal there is no mention of appropriate or practicable; and mitigation preference.	While there is no reference to "appropriate and practicable steps" for avoidance and minimization in the main body of the proposed Procedures, this language is included in the State Supplemental Guidelines under Subpart B – Compliance with Guidelines (section 230.10(d)). In addition, the State Supplemental Guidelines in Appendix A also include Subpart J Compensatory Mitigation for Losses of Aquatic Resources, which adopts sequencing for compensatory mitigation hierarchy (section 230.93(b)).
46.30	Appendix A, Subpart A, §230.3(q1): We request that the definition of special aquatic sites be removed and replaced with the definition of waters of the State, including wetlands. Special aquatic sites are not included or otherwise identified as waters of the State, so it adds confusion to solely reference them in the appendices without identifying how they relate to waters of the State.	Special aquatic sites, as defined in Appendix A, are waters of the state that have "special ecological significance". As such, the State Supplemental Guidelines have more restrictive alternatives analysis requirements for proposed discharges of dredged or fill material into special aquatic sites (see section 230.10(a)(3)). The revised draft of the proposed Procedures will include the state's technical definition of what constitutes a wetland water of the state. The State Water Board does not intend to include definitions of other waters of the state at this time (outside of the definition provided in Porter-Cologne) because it is outside of the scope of this project.
48.4	Actions to minimize adverse effects and compensatory mitigation for losses of Aquatic Resources contains an extensive array of measures cited therein, such as utilization of silt screens and the potential for on or off-site mitigation. Mitigation requires a minimum, a one-to-one (dredged area to mitigation area) acreage offset [see page 31, line 1105-1107], which may be cost-benefit prohibitive. Proposed Procedures reference: - Appendix A Subpart H, pgs. 18-22 - Appendix A Subpart J	As explained in the introductory note to Subpart H, the measures listed in Subpart H are examples of the types of actions that may be undertaken in response to 230.10(d). Whether such actions are appropriate for any given project will need to be analyzed on an individual basis. In order to conform to Executive Order W-59-93, commonly known as California's "no net loss" policy for wetlands, the Water Boards must ensure that regulation of dredged or fill activities will be conducted in a manner "to ensure no overall net loss and a long term net gain in the quantity, quality, and permanence of wetlands acreage and values…" In order to do so, a "one-to-one acreage or length of stream reach replacement is necessary to compensate for wetland or stream losses unless an appropriate function or condition

1. State Supplemental Dredge or Fill Guidelines

Comment Number	Representative Comment	Response
		assessment method clearly demonstrates, on an exceptional basis, that a lesser amount is sufficient.”

2. 404(f) Exclusion (Farming, Silviculture & Ranching)

Comment Number	Representative Comment	Response
6.35	Certain exemptions are undermined by a vague exception. In addition to the exemptions discussed above, Section IV.D. of the Procedures exempts from the new permitting program other activities and areas including suction dredge mining regulated under Clean Water Act section 402, agriculture-related activities exempt under Clean Water Act section 404(f) and discharges for purposes of creating or maintaining treatment wetlands. While this appears potentially consistent with federal rules, the actual scope of the exemptions in section IV.D is uncertain due to language stating that the 'exclusions do not, however, affect the Water Board's authority to issue or waive [WDRs] or take other actions ... To the extent authorized by the Water Code.' Procedures§ IV.D. As a result of this language, each Water Board is free to determine in its own discretion that an activity listed by the Procedures as exempt shall, instead, be subject to permitting and regulation, effectively eliminating the exemptions on a case-by-case basis. Recommendations: Delete the quoted language from this section. It is vague and confusing as drafted. If language about the scope of the exemptions is needed, the Procedures should clarify that WDRs will not be required for activities subject to an exemption under the Procedures unless they involve a discharge (other than a discharge of dredged or fill material) to waters of the state and that the Water Board will defer to determinations of exemptions made by the Corps for discharges to WOUS.	Section IV.D. of the Procedures identifies areas and activities that are exempt from complying with these specific Procedures. These areas and activities are not exempt as waters of the state and could be regulated under another program. Clean Water Act section 402 suction dredge mining activities would be regulated under the National Pollutant Elimination System (NPDES) program. Agriculture-related activities exempt under Clean Water Act section 404(f) could be regulated through other Water Board programs, such as the Irrigated Lands Program. In other words, the Waters Boards are not disclaiming jurisdiction over these areas and activities as a whole, but they would be exempt under the application requirements of the Procedures.
7.11, 9.16,	**7.11:** Activities and Areas Excluded from the Application	The jurisdictional component of the Procedures as set forth in Section II has

2. 404(f) Exclusion (Farming, Silviculture & Ranching)

Comment Number	Representative Comment	Response
9.8	Procedures for Regulation of Discharges of Dredged or Fill Material to Waters of the State (Pages 9-11, Subsection 1, Lines 361-387). The Discharge Procedures recognizes that Corps Regulatory Guidance Letters 82-03, 87-07, and 07-02 create exemptions from CWA Section 404 permits for construction or maintenance of irrigation and maintenance of drainage ditches. Although these exemptions may have originally been developed to address ditches used for agriculture, they also apply to ditches used to convey water to or from managed wetlands. Most of the wetlands that remain in the Central Valley are managed wetlands that depend on ditches and irrigation infrastructure for water supply and drainage. Most of these wetlands could not be supported without these water conveyance systems because the natural hydrology of the Central Valley has been so drastically altered. Therefore, this section needs to state that construction and maintenance of irrigation ditches and maintenance of drainage ditches for purposes of Ecological Restoration and Enhancement Projects are not subject to the procedures for dredged or fill discharges included in the Discharge Procedures.	been revised and may exclude some artificially created wetlands as waters of the state. If the wetlands are waters of the state, then the exclusions from the Procedures are intended to be consistent with the Corps' interpretation of 404(f) exclusions.
12.10	Do normal circumstances include pumping, such as in irrigation ditches? In cases where irrigation ditches are the only impacted aquatic feature, and Corps jurisdiction does not apply, we would need clarification from SWRCB and RWQCB to determine if they are jurisdictional waters of the state.	Normal circumstances are defined in Section V. Determination of normal circumstances will be require a case-specific analysis. In addition, the jurisdictional component of the Procedures as set forth in Section II has been revised. Under the revised framework, some artificial wetlands may not be considered waters of the state.
22.3	Further, while we appreciate the state's recognition of specific agricultural exemptions the federal WOTUS rule has repealed	It is expected that the Clean Water Rule will be rescinded or revised. Should a new Clean Water Rule be adopted, the State Water Board may take action

2. 404(f) Exclusion (Farming, Silviculture & Ranching)

Comment Number	Representative Comment	Response
	most of them. The new rule is currently being litigated and thus it is unclear what exemptions will remain. Because of the uncertainty with the Corps 404 exemptions, the state should not adopt a parallel regulatory process until it is settled law.	to revise the Procedures to align with federal regulation.
32.3	Second, ongoing management activities by wetland managers fall within the current exemption in the proposed Amendments for activities that are exempt under federal Clean Water Act section 404(f). Section 404(f) covers activities related to irrigation and drainage ditches, soil and water conservation practices, and normal farming activities. The 404(f) exemption is important for reducing the regulatory burdens that could otherwise be imposed on managed wetland water deliveries and management activities.	Comment noted.
33.18	We find some of the exclusions to be problematic as well. Some of the agricultural exemptions are troublesome. We see no reason to exempt farm roads. They should be located out of wetlands and are easier to construct on dry ground. There is even less reason to exempt forest roads which would undoubtedly require the deforestation of trees, understory habitat and risk sedimentation of streams.	Although the 404(f) activities listed in section IV.D. are exempt from the application requirements of the proposed Procedures, they may be regulated under other Board Orders and programs. The 404(f) exemptions do not apply to activities that convert waters of the U.S. to other uses, which would occur if a road was constructed through an existing wetland.
41.26	Section IV (A)(2)(c): In addition to the CWA statutory exemptions under Section 404(f), 33 U.S.C. § 1344(f), USACE regulations at 33 C.F.R. §323.2(d)(3) describes activities that do not require a USACE 404 permit. This provision should recognize such exclusions along with the statutory exemptions.	The Procedures were not revised to exclude activities described in 33 C.F.R. § 323.2(d)(3) from the application requirements. Although the discharges described in section 323.2(d)(3)(i) would not degrade or destroy waters of the U.S. such that they need a section 404 permit, they may nevertheless affect water quality of waters of the state and therefore be appropriate to regulate under the Water Boards' Porter-Cologne authority. Similarly

2. 404(f) Exclusion (Farming, Silviculture & Ranching)

Comment Number	Representative Comment	Response
		subsection (ii) describes activities that may have an effect on water quality and accordingly may be regulated under Porter-Cologne. Subsection (iii) is already addressed in Section IV.D as an exclusion from the Procedures. Unlike the section 404(f) exemptions, there is not clear existing guidance regarding the application of section 323.2(d)(3)(i) & (ii), and as such, it would be difficult to administer those exceptions in alignment with the Corps. Further, 404(f) activities represents a discrete category of activities that would be more feasible to regulate as a class through other Water Board programs than the activities defined by section 323.2(d)(3)(i) & (ii).
41.41	Section IV (D)(1)(a): The proposed guidelines do not identify who will determine whether a proposed activity is exempt from authorization under section 404(f)of the CWA (33 U.S.C. § 1344(f)). This is a determination that is made by USACE for discharges of dredged and/or fill material into waters of the United States under section 404 of the CWA and the State must defer to USACE. In addition, USACE recommends the State delete all references to the USACE Regulatory Guidance Letters. These documents are guidance to the field, are contextual in nature, may not be entirely relevant or applicable, and can change over time. USACE recommends that the State identify USACE will make the determination in accordance with section 404(f) of the CWA, USACE and EPA regulations, and any applicable USACE policies and guidance. Lastly, this subsection should include the exclusions from the need to get a section 404 permit provided by USACE regulations at 33 C.F.R. § 323.2(d)(3).	The Water Boards will defer to the Corps regarding determinations that activities are exempt under section 404(f) for discharges of dredged or fill material into waters of the United States. The references to the regulatory guidance letters are necessary to inform the public regarding the standards by which the Water Boards will be making determinations regarding the applicability of section 404(f) exception to non-federal waters of the state and to ensure that Water Board practice is consistent with Corps practice. To the extent that the regulatory guidance letters become outdated or are superseded, the State Water Board may revise the Procedures to reflect the change in guidance. With regard to 33 C.F.R. § 323.2(d)(3), see response to comment 41.26 above.

3. Alternatives Analysis Exemption

Comment Number	Representative Comment	Response
3.25, 6.24, 17.7, 17.10, 21.12, 24.79, 24.62	**24.79:** Further, as discussed in our subsequent comments on in lines 254-259, these procedures need to be made consistent with the Corps procedures in regards to projects that do not require an alternatives analysis. We recommend the proposed Amendments be revised to provide this consistency with the Corps on this issue.	In most cases where the Corps does not require a project specific alternatives analysis, it is because the Corps has done an alternatives analysis at a programmatic level. For many projects, especially where impacts occur in both waters of the U.S. and non-federal waters of the State, a project-specific analysis should be conducted. The Procedures require an applicant to submit an alternatives analysis in cases in which the Corps does not require one, unless an exemption applies, so that it can verify that steps have been taken to avoid and minimize impacts to waters of the state and the project alternative is the least environmentally damaging practicable alternative.
45.26	Second, the exemption for projects that would be conducted in accordance with an approved watershed plan needs further clarification. See Draft Policy at IV.(B)(3)(d)(iv). We support watershed planning, and believe it may be appropriate to reduce permitting requirements for projects conducted in accordance with an approved watershed plan. However, for the exemption in section IV(B)(3)(d)(iv) of the draft policy to be appropriate, there must be significantly more information regarding the contents of an approvable watershed plan. For example, what scale (size) watershed must the plan include? How will cumulative impacts within the watershed be determined and addressed? How will the plan ensure that alternative approaches are analyzed? How will mitigation banks fit into watershed planning efforts? Without this and other information, it is impossible to know whether approved watershed plans will protect wetlands when project-	The definition of a watershed plan has been revised to more closely align with the Corps' definition of a watershed plan and states that a watershed plan is "a document that is developed in consultation with relevant stakeholders, for the specific goal of aquatic resource restoration, establishment, enhancement, and preservation within a watershed. A watershed plan addresses aquatic resource conditions in the watershed, multiple stakeholder interests, and land uses. Watershed plans should include information about implementing the watershed plan. Watershed plans may also identify priority sites for aquatic resource restoration and protection. Examples of watershed plans include special area management plans, advance identification programs, and wetland management plans. The permitting authority may approve the use of HCPs and NCCPs as watershed plans."

3. Alternatives Analysis Exemption

Comment Number	Representative Comment	Response
	specific alternatives analysis are not conducted. Accordingly, the SWRCB should either provide details regarding the elements that must be included in a watershed plan, or remove the exemption found in section N(B)(3)(d)(iv) of the draft policy and wait until a later time to include it in an amendment to the policy once further details have been resolved.	Watershed plans are developed for a number of different size watersheds and for different purposes; therefore, the Water Boards have not predefined a hydrologic unit that would be appropriate for use with the Procedures, but rather the information that would be needed in the watershed plan for it to be approved.
3.39	Moreover, the exemptions apparently do not even apply if a board 'is required to analyze alternatives to a proposed project in order to comply with CEQA. (Id.) Whether this limitation would apply only when a board is the lead agency under CEQA for a project is not apparent. If the State Board intends it to apply when a board is a responsible agency under CEQA, the limitation will nearly always preclude application of any of the exemptions, since the vast majority of discharges subject to the proposed Program will undergo some review under CEQA and the boards commonly will be responsible agencies in such reviews. Apart from this practical consideration, this limitation makes little sense for the additional reason that an analysis of alternatives under CEQA is much different than an analysis of alternatives under the federal Guidelines. Why the State Board would predicate an exemption of one such analysis on the need for the other analysis is not apparent.	The Procedures have been revised to make it clear that "alternatives analysis" as used in the Procedures refers to the analysis required by Section IV.A. and Appendix A, State Supplemental Dredged or Fill Guidelines, section 230.10(a). (See footnote 8.) The exemptions and the tiers set forth in Section IV.A.1.h have no bearing on the required level of analysis of alternatives for compliance with any other statutory or regulatory requirement, such as CEQA. As the commenter correctly notes, the analysis of alternatives for the purposes of identifying the least environmentally damaging practicable alternative is distinct from the analysis required under CEQA. Accordingly, determining whether such an analysis is sufficient should also be distinct and separate.
3.38	The proposed Program provides exemptions from the Alternatives Analysis requirement. While any exemption from this	As well as adding an exemption from the alternatives analysis requirement, the Procedures have been revised to provide greater clarity about when an

3. Alternatives Analysis Exemption

Comment Number	Representative Comment	Response
	is unnecessary, problematic requirement would be helpful as far as it goes, these exemptions are too few and limited. One exemption, for a project that "would be conducted in accordance with a watershed plan that has been approved by the permitting authority and analyzed in an environmental document that includes a sufficient alternatives analysis, monitoring provisions, and guidance on compensatory mitigation opportunities" (Proposed Program 7), is rendered uncertain by the absence of an explanation of what must be included in a "watershed plan" for it to qualify as such in this context.	alternatives analysis will be required and the level of detail required in such an analysis when it is required. This framework includes quantitative and qualitative guidance to indicate to applicants what level of analysis will be required, if an exemption does not apply. The revisions also allow the permitting authority to determine that a lesser level of analysis is appropriate. With regards to watershed planning, the definition of watershed plan has been revised to add clarity and more closely align with the Corps definition of watershed plans.
6.19	For projects that include fill of WOUS and WOTS outside federal jurisdiction, the Procedures allow the Water Boards to require supplementation of the Corps' alternatives analysis to include the non-federal waters. This could create a situation where the Corps and the Water Boards have competing priorities for avoidance of waters, since the Corps has no authority to require avoidance of WOTS outside federal jurisdiction, even if they have higher resource values than some WOUS. Where complete avoidance of all WOTS is impracticable, the applicant may be caught between the agencies' competing demands.	The Procedures have been written to encourage collaboration between the agencies and deferral to the Corp where the Corps has jurisdiction and where it is appropriate. In areas where the Corps does not have jurisdiction, the permitting authorities must make independent decisions. However, the intent is to work collaboratively with the Corps.
6.61	The State Board also should add an exemption to section IV.B.3d stating that discharges that are subject to a Corps- approved SAMP will not be subject to an alternatives analysis under the Procedures, regardless of whether the Water Boards participated	The definition of a watershed plan in the Procedures has been revised to include SAMPS. If a project is planned in accordance with a SAMP that has been approved by the Water Board and is analyzed in an environmental document that includes a sufficient alternatives analysis, monitoring

3. Alternatives Analysis Exemption

Comment Number	Representative Comment	Response
	in the SAMP process.	provisions, and guidance on compensatory mitigation opportunities, the project may qualify for an exemption from the alternatives analysis requirement.
20.20	CSAC and RCRC recommend that operation and maintenance of existing publicly owned infrastructure be included in the list of activities exempt from Alternatives Analysis. The reason is along the same lines as the justification to exempt 'Ecological Restoration and Enhancement Projects.' Water quality and beneficial uses in waters of the state will be adversely impacted if the infrastructure does not perform its function. For example, flooding of urban or agricultural areas due to inadequately functioning flood protection facilities will likely result in contaminated water and detritus making their way back to waters of the state. Similar impacts can result in blocked outfalls or failed water or sewer lines. Failed bridges or roadways will typically result in the deposition of vehicles and detritus depositing into waters of the state. In short, the state's water quality and beneficial use objectives are not served if infrastructure is not operated and maintained as designed, and therefore there is no 'least environmentally damaging practicable alternative' to operation and maintenance.	The exemption proposed by the commenter is overly broad and not appropriate. It is incorrect to say broadly that there is no least environmentally damaging alternative to operation and maintenance because such projects can be conducted in multiple ways. Therefore, an analysis of on-site alternatives may be appropriate. For example, maintenance of a roadway that includes an erosion prone culvert crossing may addressed through hardening the culvert, or replacement with an out-of-water crossing. Similarly, levee maintenance could be conducted with grouted riprap or through use of a bioengineered product. These are not environmentally equivalent alternatives. Although the alternatives analysis requirement has not been revised to explicitly exclude operation and maintenance projects, revised language includes a scaled approached that provides qualitative and quantitative guidance for applicants for determining the level of effort needed to meet the alternatives analysis requirements. Operation and maintenance activities will likely qualify as projects that inherently cannot be located at an alternate location.
24.23, 24.80	**24.23:** The SWRCB should consider an additional exemption in regards to the California Environmental Quality Act (CEQA) that is, if a project is exempt from CEQA since it would not have a	An alternative analysis conducted pursuant to CEQA and an alternatives analysis required by the Procedures serve different purposes. It does not follow that if a project is exempt under CEQA that no alternatives analysis

3. Alternatives Analysis Exemption

Comment Number	Representative Comment	Response
	significant effect on the environment, either individually or cumulatively, it would also be exempt from the alternatives analysis requirement. Section IV.B.3(d); Lines 247-259: **vi. The project is exempt from CEQA.**	under the Procedures is necessary. The purpose of the alternatives analysis is to identify the least environmentally damaging practicable alternative. Even if a project does not have impacts that rises to the level of significant for the purposes of CEQA, it may nevertheless have impacts to waters of the state that could be avoided or minimized, and therefore identification of the LEDPA is appropriate. In addition, there are numerous CEQA exemptions that are not based upon the assumption of no-significant impact (e.g. Public Resource Code Section 21080.23. Pipeline Projects). Accordingly, a categorical exemption from the alternatives analysis requirement for all CEQA exempt projects is not appropriate.
24.59	There should be an impacts threshold below which an alternatives analysis is not required (for small impacts, especially those associated with O&M of existing infrastructure). We recommend that the language be revised to clearly state that small O&M type projects, such as pole replacements, access road repairs, etc. do not require an alternatives analysis.	Although the alternatives requirement has not been revised to explicitly exclude operation and maintenance projects, revised language includes a scaled approach that provides qualitative and quantitative guidance for applicants for determining the level of effort needed to meet the alternatives analysis requirements.
26.3	It is critical that exemption iii. from the 'Least Environmentally Damaging Practicable Alternatives' analysis requirement be interpreted by staff at the State and Regional Boards to apply to the vast majority of the types of projects CCCPWD and CCCFCD implement. Almost all of CCPWD/CCCFCD projects are location driven and would not achieve the goal of the project at an alternate location. Our projects include bridge replacements, road safety improvements targeted at specific deficiencies or	The Procedures have been restructured to require projects that inherently cannot be located in an alternate location to submit an analysis of on-site alternatives unless it is a Tier 1 project or the permitting authority determines that a lesser level of analysis is appropriate. The revised language includes a scaled approach that provides qualitative and quantitative guidance for applicants for determining the level of effort needed to meet the alternatives analysis requirements. It is not feasible to include a list of projects that inherently cannot be located in an alternate

3. Alternatives Analysis Exemption

Comment Number	Representative Comment	Response
	issues, streambank stabilizations, flood water storage, etc. In workshops, conference calls, and meetings I have attended with the State Board's staff working on these Proposed Procedures it has seemed very clear the types of projects CCCPWD and CCCFCD generally conduct are exactly what Water Board staff had in mind when they drafted this exemption. We request additional examples of location-dependent projects be included in the Final Procedures to provide guidance to Regional Board staff about the types of projects the State Board staff envisioned when drafting the Proposed Procedures.	location, in part because some projects that might not be feasibly relocated in one instance might be feasible to relocate in another. For example, bridge replacement projects frequently include realignment of bridges to allow for continued use of the existing bridge during construction.
45.25	The exemptions from alternatives analysis must be modified to ensure wetland impacts are avoided. First, the exemption for projects that inherently cannot be located in an alternate location should be eliminated. See Draft Policy at IV(B)(3)(d)(iii). Under the draft policy, such projects fall within an exemption, but the permitting authority retains discretion to 'require an analysis of on-site alternatives that would minimize impacts to waters of the state.' d. Analysis of on-site alternatives is important because it can identify alternative project designs that may avoid or minimize impacts to wetlands, and should be required in all cases. Additionally, leaving the Regional Boards with discretion to apply an exemption on a case-by-case basis will cause confusion and uncertainty within the regulated community, lead to inconsistent approaches across Regional Boards, and create additional burdens for Regional Board staff. Eliminating the	The 2016 public review draft Procedures stated that a project may be exempt from an alternatives analysis if "the project inherently cannot be located in an alternate location (e.g., bank stabilization projects). The permitting authority may, however, require an analysis of on-site alternatives that would minimize the impacts to waters of the state." In the revised Procedures, this is fundamentally the same; however, the framework has been adjusted to require that projects that inherently cannot be located at an alternate location submit an analysis of on-site alternatives, unless it is a Tier 1 project or the permitting authority determines that a lesser level of analysis is appropriate.

3. Alternatives Analysis Exemption

Comment Number	Representative Comment	Response
	exemption will better protect wetlands and reduce uncertainty and inconsistencies.	
46.14	Section IV.A (2): Please reference that exemptions to providing the alternatives analysis are located in Section IV.B(3)(d).	The Procedures have been revised and the numbering scheme has changed.

4. Alternatives Analysis Requirement

Comment Number	Representative Comment	Response
1.5, 3.28, 3.31, 3.26, 5.5, 6.25, 6.15, 6.22, 6.16, 6.13, 14.2, 14.6, 28.28, 33.4, 36.6, 36.2, 36.11, 40.3, 41.32, 41.35, 41.6, 43.12, 43.11, 46.1	**1.5:** The Water Boards should defer to the Corps' LEDPA determination, and separate alternatives analysis should not be required for a 401 certification. By ensuring consistency with federal requirements, the proposed Procedures will reduce unnecessary duplication and delays in permitting, while at the same time protecting wetlands.	The Procedures require that the Water Boards defer to the Corps determinations on the adequacy of the alternatives analysis, unless the Water Boards were not provided an opportunity to consult during the development of an alternatives analysis, the alternatives analysis does not adequately address issues raised during consultation, or the proposed alternatives do not comply with water quality standards. Deference to the Corps is intended to reduce duplication of requirements from both agencies. Applicants are encouraged to engage the Water Boards before beginning the application process to ensure that a proposed project does not violate state water quality standards. To the extent that the Water Boards are acting as the lead agency under CEQA, it may be necessary for the Water Boards to conduct further analysis to comply with CEQA.
3.29, 6.23, 12.16, 14.7, 24.60, 41.33, 41.34	**12.16:** How and when will the SWRCB consult on the development of the Alternatives Analysis? Will they consult with the project proponent during document development or with the Corps prior to document finalization?	It is expected that an applicant will submit materials that are submitted to the Corps when the Corps requires an alternatives analysis for a complete application. The Water Boards routinely consult with Corps on active 401/404 applications, and may also in regards to the alternative analysis if submitted with the application. However, since the final alternative analysis is prepared by the Corps, the decision would be made by the Corps regarding consultations with other agencies including the Water Boards on this matter. Applicants are encouraged to engage the Water Boards before the application process to ensure that a proposed alternative does not violate state water quality standards.
3.33	The proposed Program states: 'The purpose of the alternatives analysis is to identify the least environmentally damaging practicable alternative (LEDPA).' (Proposed Program 6.) It then	The Procedures state that the purpose of the alternatives analysis is to identify the LEDPA. As the commenter notes, the definition of LEDPA refers to section 230.10(a). The State Supplemental Dredged or Fill Guidelines

4. Alternatives Analysis Requirement

Comment Number	Representative Comment	Response
	adds this definition: 'LEDPA means the least environmentally damaging practicable alternative. The determination of practicable alternatives shall be consistent with the State Supplemental Guidelines, section 230.10(a).' (Id. at 13.) It also defines 'alternative analysis' as 'the process of analyzing project alternatives, including the proposed project, to determine the alternative that is both practicable and the least environmentally damaging. (Id. at 12.) These provisions may serve to describe Alternatives Analyses in a conversational sense, but they are not quite right in a legal sense. Under the federal Guidelines, the purpose of an Alternatives Analysis is to provide the USACE with information enabling it to determine under Guidelines section 230.10(a) 'if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem and not have other significant adverse environmental consequences.' LEDPA is but an acronym for 'least environmentally damaging practicable alternative.' That term or phrase, in sum, is merely a convenient, shorthand reference to the requirement spelled out in section 230.10(a) of the Guidelines. If the phrase 'least environmentally damaging practicable alternative' or its acronym 'LEDPA' is to be used in a regulation, these terms should be understood and defined ultimately to mean exactly what that section prescribes-no more, no less. Otherwise, the regulatory use of a casual shorthand phrase or its acronym could effectively work a change	incorporates section 230.10(a) verbatim from the federal 401(b)(1) guidelines. Accordingly, the Procedures implement the same substantive requirements of section 230.10(a) and do not seek to add or subtract any additional requirements other than what is articulated in section 230.10(a) of the State Supplemental Dredged or Fill Guidelines.

4. Alternatives Analysis Requirement

Comment Number	Representative Comment	Response
	in the substantive requirements of the Guidelines.	
3.37	The Staff Report mistakenly states at one point that an Alternatives Analysis determines whether a discharge is the least environmentally damaging practicable alternative that will achieve the 'basic project purpose.' (Staff Report 59.) Apart from the issue noted above, this statement should refer to 'overall project purpose' rather than 'basic project purpose.' The distinction is critical. Under the federal Guidelines, the USACE looks to the basic project purpose (e.g., providing housing or transportation) to determine whether a project is 'water dependent' in the sense that it must be sited on or near waters, and looks to the overall project purpose (e.g., provide a medium-sized single-family residential development to meet local demand near a particular city) to review alternatives to the project.	Comment noted. The staff report has been revised.
6.17, 14.11, 14.12, 24.61, 24.24, 24.22, 25.1, 36.12, 40.9, 43.10, 43.13, 43.21, 43.27, 46.25	**24.22:** The USACE exempts projects utilizing NWPs from the requirement to conduct and alternatives analysis. However, the SWRCB puts an additional condition that a NWP needs to be pre-certified. We request that this requirement be removed. The intent of the NWP Program is to provide 'timely authorizations for the regulated public while protecting the Nation's aquatic resources' for activities which will result in 'no more than minimal individual and cumulative adverse environmental effects.' Each NWP permit goes through an alternatives analysis under the National Environmental Policy Act (NEPA) and	For the NWP program, the Corps makes the determination that the classes of authorized activities comply with the CWA section 404(b)(1) Guidelines and have only minimal adverse effects individually and cumulatively. This determination is based on federal statutes and applicable federal regulations and policies. For this reason, the Water Boards must make an independent determination based on its own authorities as to the significance of the environmental effects, individually and cumulatively, on state waters. A project qualifying for a NWP may not be minimally impacting environmentally on state waters based on CEQA and other applicable California statutes, policies and regulations. The Procedures

4. Alternatives Analysis Requirement

Comment Number	Representative Comment	Response
	consistent with the 404(b)(1) Guidelines as part of the issuance process. As such, there is no need to conduct an extensive alternatives analysis on projects that qualify under this program, regardless of the pre certification status. This is a clear example of a requirement within the Draft Procedures which would subject minor activities to additional unnecessary review.	outline requirements for an applicant to submit an alternatives analysis in cases in which the Corps does not require one, unless an exemption applies, so that the permitting authority can verify that steps have been taken to avoid and minimize impacts to waters of the state and the project alternative is the least environmentally damaging practicable alternative.
6.18	Similar to discharges that qualify for coverage under general permits, discharges that are consistent with a Corps-permitted Special Area Management Plan (SAMP) have already been designed to minimize their impacts. A SAMP reflects years of multi-agency planning and permitting that identifies the highest value resources in a watershed area and prioritizes them for preservation and, where appropriate, restoration and enhancement, while guiding impacts toward areas with lower resource values and identifying ways to minimize those impacts. Examples of SAMPs include the SAMP for the San Diego Creek Watershed and the SAMP for the San Juan Creek Watershed/Western San Mateo Creek Watershed, both in Orange County. Requiring alternatives analysis under the Procedures for projects that are subject to, and consistent with, a SAMP would create potential conflicts between the Water Boards' determinations and the careful deliberations of the agencies that participated in the holistic SAMP planning process. It would waste limited resources and unsettle the expectations of landowners and dischargers that participated in the SAMP process. If the Water Boards wish to evaluate alternatives to	The definition of a watershed plan in the Procedures has been revised to state that examples of watershed plans include special area management plans. If a project is planned in accordance with a SAMP that has been approved by the Water Board and is analyzed in an environmental document that includes a sufficient alternatives analysis, monitoring provisions, and guidance on compensatory mitigation opportunities, the project may qualify for an exemption from the alternatives analysis requirement.

4. Alternatives Analysis Requirement

Comment Number	Representative Comment	Response
	discharges allowed within a SAMP area, they should participate in the SAMP process rather than imposing new requirements on dischargers after the SAMP process is complete. Notably, the Water Board was invited to participate in both of the SAMPs described above but was unable to complete the process due to lack of resources. Allocating Water Board resources to participation in multi-agency planning efforts such as SAMPs would likely be a more efficient use of those resources than creating a duplicative program to second-guess the outcome of such efforts.	
24.21, 24.50, 24.28, 28.20, 33.6, 45.22	**24.21:** The Draft Procedure states that an alternatives analysis 'may' be required for both discharges to water of the United States when not required by the USACE and discharges to waters of the state. However, it provides no criteria or guidance as to when an alternatives analysis would be required. Again, without providing any decision making framework, the likelihood of inconsistent approaches is very high.	The revised Procedures include a framework for when an alternatives analysis will be required. This framework includes quantitative and qualitative guidance to indicate to applicants what level of analysis will be required, if an exemption does not apply.
24.63, 33.8, 41.38, 45.20, 45.3, 45.23, 45.21	**24.63:** This section states that the permitting authority will be responsible for determining the sufficiency of an alternatives analysis that is required under their discretion (see 3b, 3c and 3.d above). The section lacks a description of the criteria that will be used to make this determination. We recommend that the Procedures identify the criteria that will be considered for this determination; and this section reference to the five categories used in assessing alternatives (i.e., environmental consequences	As set forth in section 230.10(a) of the State Supplemental Dredged or Fill Guidelines, the LEDPA must be both practicable and the least environmentally damaging. Only practicable alternatives to the proposed project need to be considered. An alternative is practicable where "it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purpose." The applicant will establish specific criteria to use in determining practicable alternatives; the Water Boards will review the applicant's screening criteria

4. Alternatives Analysis Requirement

Comment Number	Representative Comment	Response
	to waters of the US and waters of the state; project purpose; logistics; costs; and technology).	and evaluate how the criteria were applied. The project alternative must also be the least environmentally damaging of the practicable alternatives. This analysis focuses on the amount of fill to state waters and the extent of avoidance of other significant environmental impacts. The permitting authority will review the project environmental documents and the applicant's environmental analysis of the practicable alternatives to determine the LEDPA.
3.30	It also appears to us that regulatory conflicts could become daily events as the amendments allow override of decisions made by the Corps of Engineers, essentially wiping out the ability to utilize the streamlined permit process for minor discharges that federal law currently allows.	As drafted, the Procedures require that the permitting authority defer to the Corps determination of the sufficiency of the alternatives analysis, unless the Water Boards were not provided an opportunity to consult during the development of an alternatives analysis, the alternatives analysis does not adequately address issues raised during consultation, or the proposed alternatives do not comply with water quality standards. Deference to the Corps is intended to reduce duplication of requirements from both agencies not create regulatory conflicts. Applicants are encouraged to engage the Water Boards before beginning the application process to ensure that a proposed project does not violate state water quality standards. To the extent that the Water Boards are acting as the lead agency under CEQA, it may be necessary for the Water Boards to conduct further analysis to comply with CEQA.
33.5	404 (B)(1) Guidelines provide: 'No discharge ... shall be permitted which will cause or contribute to significant degradation of the waters of the state.' Evaluation of alternatives analyses would be more effective tool to protect wetlands if it were a more open process with the Alternatives	The receipt of an application and/or draft Orders will be publicly noticed in accordance with Section IV.B.6. The notice will list the appropriate staff contact for the project. Members of the public are encouraged to comment on the proposed project. Given regulatory requirements regarding review timelines, it would not be practicable to have a separate notice and

4. Alternatives Analysis Requirement

Comment Number	Representative Comment	Response
	Analysis documents available to the public for review and comment. Commenters can highlight deficiencies', alert staff to potential problem areas and also provide information about alternative sites that developer/consultants do not put forward. An example of the value of public review was an Alternatives Analysis MAS is an Alternative Site Analysis Marin Audubon able to review recently that was replete with factual errors including ownerships, locations, zoning/land use designations, habitat and species conditions. It was clearly not an adequate analysis on which to base regulatory decisions and it is doubtful staff could have identified all of the deficiencies. Staff cannot be expected to be as knowledgeable about local conditions so as to catch inaccuracies, or have the time required to search records and check on-the-ground conditions as may be necessary to identify relevant deficiencies.	comment process specifically aimed at the alternatives analysis.
45.24	Simple modifications to the draft policy would remedy these [lack or clarity regarding the level of detail required in an alternatives analysis] problems. These modifications would ensure that a meaningful alternatives analysis is required for every permit application, and require that the permitted project be the LEDPA. (Foot Note 7: We note that, in certain places, the Draft Staff Report/SED already appears to assume that an alternatives analysis and selection of the LEDPA would be required in all cases: “Finally, the proposed Procedures would strengthen efforts to avoid and minimize impacts to wetlands and other waters of the state by requiring an evaluation of	The revised Procedures include a framework for determining the appropriate level of detail required in an alternatives analysis. This framework includes quantitative and qualitative guidance to indicate to applicants what level of analysis will be required, if an exemption does not apply.

4. Alternatives Analysis Requirement

Comment Number	Representative Comment	Response
	alternatives to identify and implement the LEDPA. This process will avoid or reduce conflicts with policies, regulations, and planning documents, including HCPs, NCCPs, or other similar plans." Draft Staff Report/SED at 142 (emphasis added)) **Section IV.A.2(c):** ~~**If required by the permitting authority on a case-by-case basis, i**~~If no exemptions apply, an alternatives analysis in accordance with section IV.B.3 and, any supporting documentation. **Section IV.B.3.(b):** Discharges to Waters of the U.S. In reviewing and approving the alternatives analysis for discharges of dredged or fill material that impact waters of the U.S., the permitting authority shall defer to the Corps and EPA determinations on the adequacy of the alternatives analysis, unless the Executive Officer or Executive Director determines that (1) the permitting authority was not provided an adequate opportunity to consult during the development of the Corps' alternatives analysis, (2) the Corps' alternatives analysis does not adequately address issues identified by the permitting authority during consultation, (3) additional analysis is required to comply with CEQA, water quality standards, or other requirements or (45) the project and all of the identified alternatives would not comply with water quality standards. If the project also includes discharges to waters of the state outside of federal jurisdiction, the permitting authority ~~**may**~~	

4. Alternatives Analysis Requirement

Comment Number	Representative Comment	Response
	shall require the applicant to supplement the alternatives analysis to include waters of the state outside of federal jurisdiction. If an alternatives analysis is not required by the Corps for waters of the U.S. impacted by the discharge of dredged or fill material, the permitting authority ~~**may**~~ **shall** require an alternatives analysis for the entire project in accordance with the State Supplemental Dredged or Fill Guidelines, unless the project is exempt under subsection (d) below. **Section IV.B.3.(c):** Discharges solely to waters of the state outside of federal jurisdiction The permitting authority ~~**may**~~ **shall** require an alternatives analysis in accordance with the State Supplemental Dredge or Fill Guidelines, unless the project is exempt under subsection (d) below. **Section IV.B.3.(e):** ~~**The permitting authority will be responsible for determining the sufficiency of an alternatives analysis that is required under their discretion (see 3b, 3c and 3d above).**~~ The alternatives analysis must establish that the proposed project alternative is the LEDPA in light of all potential direct, secondary 9indirect), and cumulative adverse impacts on the physical, chemical, and biological elements of the aquatic ecosystem.	

5. Application Timing & Process

Comment Number	Representative Comment	Response
1.2, 3.54, 5.12, 5.13, 6.54, 7.5, 9.10, 11.2, 24.42, 24.19, 26.6, 28.16, 31.9, 31.6, 43.22	**1.2:** The proposed Procedures should be revised to provider greater clarity and streamline the application submittal and review process. There is currently frequent delay and inconsistency across the Regional Water Boards in processing applications and issuing 401 certifications. We are concerned that implementation of these procedures will further exacerbate these delays. As currently drafted, the Procedures would create additional and often unnecessary requirements. The Procedures should provide guidelines to Regional Water Board staff on timelines for their review and processing of applications, with shorter periods for routine applications.	As stated in section 6.5 of the Staff Report, the Procedures would streamline the Water Board's existing certification program and provide regulatory certainty by bringing consistency to the statewide application review process. Information requested in sections IV.A.1. and IV.A.2 is routinely requested by Water Board staff during application reviews. By including these items in the application requirements, applicants may prepare materials ahead of their initial submittal thereby reducing the number of information requests and time spent waiting throughout the application review process. Within 30 days of receiving an application Water Board staff will confirm all items listed in section IV.A.1. have been received and will notify applicants of all section IV.A.2. items needed to complete their application, subsequent application reviews will be performed within 30 days of additional information receipt.
2.12, 2.6	**2.12:** Building on this, Council staff recommends reinitiating a common application process for permitting. A single document could be designed to be used in place of different applications for state, federal, and some regional agencies, making the application process more clear and consistent. (The completed common application would be submitted directly to each agency with jurisdiction over the project.) As the Procedures are finalized, Council staff wishes to express support for such a scheme at the state level. As the agency developing these	Comment noted. If the Procedures are adopted, it is anticipated that implementation of the Procedures would include developing a statewide application for the Water Boards.

5. Application Timing & Process

Comment Number	Representative Comment	Response
	Procedures, the State Water Board could do much to facilitate more efficient permitting for aquatic resources by implementing a common application process.	
3.20, 3.27, 36.8	**36.8:** Will the Board add more 401 staff to address the substantive increase in workload?	The Procedures would streamline the Water Board's existing permitting program, and accordingly should not result in an increase in workload.
12.20	Is it necessary to send application to division of water rights as well as 401 group? Does this mean that the Division of Water Rights is the permitting authority for activities that are associated with a diversion of water (rather than the Regional Boards)?	As explained in Section IV.D, for applications associated with (1) an appropriation of water subject to Part 2 (commencing with section 1200) of Division 2 of the Water Code, (2) a hydroelectric facility where the proposed activity requires a Federal Energy Regulatory Commission (FERC) license or amendment to a FERC license, or (3) any other diversion of water for beneficial use, send applications directly to the Division of Water Rights, who will inform the applicant whether the application requirements in sections IV.A and IV.B of the Procedures apply to their application; all other applications should be sent to 401 program staff. If upon receipt, WQC program staff determines that an application should be reviewed by the DWR, WQC staff will contact you and forward your application to the DWR.
17.1	The Proposed Procedures do not include any 'grandfathering' language for projects with existing long term permits. The Proposed Procedures consist of three components (1) a wetland definition, (2) wetland delineation procedures and (3) procedures for application submittal, and the review and approval of Water Quality Certifications, Waste Discharge Requirements, and waivers of Waste Discharge Requirements for dredged or fill activities. None of these components address	The Procedure requirements would apply to all applications submitted after the final OAL approval date. The Procedures would not affect individual Orders that have already been issued.

5. Application Timing & Process

Comment Number	Representative Comment	Response
	projects that have existing long-term permits issued under existing regulations intended to protect and govern impacts to wetlands and Waters of the State. As noted above, RMV spent almost two decades to develop and implement a land use/open space plan for its property (i.e., the Ranch Plan). This effort involved the USACE, CDFW, USFWS and, at times, the San Diego RWQCB in addition to members of environmental organizations such as Natural Resources Defense Council, Endangered Habitats League, Sierra Club and many, many members of the general public.	
21.4, 23.11, 24.10, 7.8, 9.13 , 7.9, 9.14	**21.4** Page 3 lines 92-203 describe an unclear process that may be interpreted differently by different water board staff across the state, and thereby create uncertainty in understanding what is required as part of the proposed regulatory process. Some of the items that may be asked for after the initial application submittal could take significant timeframes to develop, and thus substantially delay EREP and/or beneficial wetland conservation projects. In addition, some of the items that may be asked for could have seasonal restrictions that could significantly delay even the collection of the requested data required to be able to resubmit application materials. This could detrimentally affect the ability to implement these projects as they usually have very short grant periods of performance. Applicants for beneficial wetland conservation projects need to know exactly what is required to include in a permit application to be able to plan and	The Procedures standardize a consistent application review process but do not add requirements beyond the information routinely requested by Water Board staff for project analysis, with the exception of a watershed profile and an alternatives analysis for projects that require compensatory mitigation. Ecological Restoration and Enhancement Projects are encouraged, but it is acknowledged that these projects do have the potential to impact water quality. In order to fully evaluate impacts from projects, all items in section IV.A. and items from section IV.B. are needed to evaluate all project impacts, including Ecological Restoration & Enhancement Projects. However, the Procedures exempt Ecological Restoration and Enhancement Projects from submitting a compensatory mitigation plan or an alternatives analysis, which should help to ease the regulatory burden for these projects.

5. Application Timing & Process

Comment Number	Representative Comment	Response
	budget project funding proposals appropriately. We recommend clearly defining the application requirements process and developing 'triggers' or a mechanism to determine which, if any, additional requirements may be necessary to evaluate a given project.	

6. Assessing No Net Loss

Comment Number	Representative Comment	Response
3.52	Similarly, the proposed Program points to Executive Order W -59-93 and announces that in accordance with that Order the State Board's regulation of dredged or fill activities will be conducted in a manner 'to ensure no overall net loss and long-term net gain in the quantity, quality, and permanence of wetlands acreage and values ... ' (Proposed Program 1.) This announcement is problematic in several respects. First, the Executive Order and the related California Wetlands Conservation Policy state the foregoing as an overall objective of the State of California as a whole-and not an objective of any single state agency or program, let alone a regulatory program. It is inappropriate for a regulatory program to burden permittees with a goal of not just mitigating the impacts of their projects, but also ensuring a 'long-term net gain' in wetlands. This overall state goal to achieve long-term net gain of wetlands is even less suitable as a standard for decision in an individual permit process.	The Water Boards have a duty to implement Executive Order W -59-93. In a subsequent administrative directive (California Wetlands Conservation Policy, August 23, 1993), three strategies are enumerated to achieve the objectives of Executive Order W -59-93. Specific resource agencies, including the Water Boards, are designated to assist in those strategies. The Procedures support this requirement, and clarify how this requirement will be met. Per section 13001 of the Porter-Cologne Water Quality Control Act, the Water Boards are the principal state agencies with primary responsibility for the coordination and control of water quality. It is therefore appropriate for the Water Boards to ensure that no further wetlands are lost or degraded as part of its Water Quality Certification Program. It is expected that long-term net gain in quantity, quality, and permanence of wetlands acreages and values will be achieved by, among other things, implementing more robust compensatory mitigation requirements that will improve the likelihood of achieving stated ecological goals and monitor the success of compensatory projects. In order to ensure that lost wetland acreage and function is adequately mitigated, a mitigation ratio of more than 1:1 is often required to account for temporal losses and uncertainty related to quality of future mitigation. The compensatory mitigation ratio is not a mechanism to require current applicants to mitigate for historic wetland losses.
6.8	Most of the losses of wetlands identified in the Staff Report are historical and not related to contemporaneous regulated activities. Staff Report, p. 28. These losses mostly predate the Clean Water Act, Porter-Cologne, and the Water Boards' current practices, and do not provide evidence that the current regulatory structure is inadequate or that the permitting program created by the Procedures is needed. Moreover, the historical losses lack an essential nexus with discharges proposed by current applicants, and thus it would be unlawful to require	The historical wetland losses of more than 90% is cited in the Procedures and Staff Report to explain the urgency of protecting the few remaining wetlands in California. The Water Board agrees that most of these wetland losses predate the federal 2008 Mitigation Rule, which significantly improved mitigation requirements. However, the 2008 Mitigation Rule does not address mitigation requirements for waters outside of federal jurisdiction. The Procedures fills in this missing piece. The Water Boards established the state water quality certification program in 1990. The State Water Board developed the Procedures for a number of purposes, only one of which is to ensure protection for wetlands that are no longer protected

6. Assessing No Net Loss

Comment Number	Representative Comment	Response
	current applicants to mitigate for those losses. As for contemporaneous losses, Table 5-4 of the Staff Report acknowledges that more recent loss of wetland acreage has been offset by mitigation required for regulated activities, but the Staff Report asserts the mitigation wetlands have not adequately offset lost functions, citing a 2007 study. Staff Report, p. 32 (citing to Ambrose et al. (2007)). The study predates the Corps' and EPA's adoption in 2008 of their Clean Water Act Mitigation Rule (73 Fed. Reg. 19,594 (Apr. 10, 2008), codified at 33 C.F.R. parts 325 & 332 and 40 C.F.R. part 230, subpart J), which the Procedures incorporate by reference. As a result of the Mitigation Rule and the Corps' implementation of its Standard Operating Procedures for determining appropriate mitigation, mitigation requirements have increased, with an emphasis on compensation for lost functions, services and values. The data cited in the report do not indicate that another program is needed to implement the same Mitigation Rule already in effect since 2008. If the efficacy of mitigation under the Mitigation Rule is questioned, a better approach would be to devote resources to training staff to better evaluate and monitor mitigation proposals as part of the section 401 certification process.	under the Clean Water Act due to Supreme Court decisions. Another purpose of the Procedures is to promote consistency across the Water Boards for requirements for discharges of dredge or fill material into waters of the state. Establishing Procedures that are applicable to both federal and non-federal waters of the state will help ensure that Water Board actions are consistent regardless of whether the orders are 401 certifications, waste discharge requirements, or a combination thereof and will help ensure consistency across regions. Also, current applicants are not expected to mitigate for historic wetland losses, but are expected to fully compensate for any impacts to state waters that their projects may incur (please see response to Comment #3.52).
14.14	With respect to the Authority's Program, one of the problems created by the vagaries of the mitigation under the Draft Policy is that any given Program Section is likely to pass through multiple 'watersheds.' Developing incremental and small mitigation sites in separate watersheds through a single Section is impracticable and is	Section IV.B.2.c of the Procedures has been revised to clarify that where compensatory mitigation is located in the same watershed as the project, no net loss will be determined on a watershed basis. If the compensatory mitigation and project impacts are located in multiple watersheds, no net loss will be determined considering all affected watersheds.

6. Assessing No Net Loss

Comment Number	Representative Comment	Response
	not ecologically preferable. Aggregating compensatory mitigation is supported by federal law under the federal Compensatory Mitigation Rule of 2008. (33 C.F.R. parts 325 and 332; 40 C.F.R. part 230 (the '2008 Mitigation Rule').) The 2008 Mitigation Rule specifically provides for the use of consolidated mitigation projects for linear projects. Sections IV. A.(2)(d)(ii) and B.(5)(d) allow for mitigation to be located outside the watershed containing the impacts, but the Draft Policy requires an applicant to demonstrate how the proposed compensatory mitigation will not result in 'net loss' based on the 'watershed profile.' It is therefore unclear how an applicant can demonstrate 'no net loss' to one watershed when mitigating in another.	
33.1, 33.19, 41.31, 45.4, 45.10, 45.8	**33.1:** Some provisions of the proposed Procedures do not support or further the 1993 California Wetlands Conservation Policy and would violate the goal of 'ensuring no overall net loss of wetlands and achieving a long-term gain in the quantity, quality and permanence of wetlands acreage and values.' In fact, as discussed below, many of the proposed provisions would contribute directly to a significant overall loss of wetland acreage, functions and values. The state's goal should be achieving a net gain in wetlands quality, quantity and permanence.	Several components of the Procedures are expected to lead to a long-term net gain in quantity, quality, and permanence of wetlands acreages and values. Specifically, implementing more robust compensatory mitigation requirements will improve the likelihood of achieving stated ecological goals and monitor the success of compensatory projects. Use of the watershed approach is also expected to lead to the success of mitigation projects. In order to ensure that lost wetland acreage and function is adequately mitigated, a mitigation ratio of more than 1:1 is often required to account for temporal losses and uncertainty related to quality of future mitigation. In addition, the Procedures will ensure that applicants will take the appropriate steps to avoid and minimize impacts to waters of the state.
33.20	Finally, we would like to comment on a view that the wetlands restored in the multiple wetland projects constructed in recent years to restore historic tidal and other wetlands would offset wetland deficits that may be the result of inadequate regulatory program mitigation. We strongly object to operating under this approach. It	Comment noted. Project proponents must fully mitigate for any permitted impacts to state waters. Please also see response to Comment #3.52.

6. Assessing No Net Loss

Comment Number	Representative Comment	Response
	would mean that the state and federal governments are subsidizing development projects and the filling of wetlands by private entities and others, to the detriment of the state's wetland, fish and wildlife resources. Without question, state and federal regulatory programs must ensure that each project they permit is required to ensure there is no net loss of wetland acreage, quality and function for the wetland losses it is responsible for causing, and that the mitigation is located in the watershed in which the losses occur.	

7. Climate Change Analysis

Comment Number	Representative Comment	Response
1.8, 5.6, 6.55, 40.4	**1.8:** Delete section IV.A.2.b., page 4, which requires information that should already be analyzed under CEQA for the project. The Water Boards should rely on the project's CEQA documentation for the information requested in this section.	To the extent that CEQA documentation addresses climate change related to the proposed project and associated compensation, it may be sufficient. However, current CEQA guidelines only require analysis of greenhouse gas emissions. For some projects, additional analysis may be necessary. For instance, rising global temperatures are projected to lead to future increased sea levels and associated increased shoreline erosion, saltwater intrusion, and larger storm surges. As mentioned in the Staff Report on page 53, applicants with projects subject to sea level rise should therefore consider whether the proposed project and mitigation design will accommodate projected sea level rise. Regarding climate change, scientists also predict more variability in California's climate, with more intense storms, longer dry periods, and less snowpack in the Sierras. Higher winter temperatures are expected to increase the amount of precipitation falling as water and decrease the amount falling as snow, and the snow that does fall is expected to melt earlier in the spring. Flood risks in the winter and spring will increase, while available water in the summer will sharply decline. Applicants with channelization projects should consider potential changes in hydrology due to climate change. Proposed mitigation projects generally should consider drought and associated increased fire danger in order to reduce vulnerability and enhance resilience. Applicants may also want to consider including an invasive species monitoring program for mitigation projects as increased vulnerability to invasive species is also associated with climate change.
7.4, 12.14, 21.6, 24.49, 35.2, 38.2	**24.49:** The draft states: If required by the permitting authority on a case-by-case basis, an assessment of the potential impacts associated with climate change related to the proposed projects and any proposed compensation, and any measures to avoid or	Please see response to Comment # 1.8. Unfortunately, because of the wide variety of projects and locations, it is not possible to anticipate every way that climate change may impact future projects and associated compensatory mitigation sites, and it would not be

7. Climate Change Analysis

Comment Number	Representative Comment	Response
	minimize those potential impacts.' In accordance with our previous comment on Section IV.A.2 ., we recommend that the criteria, factors and process for deciding when this information will be required should be provided in the Amendments.	possible to provide detailed guidance in the Procedures on the criteria, factors and process for deciding when a climate change analysis will be required. However, a climate change analysis is not meant to be onerous; rather, it is a reminder to both applicants and regulatory staff that it is prudent to consider climate change vulnerabilities when in the planning phase of a project.
45.39	The policy must consistently require assessment of climate change impacts. The draft policy provides the Regional Boards with authority to require, on a case-by-case basis, an analysis of impacts associated with climate change and measures to avoid or minimize those impacts. Draft Policy at IV.(A)(2)(b). The Draft Staff Report/SED highlights some of the ways in which climate change should be considered during project design: Consideration should be given to the potential impacts on project viability and mitigation success. Projects subject to sea level rise should consider the need for project design to accommodate for the long term viability of the project and compensation area. Projects involving channelization should show that anticipated changes in flows due to increased precipitation patterns, and potential flooding, due to climate change are analyzed. Draft Staff Report/SED at 53. In light of wetlands' vulnerability to changes in temperature, hydrology, and sea level rise, these considerations and others are essential to ensuring that projects are resilient to climate change impacts, and that mitigation efforts can succeed. Accordingly, and in conformance with State Board Resolution No. 2008-0030, we suggest the following revisions to section N(A)(2)(b) of the draft policy, which would make an assessment of climate change impacts a standard component of every permit application: ~~**If required by the permitting authority on a case-by-case-basis a**~~	As many projects would not be greatly affected by climate change, it would be inappropriate to require a climate change analysis for every application. However, as mentioned in the response to Comment #24.49, it is prudent for all applicants to consider possible climate change vulnerabilities of the project and mitigation sites when in the planning phase of a project.

7. Climate Change Analysis

Comment Number	Representative Comment	Response
	An assessment of the potential impacts associated with climate change related to the proposed project compensation, and any measures to avoid or minimize those potential impacts.	
46.13	Section IV.A (2)(b): We request that climate change analysis be completed in the basin plans, not through the permitting process. If climate change analysis is required on a per project basis, we request that you accept the analysis included in the CEQA document for the project.	Please see responses to Comments # 1.8 and 24.49. Climate change analysis must be performed at the project-level, in order to adequately consider site-specific conditions, the particular project characteristics, and any potential measures to avoid or minimize climate-related impacts. A basin-wide climate change analysis would not be useful to applicants and regulatory staff. In some cases, the analysis included in the CEQA document may be sufficient.

8. Compensatory Mitigation (General)

Comment Number	Representative Comment	Response
4.3, 45.34	**4.3:** Compensatory Mitigation must be in-kind (of the same type) and on-site if compensatory mitigation is required, the Policy should require in-kind and onsite wetland mitigation projects, to ensure that the mitigated wetlands are similar in structure and habitat to the impacted wetlands. This will help to ensure that similar habitat for indigenous species and wetland function (i.e. freshwater to freshwater wetlands) is protected, restored, or recreated. We appreciate that a watershed approach is prioritized for compensatory mitigation but we recommend that mitigation projects be further required to be onsite and as local as possible. For many areas, a watershed approach may be too large and a compensatory mitigation project, even within the watershed, may be completely redistributing ecological and social benefits of open space to very different areas and communities. For instance, the Los Angeles River Watershed is very large at over 800 square miles. Compensatory mitigation for a project in Compton Creek, a tributary in the southern part of the watershed, may occur at a common mitigation bank in Tujunga Wash (8), which is located in the northern part of the watershed. The socioeconomic communities differ greatly and the unequal distribution of open space and recreational opportunities becomes an environmental justice issue. Mitigation banking or in-lieu fee programs should not exonerate the applicant from providing some environmentally friendly project within the locale of the impacted area. We recommend that mitigation projects be kept in-kind and onsite to avoid these concerns of redistribution of wetlands and open space areas.	The Procedures required that the Water Boards use the watershed approach to determine the most environmentally preferable compensatory mitigation for adverse impacts to waters of the state. The watershed approach is used to determine the amount, type, and location of compensatory mitigation that will provide the desired aquatic resource functions and will continue to function over time in a changing landscape. In Appendix A of the Procedures, section 230.93 explains when certain types of compensatory mitigation may be preferable. For example, where permitting impacts are located within a service area of an approved mitigation bank, and the bank has the appropriate number and resource type of credits available, a mitigation bank may be preferable in part because it can help reduce risk and uncertainty as well as temporal loss of resource functions and services. However, the type of compensatory mitigation ultimately required will always be based on what would be environmentally preferable. Depending on the particular project, on-site and in-kind permittee-responsible compensatory mitigation may be the most environmentally preferable option.
11.6, 12.7	**12.7:** Mitigation/restoration plan requirements: The procedures state that a compensatory mitigation plan may be needed as part of a complete application as determined on a case-by-case	In section IV.B.1. of the Procedures it is stated that the Water Boards "will evaluate the potential impacts on the aquatic environment from the proposed project and determine whether the proposed project complies

8. Compensatory Mitigation (General)

Comment Number	Representative Comment	Response
	basis. It has been the experience of DWR that mitigation required by other agencies such as the California Department of Fish and Wildlife (CDFW) or the United States Fish and Wildlife Service (FWS) has often been accepted as adequate mitigation by a Regional Water Quality Control Board (RWQCB). In other cases, RWQCB has required additional mitigation. DWR requests that the Procedures be amended to take into account cases where mitigation is or may be required by other agencies as part of the same project, and to provide clear guidance as to when additional information or mitigation may be required by the RWQCB.	with these procedures." Also, the Water Boards must ensure that "A sequence of actions has been taken to first avoid, then to minimize, and lastly compensate for adverse impacts to waters of the state." If compensatory mitigation is required to compensate for adverse impacts to waters of the state, the Water Boards "will consult and coordinate with any other public agencies that have concurrent mitigation requirements in order to achieve multiple environmental benefits within a single mitigation project, thereby reducing the cost of compliance to the applicant (Section IV. B. 5. (b))." Therefore the Water Boards may concur with compensatory mitigation requirements of another agency; however, those requirements would need to be outlined in a draft compensatory mitigation plan in order to deem an application complete. The Water Boards will need to analyze specific project impacts and proposed compensatory mitigation to determine whether additional compensatory mitigation should be required.
24.75	Some regions have Corps approved mitigation banks and/or in lieu fee programs with a service area that covers multiple watersheds. These two sections (b.2. and b.3.) should include language that confirms their use is approved for compensating for out of watershed impacts, as long as the impacts occur within the bank's or in lieu fee program's service area. We recommend adding the following language to these two sections: "**Mitigation banks and in-lieu fee programs, with approved service areas that cover multiple watersheds, can be used to compensate for out-of-watershed impacts, as long as the impacts occur within the mitigation bank's or in-lieu fee program's service area.**"	As drafted, there is nothing in the Procedures that precludes compensatory mitigation from being located outside of the watershed of impact but within the service area of a mitigation bank or in- lieu program. However, clarifying language has been added to this requirement, as follows: **In general, the required compensatory mitigation should be located within the same watershed as the impact site, but the permitting authority may approve compensatory mitigation in a different watershed. For example, if** a proposed project may affect more than one watershed, then the permitting authority may determine that locating all required project mitigation in one area is ecologically preferable to requiring mitigation within each watershed.
46.15	Section IV.A(2): We request that you include a statement that if a project proposes to purchase mitigation credits from an approved mitigation bank or in-lieu fee program (ILF) to fulfill its	Appendix A, section 230.94 states that if compensatory mitigation is to be fulfilled through the purchase of credits through a mitigation bank or in-lieu fee program, a specific set of information is needed in a draft compensatory

8. Compensatory Mitigation (General)

Comment Number	Representative Comment	Response
	mitigation requirement, that a draft compensatory mitigation plan will not be required. This is addressed in Appendix A, Subpart J, §230.94(c)(l)(i) and §230:94(c)(1)(ii) (lines 1282-1286 and 1295-1300, respectively), however, including this in the main text of the Procedures will provide substantial clarity for applicants.	mitigation plan. Therefore, a draft compensatory mitigation plan is required in order for an application to be deemed complete; however, the specific information needed in a draft compensatory mitigation plan has been outlined in the procedures (see section IV.A.2.(d)).
46.19	Section IV.A(2)(d)(ii): This subsection allows for mitigation that is located outside of the impacted watershed to be proposed; however, it also requires that the applicant describe how the proposed mitigation 'does not cause a net loss of the overall abundance, diversity, and condition of aquatic resources, based on the watershed profile.' While we appreciate that this allows for a fuller range of mitigation options, we request clarification as to how mitigation proposed outside of a watershed would be able to meet the needs of the profiled watershed.	The mitigation decision is based on what is deemed environmentally preferable. There may be some cases when the greater ecologically benefit may be achieved by locating the compensatory mitigation outside of the impacted watershed. This decision would be informed by analyzing the watershed profiles of both watersheds.
46.21	Section IV.A(2)(d)(vi): This requirement is addressed in the Caltrans Statewide Stormwater Permit (Orders 2012-0011-DWQ, WQ 2001-006-EXEC, WQ 2014-0077-DWQ, WQ 2015-0036-EXEC, and 2015-0036-DWQ). We request that this requirement be amended to allow the acceptance of existing permits that also cover this requirement.	Language in section IV.A.2.d.vi. of the proposed Procedures has been updated to reflect the suggested language change. "If the compensatory mitigation involves restoration or establishment as the form of mitigation, applicants shall ~~consult~~ **notify** ~~with~~ state and federal land management agencies, ~~**airport land commission**~~, fire control districts, flood control districts, local mosquito-vector control district(s), and any other interested local entities prior to initial site selection. ~~**Appropriate mosquito and vector control measures, including maintenance specifications, shall be developed in coordination with local mosquito-vector control district(s) or other responsible public agency(ies) during the initial compensatory mitigation project design stage. These entities should be consulted as early as possible during the initial compensatory mitigation project design stage.**~~"

9. Compensatory Mitigation (Ratio)

Comment Number	Representative Comment	Response
3.51, 33.11	**3.51**: Particularly concerning is a provision calling for the boards, when determining the amount of compensatory mitigation to be required of an applicant, to 'take into account recent anthropogenic degradation to the aquatic resource and the potential and existing functions and conditions of the aquatic resource.' (Proposed Program 8.) While the boards naturally should assess the existing environmental baseline conditions when evaluating the effects of a project, they should not endeavor to evaluate putative effects on 'potential' or hypothetical functions and conditions or 'recent anthropogenic degradation' unrelated to the project. To do so would inject extraneous matters into evaluation of a project's environmental impacts and mitigation of those impacts, and run afoul of constitutional principles requiring that mitigation have an essential nexus and rough proportionality to a project's actual impacts.	Insertion of the referenced language in section IV.B.5.(c) of the Procedures was recommended by stakeholders during informal outreach. The ability to adjust the required mitigation ratio to account for recent intentional degradation of an aquatic resource that reduces the potential and existing functions and conditions is appropriate. Otherwise there could be an incentive to intentionally degrade an aquatic resource in advance of a project so that less compensatory mitigation would be required. When recent anthropogenic degradation occurs wholly independent of the project applicant's activity, a higher mitigation ratio would likely not be appropriate.
4.7, 4.8, 33.10, 33.12	**4.7:** Compensatory mitigation should be required at a minimum ratio of 3:1 acres of mitigation wetland to natural wetland lost; mitigation should *never* be under 1:1. It is important to note that mitigation should be considered a last resort for meeting the goals of the 'no net loss' policy. Nationwide, methods to replace wetlands have largely proven unsuccessful in fully recreating the biodiversity and habitat lost in areas where the wetlands have been impacted or destroyed. Research shows that in general, mitigation requirements in 401 and 404 permits have been shown to be insufficient to ensure high performance in mitigated wetlands. According to Kihslinger[1], studies of the ecological performance of compensatory mitigation have shown that compensatory wetland projects fail to replace lost wetland acres and functions more often than they fail in their ability to	The proposal to require a minimum one-to-one ratio to offset adverse impacts to waters of the state is in line with one of the goals of the Procedures to align with federal regulations to the extent feasible. A one-to-one ratio is assumed unless a functional or conditional assessment metric is used to establish the extent of lost aquatic resource functions. Lacking this information, a one-to-one ratio is set as the base ratio. However, it is important to note that a number of different factors are taken into consideration when developing a final compensatory mitigation ratio. These factors include temporal loss, in-kind vs out-of-kind, locational factors (such as proximity to the impact site), hydrologic conditions, soil characteristics, adjacent land uses, and biological conditions. Where appropriate, a higher mitigation ratio may be required. Please refer to more detailed discussion on what is taken into consideration when determining compensatory mitigation ratios in the "Water Boards' Review and Approval

9. Compensatory Mitigation (Ratio)

Comment Number	Representative Comment	Response
	meet permitting requirements. In addition to not meeting acreage requirements, mitigation wetlands often do not replace the functions and types of wetlands destroyed due to permitted impacts.[3] The Policy should clearly outline requirements for effective mitigation of impacts to wetlands. The Amount of Compensation section of the Preliminary Policy states that the Water Boards shall presume that a one to one acreage or length of stream reach is the minimum necessary to compensate for wetland or stream losses.[4] This minimum is unjustifiably low. The Policy should contain a higher mitigation ratio to create a margin of safety to account for the disparity between the functions and acreage lost and the mitigated area. In situations where wetland destruction is unavoidable, a minimum mitigation ratio of 3:1 for new mitigation area to original wetland area should be established in this Policy to ensure that adequate area is set aside to mitigate wetland impacts. Setting the minimum mitigation ratio at a 3:1 ratio will also help ensure that avoidance of impacts is prioritized over minimizing and compensating for impacts. This ratio is a standard minimum that is frequently required for projects approved by the California Coastal Commission. Thus, use of this 3:1 ratio would ensure consistency with another State Agency. The Policy suggests that compensatory mitigation could be under a 1:1 ratio without providing any evidence to support the rationale.[5] Given the scientific literature on wetland mitigation projects- Kihslinger[6] and Ambrose[7] and the goal of no net loss of wetlands, a policy that allows for a net loss of wetlands is one we cannot support.	for Applications for Individual Orders" in the Staff Report.
6.39	Similarly, the Mitigation Rule acknowledged throughout that	References to 'practicable' are not deleted in every instance throughout

9. Compensatory Mitigation (Ratio)

Comment Number	Representative Comment	Response
	compensatory mitigation needed to be practicable. However, the State Supplemental Dredged or Fill Guidelines deletes every reference to practicable in Subpart J and, instead, requires mitigation based only on what would be 'environmentally preferable.' State Guidelines § 230.93(a)(1). The intent of this change is unclear, but it creates the potential for conflicting determinations for the suitability and adequacy of proposed compensatory mitigation between agencies. In addition, the replacement of 'practicable' with 'environmentally preferable' suggests an inflexible and unrealistic approach that could preclude approval of mitigation proposals that represent the best practicable mitigation available, and/or result in impracticable mitigation requirements that permittees cannot satisfy. Section B.5.c requires a minimum 1:1 acreage or length of stream reach replacement to compensate for wetland or stream losses, absent exceptional circumstances. Replacement of streams is difficult, as the edits to Section 230.93(e)(3) of the State Supplemental Dredged or Fill Guidelines indicate. A strict interpretation of this provision would make many projects infeasible.	Subpart J of the State Supplemental Guidelines (please see sections 230.92, 230.93, 230.95 & 230.97). In addition, the term 'practicable' was not replaced with 'environmentally preferable'; the phrase following “based on” was deleted for clarity (i.e. “what is practicable and capable of compensating for the aquatic resource functions that will be lost as a result of the permitted activity” was deleted). The remaining text was combined with the following sentence that states that the permitting authority will consider what is environmentally preferable when evaluating compensatory mitigation options. Also retained is that this consideration involves weighing other criteria including cost. Therefore, this change to the text should not increase the potential for conflicting mitigation determinations between agencies or result in “impracticable mitigation requirements”. In addition, (as per section IV.B.5.(a) of the Procedures) the Water Boards will consult and coordinate with any other public agency that may have concurrent mitigation requirements in order to achieve multiple environmental benefits with a single mitigation project, thereby reducing the cost of compliance to the applicant (where feasible). Section 230.939(e)(3) acknowledges that streams are “difficult to replace”. That is why this section provides that compensatory mitigation for difficult to replace resources may be provided through in-kind rehabilitation, enhancement, or preservation, if practicable. For more information on considerations on determining compensatory mitigation requirements, please refer to sections 6.5 & 6.6 of the Staff Report. (Please note 40 CFR 230 Cross reference document has been updated to accurately reflect what was changed from the 404(b)(1) Guidelines to the State Supplemental Guidelines; some errors were discovered in version 1 of this document.)
6.42, 6.66	**6.42:** For mitigation to impacts to linear features, delete the requirement for replacing stream reaches at a 1:1 ratio based on length. A better approach, and consistent with the Corps’ focus in the Mitigation Rule, is to focus on enhancement and	The use of the term “stream length” in this context is to indicate what metric is to be used in calculating the mitigation ratio for stream impacts. Please see section 230.93(e)(3) which provides that, for difficult to replace resources, such as streams, compensatory mitigation should be provided

9. Compensatory Mitigation (Ratio)

Comment Number	Representative Comment	Response
	restoration of existing but degraded resources and the increase in functions and values obtained through such mitigation - i.e., the evaluation of impacted resources and mitigation opportunities should focus on overall functions and values of the respective resources; acreage or length is only one input in this assessment.	through in-kind rehabilitation, enhancement, or preservation, if practicable.
12.18	A potential reduction in the ratio for compensatory mitigation which includes buffer areas is appreciated, as this measure is ecologically beneficial and cost effective for project proponents.	Comment noted.
12.22	If the watershed approach for the compensatory mitigation plan places value on the protection of terrestrial resources, will compensatory credit be allocated for those non-wetland acres?	Section IV.B.5(c) provides that if a compensatory mitigation plan includes the active management of a buffer area adjacent to the mitigation site, then the permitting authority may consider a reduction in the mitigation ratio.
14.15	Furthermore, under the Draft Policy Section IV.B.(5)(c), the amount of compensatory mitigation required by the Boards will be dependent on one of two strategies: (1) a strategy based on a watershed approach based on a watershed profile developed from a watershed plan (approved by the Regional Boards); or (2) a strategy based on a watershed approach based on a watershed profile that will 'contribute to the sustainability of watershed functions.' According to the Draft Policy, planning under Strategy 1 will generally result in less compensatory mitigation than a plan under Strategy 2. This two-tier strategy is in important respects different from, and not necessarily consistent with, the USACE South Pacific Division's Final 2015 Regional Compensatory Mitigation and Monitoring Guidelines.	The Water Boards aim to sustain and enhance the quality and quantity of aquatic resources within watersheds by applying the watershed approach to strategically selected compensatory mitigation sites. The two watershed approach strategies listed in section IV.B.5.(c) of the proposed Procedures are included as an incentive to applicants to engage the watershed approach when preparing applications for projects that are to be regulated under the proposed Procedures. The federal regional mitigation guidelines similarly require a watershed approach in siting compensatory mitigation. In addition, these guidelines also require the consideration of the type, amount and condition of aquatic resources (termed “watershed profile” in the Water Board Procedures) as part of the watershed approach.
14.19	Many of the important terms used in the Draft Policy for determining adequate compensatory mitigation are not used or defined in the 2008 Mitigation Rule or in the South Pacific Division's 2015 Mitigation Guidelines. Additionally, the Draft	Definitions from the 2008 federal Mitigation Rule are found in Appendix A, section 230.92 of the Procedures (the State Supplemental Dredge and Fill Guidelines). These federal mitigation definitions will be adopted with the Procedures. The State Water Board is not adopting federal mitigation

9. Compensatory Mitigation (Ratio)

Comment Number	Representative Comment	Response
	Policy does not incorporate nor reference regional mitigation guidance documents (such as the South Pacific Division's 2015 Guidelines). Such integration and consistency is necessary if the goals and objectives of the Draft Policy are to be realized.	guidance documents, such as the South Pacific Division's 2015 Guidelines, because these documents interpret and offer guidance to the federal 2008 Mitigation Rule rather than establishing new regulations.
33.13	Buffer - Buffers are essential components of wetland habitats. Buffers are needed to protect the habitat quality and water quality. Buffers serve as transition zone habitat, provide essential refugia habitat for endangered Ridgway's Rail and Salt Marsh Harvest Mouse, foraging and nesting habitat for other special status species, and resting and foraging habitat for resident and migratory species. Buffers block impacts of adjacent human uses, be they noise, visual, or dogs, from adjacent development and help to clean water by filtering pollutants. Buffers also provide space to accommodate rising tides thereby contributing flood control benefits for adjacent human communities. For these reasons, buffers should be an integral part of all wetland mitigation requirements. No reduced compensation ratio should be allowed for buffers as suggested at B.5.c. Buffers should be required as part of all or most project designs to ensure a complete wetland habitat and all of the other services they provide. Allowing a reduced mitigation for providing buffers would ensure there would ultimately be a loss of wetland acreage. Restored or protected wetlands, in fact all wetlands, would be degraded in the short and long term unless buffers are provided.	Section IV B 5 (c) includes buffers as one of a number of considerations for establishing the amount of mitigation required by the permitting authority. As stated in this section, if the mitigation plan provides for management of buffers around the mitigation site, the permitting authority may consider a reduction in the mitigation amount required. The provision of managed buffers lowers the risk that the mitigation project will fail for the reasons cited, and as such, a lower mitigation ratio may be allowed. A minimum of one-to-one will be required, so there will be no loss of wetland acreage except for cases where a function or condition assessment demonstrates, on an exceptional basis, that a lesser amount is sufficient.
45.30, 45.32	**45.30:** The draft policy's provisions related to the amount of compensatory mitigation are problematic. In particular, the draft policy's grant of authority to the Regional Boards to require mitigation ratios of less than one-to-one is inappropriate and inconsistent with achieving no net loss. See Draft Policy at	Less than one-to-one acreage or length of stream reach replacement is permitted only when “an appropriate function or condition assessment method clearly demonstrates, on an exceptional basis, that a lesser amount is sufficient.” As the express language states, such situations will be exceptional, not the norm. Absent these specifically circumscribed

9. Compensatory Mitigation (Ratio)

Comment Number	Representative Comment	Response
	IV(B)(5)(c). As discussed further below, we do not agree that a mitigation ratio of less than one-to-one can ever be appropriate because it undermines the no-net-loss policy. The draft policy's current approach, which leaves the Regional Boards with significant discretion to reduce the required mitigation ratio below one-to-one under an undefined set of circumstances would lead to losses of wetland acreage, inconsistent requirements across and within Regional Boards, uncertainty within the regulated community, and significant additional workload for Regional Board staff. To avoid these problems, we suggest the following changes to section IV.(B)(5)(c) of the draft policy: Amount: The amount of compensatory mitigation will be determined on a project-by-project basis in accordance with State Supplemental Dredged or Fill Guidelines, section 230.93(f). The permitting authority **shall** ~~**may**~~ take into account recent anthropogenic degradation to the aquatic resource and the potential and existing functions and conditions of the aquatic resource. A minimum of one-to-one acreage or length of stream reach replacement is necessary to compensate for wetland or stream losses ~~**unless an appropriate function or condition assessment method clearly demonstrates, on an exceptional basis, that a lesser amount is sufficient. A reduction in the mitigation ratio for compensatory mitigation will be considered by the permitting authority if buffer areas adjacent to the compensatory mitigation are also required to be maintained as part of the compensatory mitigation management plan. The amount of compensatory mitigation required by the permitting authority will vary depending on which of the following**~~	situations, a minimum of one-to-one mitigation ratio will be required, and higher mitigation ratios may also be appropriate depending on the situation. Regarding Executive Order W-59-93, quantity is only one metric by which to analyze wetlands. Quality and permanence are also considerations. The Procedures allow for consideration the existing functions and values of aquatic resources as well as their size. Achievement of "no net loss" should be analyzed holistically, giving consideration to quantity, quality, and permanence, and taking into account a statewide and long-term perspective. Overall, the Procedures should help "ensure there will be a long-term net gain in the quantity, quality, and permanence of wetlands acreage and values . . . " in accordance with Executive Order W-59-93.

9. Compensatory Mitigation (Ratio)

Comment Number	Representative Comment	Response
	~~strategies the applicant uses to locate the mitigation site within a watershed.~~ ~~Strategy 1: Applicant locates compensatory mitigation using a watershed approach based on a watershed profile developed from a watershed plan that has been approved by the permitting authority and analyzed in an environmental document, includes monitoring provisions, and includes guidance on compensatory mitigation opportunities;~~ ~~Strategy 2: Applicant locates compensatory mitigation using a watershed approach based on a watershed profile developed for a project evaluation area, and demonstrates that the mitigation project will contribute to the sustainability of watershed functions and the overall health of the watershed area's aquatic resources.~~ ~~Generally, the amount of compensatory mitigation required under Strategy 1 will be less than the amount of compensatory mitigation required under Strategy 2 since the level of certainty that a compensatory mitigation project will meet its performance standards increases if the compensatory mitigation project complies with a watershed plan as described above. Certainty increases when there is a corresponding increase in understanding of watershed conditions, which is increased when using a watershed plan as described above to determine compensatory mitigation requirements.~~	
46.20	Section IV.A(2)(d)(v): We request that buffers included in a mitigation plan also provide compensatory mitigation credits to the project, consistent with Appendix A, Subpart J	Appendix A, Subpart J section 230.93(h)(2)(i) is incorporated into Appendix A: State Supplemental Dredge and Fill Guidelines, of the Procedures; therefore, this request is consistent with the Procedures, as drafted.

9. Compensatory Mitigation (Ratio)

Comment Number	Representative Comment	Response
	§230.93(h)(2)(i).	Section IV.B.5(c) also provides that buffer areas may be considered to justify a reduction in mitigation ratio.

10. Compensatory Mitigation (Hierarchy)

Comment Number	Representative Comment	Response
6.40	Recommendations: Reinsert the preference hierarchy in Section 230.93(b)(1) and all references to the consideration of practicability of mitigation throughout Subpart J, or simply revise Subpart J to rely on and cross-reference the Mitigation Rule in its full an unedited state.	The first sentence of section 290.93(b)(1) was removed to make it clear that the permitting authority may choose an option out of order based on other considerations. This sentence is sometimes misinterpreted as imposing a mandatory hierarchy of compensatory mitigation options, but as described in section 230.93 (a), the permitting authority must determine the compensatory mitigation to be required in the permit "based on what is environmentally preferable." The State Supplemental Guidelines have retained section 230.93(b)(2) through (b)(6), which explain why preference may be given to certain kinds of compensatory mitigation. In determining what is environmentally preferable, the permitting authority "must assess the likelihood for ecological success and sustainability, the location of the compensation site relative to the impact site and their significance within the watershed, and the costs of the compensatory mitigation project." Accordingly, cost is still one of several factors that must be considered in determining the appropriate compensatory mitigation.
12.21, 15.12, 33.15, 46.18	**12.21:** (ref: page 26, line 911) What is the definition of 'within the same watershed' with respect to mitigation? HUC 8, 1 0, 12? How will the watershed approach be applied in areas like the Sacramento -San Joaquin Delta which consists of many leveed islands?	When evaluating an appropriate watershed size when considering potential mitigation site locations, the chief criteria is a location where it is "most likely to replace lost functions and services…" (Appendix A, section 230.93(b)). Accordingly, the size of the watershed considered will depend on the proposed project.
24.25	IV.B.5 Compensatory Mitigation As detailed in the staff report, a watershed approach is contemplated in the Draft Procedures in terms of compensatory mitigation. Both strategies involve locating compensatory mitigation 'using a watershed approach based on a watershed profile from a watershed plan.' We have conducted informal research with professional mitigation acquisition entities, and this approach has not been seen in California. We would like this language to be removed or revised to ensure that it does not limit potential benefits in securing and protecting waters of the state. We do	The difference between the two strategies in Section IV.B.5(c) is that Strategy 1 uses "watershed approach based on a watershed profile developed from a watershed plan" and Strategy 2 uses "watershed approach based on a watershed profile developed for a project evaluation area." In either case, the applicant must use a watershed approach, which is consistent with the federal approach, but the difference is how the watershed profile is developed. The Draft Procedures incentivize, but do not require, using a watershed profile developed from a watershed plan when developing a mitigation plan by allowing the permitting authority to require less mitigation under Strategy 1. Where no such watershed plan is available, the applicant may use Strategy 2.

10. Compensatory Mitigation (Hierarchy)

Comment Number	Representative Comment	Response
	support the efforts to promote regional conservation and applaud the SWRCB for not requiring mitigation to occur within the vicinity of the project if greater benefits can be achieved elsewhere.	
24.57, 24.67, 24.83	**24.57:** The Procedures need to clarify that mitigation banks and in-lieu fee programs located outside the impact watershed can be utilized in this demonstration when they are authorized by the Corps for use in the impacted watershed. We recommend the following revision to this section: Section IV.B.1.(b); Lines 211-212: For new construction projects (i.e., not projects associated with existing facilities), ~~**The**~~ potential impacts will not contribute to a net loss of the overall abundance, diversity, and condition of aquatic resources in a watershed. **When a mitigation bank or in-lieu fee program is used for mitigation (including mitigation banks and in-lieu fee programs that are located outside of the impact watershed but whose authorized service area covers the impacted site), this requirement is satisfied.**	According to the Procedures, the Permitting Authority determines type and location of mitigation based on a watershed approach, evaluating what is the most environmentally preferable. This could include the use of credits from an approved mitigation bank or in-lieu fee program located outside of the impacted watershed.
26.4, 28.3	**26.4:** The Proposed Procedures reference a hierarchy of five mitigation approaches starting with purchase of mitigation bank credits as the most preferred option and moving through off-site and/or out-of-kind mitigation as the least preferred option. We recommend the Final Procedures allow a 6th mitigation option that includes creative and non-comparable mitigation for impacts to Water of the State. Although the Proposed Procedures allow for some flexibility when on-site and in-kind	This hierarchy of preferences for compensatory mitigation approaches is a *soft* preference which allows Water Board staff to analyze and approve compensatory mitigation plans that have the best environmental outcome when compared to the adverse impacts. This hierarchy and soft preference is in line with the Corps 404(b)(1) Guidelines. Adding another compensatory mitigation approach that is not consistent with Corps practices would go against one of the primary goals of the Procedures of promoting consistency between the Water Boards and the Corps. See also staff response to Comment #6.40.

10. Compensatory Mitigation (Hierarchy)

Comment Number	Representative Comment	Response
	mitigation may not be possible or practical, we believe in some cases, the most beneficial, feasible mitigation for our typically small impacts would be direction of funds to alternative mitigation such as local watershed group planning and restoration efforts, research, or other in-direct watershed-benefitting efforts.	
33.17	The State should not be supporting this type [mitigation banks] of mitigation. Marin Audubon opposes mitigation banks because they set the stage for losing wetlands in the future in an unidentified location and for unidentified projects. It is possible a project could be modified to reduce or eliminate wetland losses, but because a bank is available, applicants have a ready fix and further discussion of alternatives usually ends. Mitigation banks have a history of success that is mixed at best. Our experiences demonstrate many problems inherent in their use.	Both state and federal regulation require an applicant to avoid and minimize potential impacts to wetlands to the extent practicable. The availability of mitigation banks does not remove this requirement. The Procedures generally favor mitigation banks and in-lieu fee programs over permittee-responsible mitigation, because they usually involve consolidating mitigation projects where ecologically appropriate, pool financial planning and scientific expertise, reduce temporal losses of functions, reduce uncertainty over project success, and is overseen by multiple agencies. However, the Water Boards' preference for mitigation banks over permittee-responsible mitigation is a soft preference, because in some cases permittee- responsible mitigation may have the better environmental outcome. See also staff response to Comment #26.4.
40.6	Compensation Evaluation Comment: Mitigation proposals are supposed to be consistent with the USACE mitigation guidelines, which expresses a preference for the use of mitigation banks. However, at present, most mitigation banks do not have credits available for impacts to "state only" waters. Recommendation: The Procedures should make clear that, if no mitigation bank credits are available for impacts to waters of the state, the applicant can utilize available in-lieu fees and/or permittee responsible mitigation.	The Procedures are in line with the Corps 404(b)(1) Guidelines in that they include the soft preference in compensatory mitigation approach. See also staff responses to Comments #6.40 and 26.4. This soft preference requires Water Board staff to take into consideration the best environmental outcome to compensate for the adverse impacts, whether it's through mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. Where no mitigation banks have credits that would be appropriate compensatory mitigation, in-lieu fee programs and permittee-responsible mitigation will be considered.
3.40, 6.36, 14.16,	**41.27:** Section IV (A)(2)(d): This requirement appears to relate only to USACE Regulatory program-related	Revisions have been made to Section IV.A.(d) of the Procedures to clarify what must be submitted when an applicant intends to fulfill its compensatory mitigation

10. Compensatory Mitigation (Hierarchy)

Comment Number	Representative Comment	Response
24.76, 41.27, 42.5, 43.14, 43.16, 44.3, 46.16	permittee-responsible compensatory mitigation. Per USACE and USEPA regulations at 33 C.F.R. § 332.3(b) and 40 C.F.R. § 230.93(b), mitigation banks and in-lieu fee programs are generally preferred over permittee responsible compensatory mitigation. USACE recommends that the State adopt the same preference hierarchy.	obligations by securing credits from a mitigation bank or in-lieu fee program. Section IV.A.(d) also states that a draft compensatory mitigation plan "shall comport with the State Supplemental Dredge or Fill Guidelines, Subpart J" which includes the soft preference hierarchy for compensatory mitigation approaches. See also staff responses to Comments #6.40 and 26.4.
41.56	Appendix A: State Supplemental Dredged or Fill Guidelines: Section 230.93(L)(2): The State has proposed to eliminate all discussion of the process for approval of mitigation bank and in-lieu fee programs found in USACE regulations at 33 C.F.R. Part 332 and the Section 404(b)(1) Guidelines at 40 C.F.R. Part 230, Subpart J. Therefore, it is not clear why section 230.93(1)(2), related to the approval of mitigation banks and in-lieu fee program instruments, has been retained.	Appendix A, section 230.93(L)(2) has been struck from the State Supplemental Dredge or Fill Guidelines to reflect that provisions outlined in (L)(2) is expected to be implemented by the Corps.
44.4	Watershed Approach: There are many ways to incorporate watershed-based strategies into site-specific permit approvals, and EPA has championed the watershed approach for over 25 years. The Procedures encourage the watershed approach in several respects; however, the policy would benefit from a broader definition and application of the concept. For example. Strategy 1 in Section B.5.c should explicitly include habitat conservation plans (HCPs) or natural community conservation plans (NCCPs) that incorporate CWA programs as satisfying the Strategy's definition of a watershed approach. EPA recommends the State Board incorporate language on this subject, which was previously provided to your 401 staff. Incorporating	The definition of a watershed plan has been revised to state that HCPs and NCCPs may qualify as watershed plans.

10. Compensatory Mitigation (Hierarchy)

Comment Number	Representative Comment	Response
	HCP/NCCPs would exempt projects in their planning areas from additional alternatives analyses (Section B.3.d,iv), help advance regulatory streamlining for the state, and provide for better regional environmental outcomes including water quality protections.	
46.26	Section IV.B(5)(c): We request that restoration and enhancement of aquatic resources to historic conditions be given equal weight as creation of new aquatic features in regions where conversion and degradation of aquatic resources, rather than loss, has caused a loss of functions and values of waters of the State.	Generally restoration (re-establishment/rehabilitation) is given equal weight with establishment (creation) because both types of mitigation result in a gain in area and function.

11. Complete Application (case-by-case basis)

Comment Number	Representative Comment	Response
3.41, 6.51	**3.41**: The proposed Program conflicts with the requirements of the Permit Streamlining Act. It provides a list of items that are required for a complete application, but also provides a second list of 'additional information' (including an Alternatives Analysis) that the boards may decide 'case-by-case' are needed for a complete application. It prescribes two back-to-hack 30-day review periods, one for completion of the items in the first list and one for completion of any items required in the second list. (Proposed Program 3.) Neither the dual lists nor the dual time periods comport with the Permit Streamlining Act.	The Procedures are consistent with the requirements of the Permit Streamlining Act. With regards to the list of items required for a complete application, the Permit Streamlining Act requires that "each state agency … shall compile **one or more lists** that shall specify in detail the information that will be required from any applicant for a development project (Gov. Code, § 65940 (a) – emphasis added). CCR title 23 section 3835 lists items needed for a complete water quality certification application; However, as noted in the Staff Report, section 6.5, current application requirements do not include all necessary information to make a regulatory decision, leading to delays in application processing. To address this, the Procedures list additional items needed for a complete application. The additional items reflect information that applies to some but not all projects (e.g. supplemental field data from the wet season). The Board could require that this additional information be required in all cases, but that could constitute unnecessary workload for many projects. In addition, the Procedures comply with the Permit Streamlining Act timeline. Section 65943 (a) of the Permit Streamlining Act provides that the Water Board has 30 days in which to determine whether an application is complete, and Section 65943(b) provides an additional 30 calendar days after receipt of supplemental information. The Procedures are consistent with these requirements in that they specify that applications be reviewed for completeness within 30 days of receipt and deemed complete within 30 days of receiving all of the required items. Applicants are welcome to submit items from section IV.A.2. with their initial application to avoid waiting the additional 30-day period for Water Board staff to list items needed on a case-by-case basis. It should be highlighted that complete application requirements, listed in section IV.A.2. are requested during the Water Board's existing application review process; these requirements are not new. The procedures simply provide greater clarity of information

11. Complete Application (case-by-case basis)

Comment Number	Representative Comment	Response
		necessary to make certification decisions.
3.42, 3.9, 6.7, 6.4, 6.45, 7.3, 12.6, 14.9, 20.15, 20.4, 24.9, 24.13, 24.47, 24.30, 26.8, 28.15, 28.21, 37.4, 43.20, 45.5, 48.2, 35.9	**24.30:** Throughout the document multiple conditions stipulate the permitting authority apply requirements on a 'case by case basis'. It is understandable that the individual Boards be given some discretion on when to apply specific conditions, however the language includes no guidance on when or how to apply these. This vague language may result in inconsistencies on how these are applied and could create uncertainty to the regulated public. It is recommended that additional, condition specific language be added to better define when and how these requirements may be enforced.	Case-by-case determinations were used in two sections of the Procedures. First, section II, allowed for wetlands to be considered waters of the state on a case-by-case basis. This section has been revised to provide greater clarity. Second, section VI.A.2 included additional information that may be required for a complete application by the regional boards on a case-by-case basis. The conditions under which the additional information may be required and the corresponding required information are included in this section (e.g. supplemental wet weather data may be required if delineations were conducted during the dry season). The additional items reflect information that apply to some but not all projects. The Water Board could require that this additional information be required in all cases, but that could constitute unnecessary workload for many projects.
8.2	CVWD also believes that there is a need for flexible, case-by-case requirements applicable to the highly variable hydrological conditions that occur within different regions of California. This is why California's Porter Cologne Act created separate Regional Water Quality Control Boards	Comment noted.
10.4, 24.20, 24.55	**10.4:** The Sanitation Districts recommend the addition of an emergency permit option in case immediate action is necessary to avoid loss of or damage to an essential public service or asset. In such a case, the permittee could be required to complete an application within 60 days after the emergency work has been completed.	The State Water Board has general orders available for projects that meet the definition of "emergency" as defined by Public Resources Code, section 21060.3: "a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. 'Emergency' includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage." See the State Water Board website for certifications of Regional General Permit 5, 8, and 63. Pursuant to section IV.C, the permitting authority may also issue general orders in the future for similar activities.

11. Complete Application (case-by-case basis)

Comment Number	Representative Comment	Response
26.7	As with all regulatory processes, we believe the Proposed Procedures should consider the scale of a project and its associated impacts. Low impact projects should take less time, energy, detail, and effort on both sides (both our applications and the Regional Board's review). Although the Proposed Procedures do seem to acknowledge this (see Appendix A Lines 543-546 and Lines 550-553), this comment is directed in particular at the extensive and open-ended section of the Proposed Procedures titled 'Additional Information Required for a Complete Application'. We request clear acknowledgement in the Final Procedures that low impact projects should not trigger the optional additional information required for a complete application, and we appreciate any efforts by the State and Regional Boards to consider a projects' scale in their regulatory process.	Although items from section IV.2. of the Procedures may be needed to evaluate low impact discharge projects, the level of detail required for this information will be commensurate with the scope and scale of proposed impacts (see Section 230.6 of the Supplemental Dredge and Fill Guidelines) and, therefore, would be less than the scope and scale of information needed to evaluate projects with greater impact quantities.
28.1	The Air Pollution Control District is concerned about the potential impacts of dredging and screening operations on local air quality. Accordingly, the County recommends amending the Proposed Procedures to include a requirement that dredging and screening operations be conducted in accordance with the requirements of the applicable air pollution control district. This recommended amendment would help ensure dredging and screening operations are conducted in a manner that protects air quality and public health.	Potential air quality impacts are already evaluated as part of the processes CEQA review. A Water Board Order does not excuse an applicant from complying with any federal/state or local agency's regulatory requirements.
28.8, 28.6	**28.6:**[IV.A.2. (d) viii] For projects adjacent to recreational beaches that exceed three days, prepare a plan to monitor water quality in accordance with current State regulations (currently fecal indicator bacteria -total coliform, fecal coliform, and enterococcus bacteria), and submit that plan for comment	Water quality monitoring requirements are based on multiple factors, including analysis of potential project impacts on water body beneficial use and impairment designations made in regional water quality control plans. Although water quality monitoring may be included as a condition to certification (including fecal indicator tests), the intent of the Procedures is

11. Complete Application (case-by-case basis)

Comment Number	Representative Comment	Response
	and approval to the local monitoring agency for beach water quality at least one week prior to the start of the project with the following components: i. Proposed sampling locations (with respect to discharge point(s)), procedures and methods. II. Sampling approach with respect to the different stages of the project which meets the following minimum frequency requirements: • A minimum of two samples over a two day period during the initial surveillance period at the discharge location must be collected. • For projects lasting longer than a week, sampling events must be conducted at least weekly to monitor water quality for the duration of the project or until the local monitoring agency deems sampling complete. • If responsible party's project samples or local agency's routine samples in the area of the project exceed State health standards, re-sampling shall be conducted by the · responsible party in accordance with direction by the local monitoring agency until compliance with water quality standards are met. • Sample results must be reported to the local monitoring agency no later than close of business the day following sample collection (preliminary results are acceptable provided final results are provided the same day they become available)	not to replace staff's project level analysis, nor do the Procedures outline any other water quality testing requirements. As such, these requirements will continue to be determined during project-specific analysis. Please see the requirement listed in section IV.A.2(e).
40.7	Restoration Consultation - Other Agencies Comment: The current draft Procedures and/or guidelines require that, where restoration or establishment of waters of the State is proposed as part of a project, applicants would be required to enter into a consultation with defined entities PRIOR to the Regional Boards	Language in section IV.A.2.d.vi. of the Procedures has been updated to reflect the suggested language change.. "If the compensatory mitigation involves restoration or establishment as the form of mitigation, applicants shall ~~consult~~ **notify** ~~with~~ state and federal land management agencies, **airport land commission**, fire control districts,

11. Complete Application (case-by-case basis)

Comment Number	Representative Comment	Response
	determining that a project application is complete. As discussed above, most projects needing a permit from the Regional Boards will have been previously evaluated by a Lead Agency under CEQA. The agencies identified for consultation under the Procedures will have been invited to comment in that CEQA process. Requiring a separate consultation through and with Regional Board staff is not only potentially duplicative and time consuming, but could lead to conflicting conclusions, actions, and requirements between Lead Agency and the Regional Boards. Recommendation: Within the Procedures, change the 'consultation' requirement to require instead that an applicant 'notify' the identified agencies when its project includes restoration and/or establishment. The Procedures should also direct the Regional Boards to ensure notification occurs sufficiently early such that the agencies can participate in the Lead Agency's CEQA process. This will meet the needs of the entities listed in the Policy to be aware of projects and be able to ensure that any comments or issues that they have are considered by Lead Agencies in the CEQA process versus dredge and fill application processing by Regional Boards.	flood control districts, local mosquito-vector control district(s), and any other interested local entities prior to initial site selection. ~~**Appropriate mosquito and vector control measures, including maintenance specifications, shall be developed in coordination with local mosquito-vector control district(s) or other responsible public agency(ies) during the initial compensatory mitigation project design stage. These entities should be consulted as early as possible during the initial compensatory mitigation project design stage.**~~"
45.35	Suggested in text language change to section IV.B.5.(a) Section IV(B)(5)(a): Compensatory mitigation, in accordance with the State Supplemental Dredged or Fill Guidelines, Subpart J, **should be presumed to be required, and will only be considered after the applicant has demonstrated that adverse impacts to waters of the state have been avoided and minimized to the maximum extent practicable** ~~may be required to ensure that an activity complies with these Procedures.~~	As stated in section IV.B.1.(a), the Procedures already require that the Water Boards confirm that applicants have demonstrated that a sequence of actions have been taken to first avoid, then minimize, before requiring compensation to adverse impacts to waters of the state.

11. Complete Application (case-by-case basis)

Comment Number	Representative Comment	Response
46.12	Section IV.A(2): Please update the title of this section to reflect that this is information that may be required for a complete application, on a case-by-case basis.	The requirements listed in section IV.A.2. of the Procedures already state conditions for when they would be required for a complete application.

12. Complete Application (In all cases)

Comment Number	Representative Comment	Response
1.6, 3.43, 6.57	**1.6:** Revise section IV.A. 1.d., pages 3-4. A map submitted for a Corps' preliminary jurisdictional determination that includes all potential WOTS should satisfy the requirement for a map submission (change from 'may satisfy' to 'shall satisfy'). Suggested in text language: (110-119) Map(s) with a scale of at least 1:24000 (1" = 2000') and of sufficient detail to accurately show (1) the boundaries of the lands owned or to be utilized by the applicant in carrying out the proposed activity, including the location, dimensions and type of any structures erected or to be erected on the plotted lands for use in connection with the activity and the location, and (2) all aquatic resources that may qualify as waters of the state, within the boundaries of the project, and all aquatic resources that may qualify as waters of the state outside of the boundary of the project that could be affected by the project. A map submitted for a Corps' preliminary jurisdictional determination ~~may~~ **shall** satisfy this requirement if it includes all potential waters of the state. The Permitting Authority may require that the map(s) be submitted in electronic format (e.g., GIS shapefiles).	It is not possible to determine whether a map will provide all of the information needed to fully analyze a project without first reviewing the map, therefore the use of "may satisfy" is appropriate in this context.
6.58	Section IV.A.1(d) requires that application maps show 'the location, dimensions, and type of any structures erected or to be erected on the plotted lands for use in connection with the activity.' This could be interpreted to mean that plans submitted at the application stage must show where individual homes or other structures would be located. This level of detail is not always known at the application stage, particularly for projects that are not yet at the stage of producing tentative/parcel maps,	If the location of individual structures is known at the time application they should be indicated on project maps. The text of the Procedures has been edited as follows: (110-119) Map(s) with a scale of at least 1:24000 (1" = 2000') and of sufficient detail to accurately show (1) the boundaries of the lands owned or to be utilized by the applicant in carrying out the proposed activity, including the **grading limits , proposed land uses, and the** location, dimensions, and type of any

12. Complete Application (In all cases)

Comment Number	Representative Comment	Response
	including large-scale projects that are built out in phases over many years. Recommendation: Delete the requirement for the map to show structures and instead have it depict the proposed grading limits and land uses. This will provide enough information to assess the impacts from discharges of fill materials into waters of the state and related indirect impacts from development.	structures erected or to be erected **(if known)** ~~**on the plotted lands for use in connection with the activity and the location,**~~ and (2) all aquatic resources that may qualify as waters of the state, within the boundaries of the project, and all aquatic resources that may qualify as waters of the state outside of the boundary of the project that could be affected by the project. A map submitted for a Corps' preliminary jurisdictional determination may satisfy this requirement if it includes all potential waters of the state. The Permitting Authority may require that the map(s) be submitted in electronic format (e.g., GIS shapefiles).
12.11	Access limitations to lands outside of the project area often restrict our ability to conduct on the ground assessments. Will it be acceptable for this map to be based on aerial photo interpretation only? Also, a clearer definition of waters that 'could be affected' is needed. Current wording leaves the statement open to interpretation, and could range from a significant impact within the immediate area to an insignificant impact miles downstream.	Recent aerial photos may be used to satisfy mapping requirements, but such a determination cannot be made without analyzing the actual map produced by the aerial photo. "Waters of the state outside of the boundary of the project that could be affected by the project" means any water that could be affected by the discharge of waste such that a report of waste discharge is required by Water Code section 13260.
12.12	Are there specific resources (such as basin plans) which should be used to obtain information on existing water quality impairments; source of impairments?	Water Board staff are available to provide resources that may be useful during the application process. Information on beneficial uses is in regional water board basin plans which are available on the State Water Board's website; in addition, GIS layers identifying water body impairments are available upon request.
20.13, 26.1	**20.13:** Regarding the required description of the waters to receive a discharge of dredged or fill material, there is a specific requirement for rounding areas of impacts to the nearest tenth of an acre, but with a caveat of 'where applicable.' CSAC and RCRC recommend that this requirement be deleted, as impacts of less than 0.1 acre are minimal.	The "as applicable" referenced by the commenter refers to the unit of measurement that is most appropriate for a particular project: acre, linear foot, and cubic yard. Please note that the Procedures have been revised to require that all applicants should report the quantity of proposed impacts to a thousandth of an acre to avoid over estimation of impacts related to dredge of fill activities, particularly in cases where there are less than 0.1

12. Complete Application (In all cases)

Comment Number	Representative Comment	Response
		acre of impacts.
24.46	The amount of impacts that result from a project are used for a number of purposes, including calculation of fees and identifying the quantity of the required mitigation. Rounding the area of impact to the nearest 0.1 acre (i.e., 4,356 sq ft) is not a significant issue on impact locations with larger areas of impact. However, for projects that result in only small impacts (e.g., 100 sq ft.), it would be unreasonable to round this to the next 0.1 acre and as a result be required to mitigate for 4,356 sq ft. of impacts (i.e., assuming at a minimum a 1x1 mitigation ratio is required). An approach that would be more reasonable and that would address this issue would be to round to the nearest one thousandth (0.001) of an acre for an impact location that is less than or equal to one acre and to the nearest one hundredth (0.01) of an acre at an impact location that is over one acre. Section IV.A.1(e), Lines 122-123: A description of the waters proposed to receive a discharge of dredged or fill material, including the beneficial uses as listed in the applicable water quality control plan. The description should also include: a description of discharge at each individual impact location, quantity of impact at each impact location in rounded to the nearest **one-hundredth (0.01)** ~~**tenth**~~ of an acres **at an impact location with more than one acres of impacts and to the nearest one-thousandth (0.001) of an acre at an impact location with less than or equal to one acre of impacts,** linear foot, and cubic yards (as applicable), assessment of potential direct and indirect impacts to listed beneficial uses and potential mitigation measures for those potential impacts to beneficial	The Procedures have been revised to require that all applicants report the quantity of proposed impacts to a thousandth of an acre to avoid over estimation of impacts related to dredge of fill activities, particularly in cases where there are less than 0.1 acre of impacts. The Procedures require the same rounding standard for all projects to further ease and conformity of reporting.

12. Complete Application (In all cases)

Comment Number	Representative Comment	Response
	uses, identification of existing water quality impairments(s); the source of water quality impairment(s), if known; and the presence of threatened or endangered species resource habitat.	
20.14	We also recommend that the Proposed Procedures be amended to clarify that driving on existing roads or concrete surfaces is not an activity that warrants inclusion as an 'impact area.' This approach is consistent with the U.S. Army Corps of Engineers' 404 Permit regulations (33 CFR Section 323.2(3)(i)), which state: 'Section 404 authorization is not required for' any incidental addition, including redeposit, of dredged material associated with any activity that does not have or would not have the effect of destroying or degrading an area of waters of the United States''	Existing roads or surfaces are considered part of the Project Evaluation Area. Access roads as part of a project evaluation area because these surfaces often require maintenance and/or upgrades during project construction. Access roads have the potential to contribute significant amounts of sediment to nearby water features.
20.19	The Proposed Procedures also need to clarify that projects that are exempt from the California Environmental Quality Act (CEQA) are compliant with CEQA, and filed Notices of Exemption are not required to make an application 'complete.'	Per California Code of Regulations, title 23, section 3856, which is referenced by Section IV.A.1.a of the Procedures, CEQA document(s) should be submitted "if available" and "CEQA documentation is not required for a complete application." When a project is exempt from CEQA, there is no required CEQA documentation, but if a Notice of Exemption is filed, applicants are encouraged to submit a copy.
20.8	CSAC and RCRC appreciate the inclusion of what appears to be uniform criteria on what constitutes a "complete application" for discharges of dredged or fill material in waters of the state. Building upon the proposed criteria, we recommend that the Regional Boards be required to also do the following: 1) Post on their web sites the criteria of a complete application. In addition, the proposed Procedures need specify up-front the monitoring and reporting requirements. 2) Adhere to the listed criteria in determining "completion" of an application. 3) Provide to the applicant within 30 days of receipt of an application a complete list of all information needed to make the application complete. Questions and information requests should be limited solely to	As to 1, monitoring requirements cannot be determined prior to project-specific analysis; as to 2-4 the draft Procedures provide application review timelines, as follows: the Water Boards will provide to the applicant within 30 days of receipt of application a complete list of all information required for a complete application; following receipt of all required items, the Water Boards will have 30 days to determine if an application is complete. As to 5, workload issues and the varying complexity of proposed projects necessitate flexibility regarding the final approval of a water quality certification. However, Water Board staff has conducted a Lean 6 Sigma analysis in an effort to streamline the process for 401 certifications and anticipates undertaking additional efforts, including creating a standard application form and participating in pre-application consultations to

12. Complete Application (In all cases)

Comment Number	Representative Comment	Response
	issues involving potential impacts to waters of the state. 4) Avoid deeming an application incomplete or issue requests for information for the purposes of extending timelines set forth in the Permit Streamlining Act or the U.S. Army Corps of Engineers' 404 Permit processing regulations, or because of potential public or political controversy in regards to the proposed project. 5) Issue 401 Water Quality Certification (WQC) to the applicant within 30 days of receipt of the applicant's response to their request for information in the applicant provided all of the information specified in the request for information. Regional Boards should not make the issuance of a 401 WQC contingent upon the applicant obtaining other federal, state or local permits or authorizations.	further expedite the process.
24.43	Section IV and Section IV.A.1.a/ Footnotes 4 and 5: These footnotes incorporate by reference sections of the California Code of Regulations that are not specifically applicable to WDRs. (See comment letter for referenced CCRs) It appears that these Amendments would presume to change the applicability of a codified regulation. This raises the following questions that staff need to address: Does a state water plan have the power to amend the applicability of a state regulation? Does the SWRCB propose to revise this CCR section concurrently with the adoption of these Amendments in order to provide clarity to the regulations?	The Procedures are proposed for inclusion in the Water Quality Control Plans for Inland Surface Waters and Enclosed Bays and Estuaries and Ocean Waters of California. As part of a water quality control plan, the Procedures will have the same force and effect as regulations. Therefore, revisions to California Code of Regulations, title 23, sections 3855 and 3856 are unnecessary. The referenced footnotes make it clear that the Procedures will extend the application of those sections to individual waste discharge requirements for discharges of dredged or fill materials to waters of the state.
24.44	The Homeland Security Act and other federal and state laws and regulations limit the information about critical infrastructure (e.g. gas & electric facilities) that can be made publically available in order to protect this critical infrastructure. The Draft Procedures need to acknowledge this restriction and we recommend inclusion of the following condition:	If the reporting requirements in this order conflict with the requirements of the Homeland Security Act and/or any other federal or state law requirements that pertain to security in the United States, that federal or state law shall take precedence over Procedures requirements. If an applicant identifies Procedure requirements that conflicts with the Homeland Security Act, e.g. gas pipeline location information, it is the

12. Complete Application (In all cases)

Comment Number	Representative Comment	Response
	In text language change suggestion: "**If the reporting requirements in this Order conflict with the requirements of the Homeland Security Act and/or any other federal or state law requirements that pertains to security in the United States, the Homeland Security Act and/or any other federal or state law or requirement that pertains to security in the United States shall take precedence**." Further, for the above reasons, information may not be able to be provided in shape files.	applicant's responsibility to cite relevant federal regulations on the project application where this information would otherwise be provided; therefore, the suggested in-text language change is not necessary.
24.85	For linear projects that may have only one or several locations that may be co-located within a water of the state, this requirement to provide aquatic resource information for the entire project area is unnecessary and overly burdensome. We recommend that the requirements for linear projects be limited to those waters of the state that are directly impacted by the project and the insertion of the sentence below on line 116, as follows: In text language change suggestion: "…**project that could be affected by the project. Linear projects only need to show those water features in which it will have dredge and/or fill impacts. A map submitted**..."	Knowing the proximity of project activities to aquatic resources is necessary to evaluate potential project impacts on waters of the state; therefore, it is necessary for applicants to provide aquatic resource information for the entire project evaluation area.
41.22	Section IV(A)(1): It appears as though an application for a CWA section 401 water quality certification will not be considered 'complete' unless information related to waters of the State is	Section 401 requires that the state set forth any limitations necessary to assure that the proposed discharge will comply with various provisions of the Clean Water Act as well as "any other appropriate requirement of State

12. Complete Application (In all cases)

Comment Number	Representative Comment	Response
	submitted. Because a CWA section 401 water quality certification is required only for an activity that may result in a discharge of a pollutant into waters of the United States, the State lacks authority to require such information and to delay processing of an application for CWA section 401 water quality certification pending information related to the discharge of dredged and/or fill material into waters of the State, that are not waters of the United States.	law," which includes compliance with Water Quality Control Plans. The Procedures are proposed for inclusion in the water quality control plans for inland surface waters and enclosed bays and estuaries and ocean waters of California. Since state water quality standards apply to all waters of the state, the Water Boards have the authority to request this information from applicants.
41.25	Section IV (A)(1)(e): In the last sentence, it is unclear what is meant by 'threatened or endangered aquatic species resource habitat,' as there is no clarification provided.	Rare, threatened, or endangered species are identified by state and federal law. The Procedures have been revised to clarify as follows: Section IV.A.1.(e): …**'rare**, threatened or endangered ~~**aquatic**~~ species ~~**resource**~~ habitat,

13. Constructed Treatment Wetland Exclusion

Comment Number	Representative Comment	Response
6.48, 11.3	**6.48:** Nevertheless, maintenance of these systems may not be exempt from the Procedures' permitting program, depending upon how far back into history any particular Water Board determines is appropriate to look in deciding whether a treatment wetland is 'located in an area that did not historically support wetland areas or other aquatic functions,' as the Procedures require for a feature to be exempt. From a physical perspective, for natural treatment wetlands to hydrologically and hydraulically perform in a manner that further treats discharges, storm water and/or diverted surface waters, the systems must be located in close proximity to, and downstream of discharges or diversions, at a point that can be graded to facilitate collection, while remaining upstream of receiving waters. As a result, treatment wetlands only function physically if they are constructed in areas that may have, as a matter of deep history, been floodplains or areas that supported wetlands in decades or centuries past, but that are no longer within floodplains or areas that do or would naturally convert to wetlands. Consequently, the exception as written will be ineffective to exempt from the Procedures construction, operation and maintenance of treatment wetlands, and it should be amended. Amend the exemption in Section IV.D.2. (b) as follows: "Discharges of dredged or fill material for the purposes of crating or maintaining constructed treatment wetlands, as long as the constructed treatment wetland is located in an area that ~~**did not historically**~~ **does not** support **natural** wetland areas or **significant** aquatic resources **at the time of the construction of treatment wetlands**, and the treatment wetlands were not constructed as mitigation for discharges of dredged or fill material to other wetlands."	The Procedures have been revised and now provide criteria for determining whether wetlands are waters of the state. Constructed treatment wetlands, as well as certain other types of artificial wetlands, are generally excluded as waters of the state unless specific criteria are met, such as designation in a water quality control plan.

13. Constructed Treatment Wetland Exclusion

Comment Number	Representative Comment	Response
26.10	While the Proposed Procedures make it clear discharges of dredged or fill material for the purpose of maintaining constructed treatment wetlands and sedimentation/stormwater treatment facilities already covered by an existing Water Board Order are excluded from the new Proposed Procedures, we believe consideration should be given to exempting operation and maintenance of these treatment wetlands, sedimentation facilities and stormwater facilities from all regulatory oversight by the State or Regional Boards. While these facilities may establish wetland characteristics, they were designed for a specific function and they must be routinely maintained in order to function as designed and intended.	The Procedures have been revised and now provide criteria for determining whether wetlands are waters of the state. Constructed treatment wetlands, as well as certain other types of artificial wetlands, are generally excluded as waters of the state unless specific criteria are met, such as designation in a water quality control plan. Under this revision, the Water Boards would not regulate the operation and maintenance activities of an excluded treatment wetland; nonetheless, the Water Boards could regulate any discharge from an excluded artificial facility that may affect waters of the state.

14. Definitions

Comment Number	Representative Comment	Response
3.56, 46.28, 14.13	**3.56:** The proposed Program defines 'project evaluation area' (for purposes of evaluating project and mitigation sites) with respect to an 'ecologically meaningful unit' of a watershed. It does not define or otherwise explain what is an 'ecologically meaningful unit,' but says that the size and location of such a unit 'shall be based on a reasonable rationale.' (Proposed Program 13.) What would be a 'reasonable rational' in this context or what criteria or considerations might be pertinent to any such rationale, the State Board does not say. Some explanation or guidance is needed.	Due to the variety of the size of projects that are certified through the water quality certification program, it is difficult to tell applicants what 'ecologically meaningful unit' is right for the scope of their individual project area. Projects can range in size from replacing a small culvert, therefore only needing a small watershed profile, or renewable transmission lines that could span many miles. State Water Board recommends using the same evaluation area used when evaluating the project under CEQA. Best professional judgment should be applied when determining a project evaluation area.
20.31, 37.11, 28.25	**20.31:** We also recommend that the Proposed Procedures include definitions General and Individual Orders.	The term General Orders (GO), explained in section IV.C. of the Procedures, are issued for specific classes of dredge or fill discharge activities that are similar; involve the same or similar types of discharges and possible adverse impacts requiring the same or similar conditions or limitations in order to alleviate potential adverse impacts to water quality. An explanation of the difference between individual and general orders can be found in section 5.1, Regulatory Background, of the Staff Report.
23.10	Definition of Adaptive Management. The Conservancy supports the definition of adaptive management in Section 230.92 except that it should not be limited to compensatory mitigation projects. Adaptive management is a process that allows early identification of potential problems and appropriate management responses. This applies to mitigation and restoration projects alike and, as discussed above, can have a particularly central role in restoration projects. In fact, adaptive management is much more likely to succeed in a restoration project, particularly those that seek to return a site to its historic conditions. We would also like to point out that adaptive management is not the same thing as addressing deficiencies after a project has failed to meet its goals as described in Section	Adaptive management plans for Ecological Restoration and Enhancement Projects would be a new requirement for these types of projects and additional requirements for Ecological Restoration and Enhancement Project applicants would disincentivize undertaking such projects. Unlike compensatory mitigation projects, Ecological Restoration and Enhancement Projects are not undertaken to compensate for adverse impacts to waters of the state.

14. Definitions

Comment Number	Representative Comment	Response
	(c) p. 41. The process described there is remediation. Under most conditions, a well-designed adaptive management plan should prevent a project from reaching that point by having sufficient assessment and monitoring to resolve uncertainties and detect potential issues before they manifest into problems. Furthermore, possible corrective management actions should be identified in advance as much as possible so the response can be timely. Addressing project failure, on the other hand, often requires 'going back to the drawing board'' and questioning initial project assumptions, goals, and objectives. It is much less about how the project is managed. When the term adaptive management is misapplied it can discredit this approach. We do not want adaptive management to be seen as a way to avoid addressing project complications or postponing necessary actions.	
24.39	The Procedures state that the terms defined in the Procedures shall be used in the event there is a conflict with the terms in the 1987 Corps Manual and Supplements. It would be helpful for staff to identify which terms for which this is an issue and list them in the draft Procedures to ensure there is no confusion as to which terms the draft Procedures are referring. We recommend the following revisions: "The methods shall be modified only to allow for the fact that the lack of vegetation does not preclude the determination of such an area that meets the definition of wetland. **The** ~~**T**~~**t**erms **(list terms….)** as defined in these procedures shall be used ~~**if there is a conflict with**~~ **in lieu of the** terms in the 1987 Manual and Supplements."	"The methods shall be modified only to allow for the fact that the lack of vegetation does not preclude the determination of such an area that meets the definition of wetland. Terms as defined in these procedures shall be used if there is a conflict with terms in the 1987 Manual and Supplements." This language was included in case of any unforeseen inconsistences, specifically if there are changes in federal regulation that may no longer align with the draft procedures.
24.74	The definition of in kind was omitted from Appendix A although it was not deleted in the 'Compare' document. We recommend that this definition be retained in Appendix A	Exclusion of the term in-kind was an oversight. The definition has been included in the Procedures.

14. Definitions

Comment Number	Representative Comment	Response
28.9	The Department of Parks and Recreation (DPR) periodically removes cattails out of ponds and it is unclear in the Proposed Procedures whether this is dredging or just maintenance. There are definitions for many terms in the technical documents attached to the new procedures, but dredging Is not defined in them. DPR recommends that a clear definition of dredging be incorporated.	Per the Section V. of the Procedures, Discharge of Dredged Material means addition of dredged material, material that is excavated or dredged from waters of the state, including redeposit of dredged material other than incidental fallback within, to waters of the state. The activity described would usually be regulated under the Procedures. There are limited exceptions for general maintenance activities; however, it is unclear whether the activity described would be regulated based on the minimal description. Please consult with the appropriate regional water quality control board.
30.4, 41.44, 41.43	**30.4:** We note that many key terms are left undefined in the proposed amendments, suggesting that this will become a process of decision-making on-the-fly as determined by each individual case. This will impact landowners and farm operators through confusion on how to apply regulatory requirements as these decisions are layered one upon- the-other, as well as create a regulatory quagmire for each Regional Water Board to follow and adhere to. We suggest creating more certainty for landowners and farm operators by clearly defining key terms consistent with federal terms in the Clean Water Act as related to these types of discharges. Certainty will avoid future conflicts, litigation and regulatory gridlock, as rough interpretations could be made case-by-case as suggested in the proposed amendments.	The State Water Board is committed to providing certainty to the regulated community. However, it is unclear which additional key terms the commenter would like the Procedures to define. Regulatory guidance letters from the Corps pertaining to 404(f) Exclusions (farming, ranching & silviculture) are, however, incorporated by reference into the Procedures.
41.29	Section IV (A)(2)(d)(iii): USACE recommends the State define 'preliminary information,' as it is unclear what is meant by this statement.	This term is used colloquially to mean information developed prior to the final information, so it is not necessary to define.

15. Draft Compensatory Mitigation Plan Requirement

Comment Number	Representative Comment	Response
2.8	No Mitigation Requirement for Restoration Projects. Council staff supports the proposed exemption on mitigation requirements for restoration projects, which would accelerate and lower the cost of such projects.	Comment noted.
3.44	The proposed Program provides that if an applicant proposes compensatory mitigation that involves restoration or establishment on a site(s) within five miles of any airport, the applicant shall consult the applicable airport land use commission or other appropriate responsible public agency to determine whether the proposed compensatory mitigation project may pose a danger to air traffic safety, and submit proof of consultation. (Proposed Program 5.) Why the State Board chose a five mile radius is not apparent; that does not correspond to the two-mile radius commonly used in other contexts, including environmental review of projects under CEQA.	This provision in the Procedures is supported by federal standards for airport safety. The Federal Aviation Administration "Advisory Circular 150/5200-33B (08/28/2007)" provides guidance for wildlife hazard management near airports. This AC recommends that a distance of 5 statute miles be maintained between the farthest edge of the airports area of operations and any wildlife attractant "that could cause hazardous wildlife movement into or across the approach or departure airspace". Note that this requirement has been revised to state that if a compensatory mitigation project is required, the applicant shall "notify" any interested local agencies, including the airport land use commission (rather than consult).
3.45	The proposed Program provides that '[i]f compensatory mitigation is required' by the boards on a case-by-case basis, then the applicant must provide a number of items, including '[p]reliminary information' about ecological performance standards, monitoring, and long-term protection and management. (Proposed Program 5.) This provision is problematic in at least two respects. First, when and how is an applicant to know whether a board will require compensatory mitigation? That typically is a determination made during project review based on evidence. Second, what does the State Board mean by 'preliminary information' in this provision? What information is required?	During the application process, the permitting authority will determine whether compensatory mitigation for the project is required, in consultation with the applicant and other agencies (see Draft Procedures, section IV A (2)(d)). This decision is in part based on information from the applicant about the sequence of actions that were taken to first avoid, then to minimize adverse impacts to waters of the state, and whether any unavoidable impacts remain. Documentation of this process, for application purposes, will help inform the decision regarding whether compensatory mitigation is appropriate. If compensatory mitigation is required, the project proponent would need to submit a draft compensatory mitigation plan with the items listed in section IV.2.(d) in order for the Water Boards to deem an application complete. This draft compensatory mitigation plan is considered preliminary because Water Board staff will work with the project proponent on finalizing the draft compensatory mitigation plan

15. Draft Compensatory Mitigation Plan Requirement

Comment Number	Representative Comment	Response
		during the review and approval stages of the application process. In addition, project proponents are encouraged to contact the Water Boards early in the planning stages of a project for a pre-application consultation in order to discuss items required during the application process.
3.58	The proposed Program would revise section 230.93(a) of the federal Guidelines in ways that are not necessitated by any jurisdictional or procedural differences between federal and state programs and appear intended to blind the boards to important, pragmatic considerations in determining appropriate compensatory mitigation. Why the State Board proposes these critical policy changes, it does not say. The change is not merely unjustified, but unwise. It would, as well, lead to conflicts with the USACE's decisions under the federal Guidelines. The proposed Program requires boards to base compensatory mitigation on 'what would be environmentally preferable' and deletes from consideration 'what is practicable and capable of compensating for the aquatic resource functions that will be lost as a result of the permitted activity.' (Proposed Program 25; Comparison 26.) Apart from the policy and practical reasons militating against this change, there is considerable uncertainty of what to make of it in any event, since considerations of practicability and cost remain in other aspects of the proposed Program.	This section discusses a number of general principles, which are further developed as requirements in the following sections. For example, the wording deleted from this section is captured in Appendix A section 230.93(f)(1), that the amount of compensatory mitigation must be "to the extent practicable, sufficient to replace lost aquatic resource functions". So the Procedures **do** include the requirement; it is not deleted. The reason that phrase was deleted from this section on general considerations is to highlight that the permitting authority will evaluate proposed mitigation options based on what is most environmentally preferable. In determining what is environmentally preferable, the authority must assess multiple factors, including "the costs of the compensatory mitigation project."
4.5	The Preliminary Draft Policy should require buffers and specify minimum buffer size requirements. The Policy suggests that buffer areas be included as a component of compensatory mitigation. For example, the Policy states that "the permitting authority may require….buffers around aquatic resources….' (pg32) As has been noted by Ambrose, "Buffers can protect wetlands by filtering pollutants, providing refuge for wetland	The buffer requirement as stated in the Procedures is consistent with the federal requirement, which is one of the primary objectives of the Procedures. In addition, not all mitigation sites would require a buffer. For example, if a mitigation site is located in areas where the surrounding landscape is preserved or protected by zoning, general plans or conservation easements, buffers may not be necessary. Also, buffer size is based on a number of considerations and should not be pre-determined,

15. Draft Compensatory Mitigation Plan Requirement

Comment Number	Representative Comment	Response
	wildlife during times of high water levels, acting as barriers to the disruptive incursions by people and pets into wetlands, and moderating predation by ground dwelling terrestrial predators. Buffers can also reduce the risk of invasion by non-native plants and animals, by either obstructing terrestrial corridors of invasion or by helping to maintain the integrity and therefore the resistance of wetland communities to invasions." Buffers increase the success of mitigated wetlands. In which situations would it be unnecessary to include buffers? The SWRCB should strengthen this language by requiring that buffers be included in all permittee- responsible compensatory mitigation projects by default, unless the project proponent can prove that they are not needed to ensure the ecological sustainability of a mitigation site. In addition, the Preliminary Draft Policy should place requirements and minimum criteria for what constitutes a buffer, rather than merely suggesting they be included as part of a compensatory mitigation plan. While we understand buffer sizes may vary based on the scale of the project, we believe the State Board should specify guidelines for these buffers by setting minimum criteria. For example, the California Coastal Commission requires the establishment of 100 foot buffers around wetlands to allow adequate distance between the wetland and construction activities. These buffers provide critical habitat for species residing in the transitional zone between wetlands and uplands and should provide protection by minimizing the effects of erosion, sedimentation, and pollution arising from urban, industrial, and agricultural activities in nearby developments.	but designed specifically for the site and resource conditions.
5.2, 5.4	**5.2:** The Draft Procedures require applicants to submit a draft mitigation plan for review prior to certification, and to obtain	As drafted, the Procedures indicate that a draft compensatory mitigation plan is required before an application may be deemed complete. Where

15. Draft Compensatory Mitigation Plan Requirement

Comment Number	Representative Comment	Response
	approval of a final mitigation plan before commencing work in waters of the state. The latter requirement will extend the already lengthy certification process, and likely will cause unnecessary delays in project schedules.	possible, the Water Boards try to work with the project proponent during the application review and approval stage to approve a final compensatory mitigation plan before issuing an Order. If a final compensatory mitigation plan is not approved before the issuance of an Order, the Water Boards may include as a condition in an Order that the permittee will need final approval of a mitigation plan prior to impacting waters of the state. In these cases, the Water Boards would approve the mitigation plan by amending the original Order to include the final compensatory mitigation plan. Such a condition would allow the permittee the flexibility to begin work while completing the final plan, as long as work is not impacting waters of the state.
6.14	To promote consistency in regulation and ensure that mitigation compensates adequately for authorized fill of wetlands, the State Board should provide guidance and standardized forms and templates to the Water Boards, and better training of staff to evaluate mitigation proposals and ensure their successful implementation.	Recently, the Water Boards have undertaken an effort to provide a common organizational structure for Orders to promote consistency and clarity in regulating discharges of dredged and fill material to waters of the state. In addition, staff are working on a standardized statewide application form that will ensure that information that is needed from project proponents is accurate and consistent. Finally, as part of the implementation of the Procedures, there will be training for Water Board staff that work with discharges of dredged or fill material on a number of different elements included in the Procedures.
6.56, 13.3, 14.8, 28.18, 28.19, 37.7, 40.8, 41.30	**37.7:** Section IV .A. vi requires if compensatory mitigation involves restoration or establishment the applicant shall consult with various agencies including flood control districts prior to initial site selection. It is not clear in the procedures how this must be accomplished. Would the permitting agency provide a list of contacts to the applicants? What would the permitting agency require from the applicants to fulfill this requirement? What would be required of the District as a flood control agency to consult with applicants?	This requirement has been changed from “consult with” to “notify”. The intent is that the various agencies concerned with public health and safety should be notified of a proposed wetland development project. The agencies then may advise the project proponent on site location, design and management options to mitigate any potential public health and safety concerns.
12.8, 12.17,	**12.17:** Coordination with the other public agencies requiring	Interagency collaboration is an important element in mitigation planning.

15. Draft Compensatory Mitigation Plan Requirement

Comment Number	Representative Comment	Response
14.18, 14.3, 20.21, 24.65	mitigation is critical, as restoration plan conditions by CDFW (LSAA and ITP) and USFWS/NMFS (BO's) may lead to conflicting requirements.	As drafted, the Procedures state "[w]here feasible, the permitting authority will consult and coordinate with any other public agencies that have concurrent mitigation requirements in order to achieve multiple environmental benefits with a single mitigation project, thereby reducing the cost of compliance to the applicant (see section IV.B.5.(b)). Applicants are also encouraged to facilitate interagency collaboration by scheduling planning meetings, and site visits and by making documentation readily available for multiple agency review.
14.17	Additionally, the requirements of Section IV. A.(2)(d) (draft compensatory mitigation plan and watershed profile at the time of application submittal) are far more detailed than required for permit applications under federal law. For instance, Section IV. A.(2)(f) requires significant detail in a draft restoration plan at the time of the application. Such detail is not required under federal law. While the State Board may feel that more detail than is required under federal law is necessary and/or appropriate, the practical problem is that this level of detail at such an early point in planning, particularly for a large and complex project like the Authority's Program is generally not reasonably available.	Federal requirements in 40 CFR Subpart J, section 230.94 (c), requires the submittal of a draft compensatory mitigation plan and specifies what should be included in a final plan. The Procedures are more detailed than (but still in alignment with) federal requirements regarding what should be submitted as part of a draft mitigation plan. Additional detail regarding the required components of a plan helps lend clarity regarding what is expected to be included in the final mitigation plan. The purpose of requiring a draft plan as part of the application is to ensure that the applicant begins mitigation planning in a timely manner so that the certification approval process may proceed efficiently, and also to ensure that the Water Boards participate early on in compensatory mitigation planning with the applicant and other interested agencies. However, it is correct that the requirement for a draft restoration plan for temporary impacts is not required by federal regulations. For projects affecting federal waters of the state, more stringent requirements may be imposed via the State Water Board's authority under Porter-Cologne to adopt water quality control plans and the authority under the Clean Water Act, section 401 to impose limitations that are necessary to ensure compliance with appropriate requirements of State law. Applicants are required to submit a draft with their applications because it is anticipated that some details of the restoration plan may evolve. A final restoration

15. Draft Compensatory Mitigation Plan Requirement

Comment Number	Representative Comment	Response
		plan must be submitted before the issuance of an Order.
19.3, 27.2	**19.3:** Lines 1171 to 1174 of the current draft state 'Compensatory mitigation projects may also be used to provide compensatory mitigation under the Endangered Species Act or for Habitat Conservation Plans, as long as they comply with the requirements of paragraph (j)(1) of this section.' We ask that the Board add the term 'Natural Communities Conservation Plans' so that this sentence reads: "**Compensatory mitigation projects may also be used to provide compensatory mitigation under the Endangered Species Act or for Natural Community Conservation Plans and Habitat Conservation Plans, as long as they comply with the requirements of paragraph (j)(1) of this section**."	Revisions has been made to this section as follows: Compensatory mitigation projects may also be used to provide compensatory mitigation under the **federal and state** Endangered Species Act or for **Natural Community Conservation Plans and** Habitat Conservation Plans, as long as they comply with the requirements of paragraph (j)(1) of this section.
20.18, 37.8	**20.18:** The Proposed Procedures require consultation with the applicable airport land use commission or other appropriate responsible public agencies to determine whether the proposed compensatory mitigation within five miles of any airport may pose a danger to air traffic safety. CSAC and RCRC recommend that this requirement be deleted as projects are already subject to local airport land use agency rules and regulations.	See response to comment 37.7.
20.24	The proposed procedures state: 'compensatory mitigation shall be commensurate with the magnitude of impact associated with the project.' The proposed procedures should state that no compensatory mitigation is required for impacts to areas that do not contain biological resources, nor for post disaster work on areas where biological resources were eliminated by the disaster.	The objective of compensatory mitigation is to offset losses resulting from unavoidable impacts to waters of the state authorized by permits (see Appendix A, section 230.93(a)(1)). Whether compensatory mitigation is appropriate must be a project-specific analysis.
21.7	The following comments are for consideration primarily if the above proposed changes to the EREP definition are not incorporated into the draft Procedures. If the definition is	Compensatory mitigation may be required to offset losses from unavoidable project impacts to waters of the state authorized by permits. Whether compensatory mitigation is appropriate must be a project-specific

15. Draft Compensatory Mitigation Plan Requirement

Comment Number	Representative Comment	Response
	changed, then the following comments may not apply. 'Beneficial wetland conservation projects' are those projects that currently do not fit into the draft EREP definition, but would fit with our above proposed definition. Many beneficial wetland conservation projects have elements that are critical to their success, but may not allow them to fit under the current EREP definition. Page 4 lines 141-142 state that compensatory mitigation plans are not required for Ecological Restoration and Enhancement Projects. We would propose to expand the statement that compensatory mitigation plans are not required for beneficial wetland conservation projects.	analysis. Where a project increases the amount and condition of wetlands, compensatory mitigation may not be appropriate.
23.2	Regulations do not address the benefits of using fill for restoring and/or increasing wetland areas in appropriate locations, including creating upland transition zones around coastal wetlands and estuaries. [Commenter provided case studies and references.] The Water Board's proposed regulations specifically exclude the creation of upland areas as part of ecological restoration projects (p. 12, line 447), which is out of step with the latest scientific consensus on the importance of transition zones in coastal wetlands restoration projects. If fill used to create these large transition zones is considered by the Water Board in the same light as fill for a development project, then compensatory mitigation could be required, penalizing project proponents for an environmentally beneficial action. The mitigation requirement also raises significant questions about feasibility. In many estuarine habitats throughout the State, the opportunities to restore wetlands that are not already considered waters of the State or slated for future restoration is extremely limited. Even if an appropriate site could be found, other resource agencies (e.g., USFWS) would require the	As drafted, the definition of an Ecological Restoration and Enhancement Project states that, “These projects do not include the conversion of a stream or natural wetland to another aquatic resource type or uplands; stream channelization; or relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments.” This does not exclude upland areas being converted to wetlands as an Ecological Restoration and Enhancement project, but rather excludes wetlands from being converted from a stream, wetland, or other aquatic resource to upland. Therefore, the projects described in this comment would not be subject to compensatory mitigation.

15. Draft Compensatory Mitigation Plan Requirement

Comment Number	Representative Comment	Response
	inclusion of transition zone, which could require more mitigation. The most likely result is that these transition features will be dropped from wetland restoration projects, jeopardizing their long-term success and our mutual goals of providing resilient habitat that supports endangered species recovery. The adopted regulations should facilitate complete environmental restoration projects and incorporate the latest scientific consensus that encourages the creation of upland transition zones. These regulations should not treat these features as impacts to be mitigated but rather be seen as essential to the long-term success of the entire ecosystem.	
24.51	Staff may direct the applicant to conduct an assessment using a method approved by the permitting authority. In accordance with our previous comment on Section IV.A.2., we recommend that the criteria, factors and process for deciding when this information will be required should be provided in the Amendments. One of the criteria should be that the project is not required to conduct an assessment when the project is using an in lieu fee program or a mitigation bank.	"[A]n assessment of the overall condition of aquatic resources proposed to receive a discharge of dredged or fill material and their likely stressors, using an assessment method approved by the permitting authority…," as required by section IV.A.2.d, may be required in cases when compensatory mitigation is required. The phrase "on a case-by-case basis" refers to the requirement for compensatory mitigation, not to the requirements for an assessment and draft compensatory mitigation plan. An assessment of the impacted aquatic resource will help determine the condition and function of that resource and the appropriate compensatory mitigation ratio for that adverse impact, regardless of the method of compensatory mitigation proposed (permittee responsible, in-lieu fee program, or mitigation bank.) This is consistent with the federal procedures for establishing a mitigation ratio (see Final 2015 Regional Compensatory Mitigation and Monitoring Guidelines For South Pacific Division USACE, section 3.4, pg 16).
24.53	This section mandates (i.e., shall consult) consultation with an open ended list of parties. Any mandated consultation should only be with specific governmental agencies and be a requirement to request consultation. If an agency is non responsive after a certain period of time for any reason, this	Please see response to comment # 37.7**.**

15. Draft Compensatory Mitigation Plan Requirement

Comment Number	Representative Comment	Response
	should satisfy the consultation requirement. Further, consultation with other interested 'local entities' could be encouraged but should not be mandated. We recommend the following revisions: "If the compensatory mitigation involves restoration or establishment as the form of mitigation, applicants shall consult with **applicable** state and federal land management agencies, fire control districts, flood control districts, and local mosquito-vector control district(s)~~**, and**~~ The applicant is encouraged to consult with any other interested local agencies prior to initial site selection. Appropriate mosquito and vector control measures, including maintenance specifications, shall be developed in coordination with local mosquito vector control district(s) or other responsible public agency(ies) during the initial compensatory mitigation project design stage. **If an attempt is made to consult, but the agency or party is non-responsive, this shall satisfy the consultation requirement**."	
24.66	It is important for the Procedures to clarify that the requirement for mitigation is triggered when permanent ' losses' occur. This section states: 'Amount: The amount of compensatory mitigation will be determined on a project by project basis in accordance with State Supplemental Dredged or Fill Guidelines, section 230.93(f). The permitting authority may take into account recent anthropogenic degradation to the aquatic resource and the potential and existing functions and conditions of the aquatic resource. A minimum of one to one acreage or length of stream reach replacement is necessary to compensate for wetland or stream losses unless an appropriate function or condition assessment method clearly demonstrates, on an exceptional basis, that a lesser amount is sufficient.' To help	Compensatory mitigation is defined in Appendix A, subpart J, section 290.92. The definition states that compensatory mitigation is for the purpose of "offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved". Accordingly, the focus of compensatory mitigation is on "unavoidable adverse impacts," not losses. Adverse impacts are not limited to permanent adverse impacts.

15. Draft Compensatory Mitigation Plan Requirement

Comment Number	Representative Comment	Response
	provide clarity, we recommend that the following sentence be inserted into this paragraph following the last sentence in the above quote: **'Losses' are for those waters that are permanently adversely affected.'**	
24.73, 42.6	**24.73:** We appreciate that 'mitigation banks' and 'in lieu fee programs' are identified here [Appendix A: Subpart J, section 230.91(a)(1)], as these are very important options for satisfying mitigation requirements. Because of their importance it would be helpful to acknowledge these options in the updated Procedures. Pipeline and electric utility companies generally do not own the land their pipelines traverse and, as such, rely heavily on such mitigation banks and in lieu fee programs to mitigate unavoidable wetland and streambed losses. We believe that it is vital that any updated Procedures include the maximum flexibility possible to utilize these options. We recommend that 'mitigation banks' and 'in lieu fee programs' be incorporated into the appropriate sections of the Procedures.	It is the State Water Board's goal to align with federal compensatory mitigation requirements to the extent possible. As drafted, the Procedures align with the federal requirements when considering the method of compensatory mitigation by adopting the soft preference in the following sequence: mitigation banks, in-lieu fee programs, then permittee responsible compensatory mitigation. As stated in section IV.B.5.(a), the Water Boards will ensure that compensatory mitigation plans are in accordance with Appendix A, Subpart J during the review and approval of applications for projects. Subpart J, outlines all the factors that would be taken into consideration when determining appropriate compensatory mitigation for proposed impacts to aquatic resources, including the above described soft preference.
24.82	Additionally, the Amendments need to acknowledge that the authorized service area of a mitigation bank or in lieu fee program may cover multiple watersheds and, in such a case, mitigation from a mitigation bank or in lieu fee program located outside of the impacted watershed may be used when the service area includes the impacted area. To address projects that use in lieu fee programs or mitigation banks we recommend the following revision: "If compensatory mitigation is required by the permitting authority on a case-by-case basis, an assessment of the overall condition of aquatic resources proposed to receive a discharge of dredged or fill material and their likely stressors, using an assessment method approved by the permitting authority and a draft compensatory mitigation plan developed	As drafted, there is nothing in the Procedures that precludes compensatory mitigation from being located outside of the watershed of impact. However, the following clarifying language has been added to Section IV.B.5.(e): In addition, mitigation banks and in-lieu fee programs with approved service areas that cover multiple watersheds may be approved by the permitting authority to compensate for out-of-watershed impacts, as long as the impacts occur within the mitigation bank's or in-lieu fee program's service area.

15. Draft Compensatory Mitigation Plan Requirement

Comment Number	Representative Comment	Response
	using a watershed approach containing the items below. Compensatory mitigation plans are not required for Ecological Restoration and Enhancement Projects **or when an in-lieu fee program or mitigation bank is used. Further, mitigation banks and in-lieu fee programs located outside of the impacted watershed may be used when the impact is located within the mitigation bank's or in-lieu fee program's service areas**."	
31.1	Board Resolution No. 2008-0026 states "California continues to lose "functional wetlands" at an increasing rate despite the efforts of the State's 401 Water Quality Certification Program. This fact is documented in a State Water Board research study contracted with UCLA titled *An Evaluation of Compensatory Mitigation Projects Permitted Under Clean Water Act Section 401 by The California State Water Resources Control Board, 1991-2002.*" The study does not state that there is a loss of functional wetlands. It states "Given the low ecological condition of most mitigation wetlands, it seems likely that many mitigation projects did not replace the functions lost when wetlands were impacted, and hence that the goal of "no net loss" of wetland functions was not met, but this study cannot provide a definitive conclusion on this issue. " My take away from the UCLA study is that there needs to be improved permit conditions, including clarity, that lead to better mitigation requirements. Simply put, the "Boards" need to do a better job of succinctly describing what they want. To quote the study "Our study found relatively high levels of compliance with mitigation permit conditions."	The commenter questions the need for the Procedures and suggests that the solution to "no net loss" is clear permit conditions that define succinctly what actions the Water Boards want the permittee to take to protect wetlands. However, that is the purpose of the Procedures. The Procedures, if adopted, would institute clear avoidance, minimization and compensatory mitigation requirements that will be consistently applied by all Water Boards. The Procedures, in effect, will provide guidance to staff and applicants for planning and implementing successful mitigation projects ensuring no net loss. In addition, the Procedures clarify application requirements and the application review and approval process which should reduce delays in processing. Finally, through implementation of a common organizational structure for Orders, the Water Boards aim to improve clarity in certification requirements.
33.9	Compensatory mitigation should only be allowed for projects that are water dependent and are in the interest of all of the public, for example, bridge widening, water treatment facilities, ferries etc.	The Procedures, if adopted, will institute a robust and comprehensive set of compensatory mitigation requirements consistent with federal requirements. When implemented as required, successful mitigation will be the expected outcome. If compensatory mitigation fails, then these

15. Draft Compensatory Mitigation Plan Requirement

Comment Number	Representative Comment	Response
		Procedures would require the permittee to address the causes.
41.28	In addition, the State should defer to the decisions by USACE on required compensatory mitigation for discharges of dredged and/or fill material into waters of the United States subject to section 404 of the CWA. To the extent the State intends a broader application than USACE permit actions, the State needs to recognize that for the Civil Works Program, the USACE determines and approves the final compensatory mitigation plan, not the State. However, the USACE welcomes the permitting authority's suggested edits and comments on the USACE's compensatory mitigation plan. The State must recognize that the USACE is unable to adhere to this section of the proposed Procedures because we must comply with the requirements of section 2036(a) of the Water Resources Development Act of 2007 and associated USAGE Headquarters guidance in developing compensatory mitigation plans and determining the amount, nature, type and location of compensatory mitigation.	Section 313 of the Clean Water Act states that federal agencies must comply with state laws in the same manner as any nongovernmental applicant, and Section 404(t) similarly requires that federal agencies that engage in dredge or fill activities comply with state regulations to the same extent as any nongovernmental person. The State Water Board has broad authority under the Porter-Cologne Water Quality Control Act to adopt water quality control plans that address factors affecting water quality, including the discharge of dredged or fill material. A water quality control plan has the same force and effect as a state regulation. Per Section 401(d) of the Clean Water Act, the Water Boards may set for limitations in their certification necessary to assure compliance with any appropriate requirements of State law, which includes water quality control plans. As such, the Water Boards are obliged to ensure state waters are protected in accordance with state law, which includes the Porter-Cologne Water Quality Control Act and CEQA. The Water Boards expect that they can collaborate with the Corps to develop a final mitigation plan.
48.4	Actions to minimize adverse effects and compensatory mitigation for losses of Aquatic Resources contains an extensive array of measures cited therein, such as utilization of silt screens and the potential for on or off-site mitigation. Mitigation requires, at minimum, a one-to-one (dredged area to mitigation area) acreage offset [see page 31, line 1105-1107], which may be cost-benefit prohibitive. Proposed Procedures reference: - Appendix A Subpart H, pgs. 18-22 - Appendix A Subpart J	Subpart H describes actions that may be undertaken, but are not required. The actions described in Subpart H are also included in the federal 404(b)(1) Guidelines and should therefore be familiar to operators who have been subject to CWA section 404 permits for discharging dredged or fill material to waters of the U.S. Requiring a minimum of one-to-one mitigation (except as described by Section IV.B.5.c) is consistent with federal requirements and appropriate in light of Executive Order W-59-93.

16. Ecological Restoration and Enhancement Definition

Comment Number	Representative Comment	Response
7.12, 9.17	**7.12:** Ecological Restoration and Enhancement Project (Pages 12-13, Lines 437-457). The language in the definition of an Ecological Restoration and Enhancement Project that we provided in our July 15, 2013 comment letter related to such projects being undertaken on public lands, needs to be included in the definition provided in the Discharge Procedures. Insert the following sentence on Line 446 after "'...**or non-governmental conservation organization**": "**Such projects may also be undertaken voluntarily on public lands that are managed primarily to provide wildlife habitat, such as state wildlife areas, preserves, and national wildlife refuges, to help accomplish habitat management objectives.**"	The definition for Ecological Restoration and Enhancement Projects has been revised to include projects undertaken by state and federal agencies, which may include restoration and enhancement projects on public lands.
20.30, 42.8, 42.8	**20.30:** The definition of 'Ecological Restoration and Enhancement Project' should include any project that...assists or controls the recovery of an aquatic ecosystem that has been degraded, damaged or destroyed to restore some measure of its natural condition and to enhance the beneficial uses or potential beneficial uses of water.' This definition should include any project undertaken to comply with Federal or State compensatory mitigation requirements, as such projects that provide the same ecosystem benefits as voluntary restoration projects, and the project will have already undergone vetting by Federal and State environmental agencies. This definition should include land conversions that eliminate conditions that U.S. Fish and Wildlife Service, Natural Resources Conservation Service, Farm Service Agency, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Forest Service, U.S. Bureau of Land Management, California Department of Fish and Wildlife, California Wildlife Conservation Board or other Federal or State resource agency has deemed harmful to native species or their habitat.	Compensatory mitigation projects and land conversions are not included in the definition of Ecological Restoration and Enhancement Projects (EREP). An EREP is voluntarily undertaken to restore an aquatic resource, thereby increasing the inventory of functioning and beneficial aquatic resources. Compensatory mitigation, on the other hand, is a project that is required as a condition of an agency permit to offset impacts to aquatic resources associated with an activity or project. Therefore these types of projects only maintain the existing aquatic resource inventory if successful. Land conversion projects for purposes of restoring upland habitat are also not included in this definition. This definition applies to projects restoring aquatic resources subject to the Water Boards authorities under the Water Code.

16. Ecological Restoration and Enhancement Definition

Comment Number	Representative Comment	Response
23.3	Definition of Ecological Restoration and Enhancement Project (p. 12). Please note that the State Coastal Conservancy is not included on the list of state conservation agencies (lines 443-5) in this section and, given our role as major funder of wetland restoration along the California coast and in San Francisco Bay, we hope you will correct this oversight.	The list of agencies in the definition of Ecological Restoration and Enhancement Projects is not meant to be exhaustive. The Coastal Conservancy is considered a resource agency that could enter into a binding enhancement or restoration agreement for a project that may be considered an Ecological Restoration and Enhancement Project. For the sake of clarity, the definition has been revised to explicitly include the Coastal Conservancy.
23.4, 23.5, 23.6, 23.7	**23.5:** We would suggest that an ecological restoration and enhancement project means the 'project is voluntarily undertaken for the purpose of assisting or controlling the recovery of an aquatic ecosystem that has been degraded, damaged or destroyed to restore some measure of its natural condition and to enhance its beneficial uses, including the beneficial use of water'. To further distinguish these types of projects the definition could discuss that these projects usually (although not exclusively) are funded by public funds and undertaken by one or more public agencies in order to fulfill their restoration mandate as opposed to compensate for adverse changes to the environment.	The definition has been revised to reflect that an Ecological Restoration and Enhancement Project "is voluntarily undertaken" in the first sentence. The definition already specified that it did not include projects required for mitigation purposes. The request to revise the language to state that these projects are usually funded with public monies was not incorporated. The current language states that these projects must be in a binding wetland or steam enhancement or restoration agreement, which implies that these projects are often publically funded at least in part.
32.5, 32.6	**32.6:** Grassland Water District requests that the SWRCB make a small revision to the definition of an EREP as follows, so that it includes wetland restoration projects made under an agreement with a local wetland management agency such as Grassland Water District or Grassland Resource Conservation District: Ecological Restoration and Enhancement Project means projects undertaken for the sole purpose of assisting or controlling the recovery of an aquatic ecosystem that has been degraded, damaged or destroyed to restore some measure of its natural condition and to enhance the beneficial uses or potential beneficial uses of water. Such projects are undertaken	While conservation easements allow access to land and protect land from certain activities, such as development, a binding stream or wetland agreements outline more specific parameters associated with an Ecological Restoration and Enhancement Projects. These parameters may include monitoring and assessment provisions and performance criteria to determine the success of a restoration project. Binding stream or wetland agreements may also include a conservation easement requirement; however, more is needed in order for a project to qualify for the specified incentives.

16. Ecological Restoration and Enhancement Definition

Comment Number	Representative Comment	Response
	voluntarily in accordance with the terms and conditions of a binding stream or wetland enhancement or restoration agreement, a wetland establishment agreement, **or projects designed to enhance or restore wetland habitat on managed wetlands subject to a conservation easement** between the landowner and the U.S. Fish and Wildlife Service, Natural Resources Conservation Service, Farm Service Agency, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Forest Service, U.S. Bureau of Land Management, California Department of Fish and Wildlife, California Wildlife Conservation Board or other federal or state, or local resource agency or non-governmental conservation organization. ...13	
41.45	Section V: Ecological Restoration and Enhancement Projects: The definition utilized indicates that only those activities undertaken in accordance with an agreement with federal or state resource agencies or non-governmental conservation organizations are considered to be ecological restoration and enhancement projects (Lines 400-446). Please note that this definition is not consistent with USACE experience with these activities, as aquatic habitat restoration, establishment, and enhancement activities frequently occur without such agreements. In addition, the definition should include ecosystem restoration projects proposed by the USACE.	The Procedures have been revised to reflect that Ecological Restoration and Enhancement Projects include those restoration and enhancement projects undertaken by a state or federal agency. The EREP definition restricts other proposed projects to those with binding agreements with agencies. Because additional agency review and oversight is provided through the agreements, a number of application requirements are limited in the Procedures for EREPs to avoid regulatory redundancy and associated cost. Projects not meeting the EREP definition will be subject to the standard application requirements.

17. Economic Impacts & Potential for New Regulation

Comment Number	Representative Comment	Response
9.7, 21.1, 23.12, 32.1	**9.7:** The policy of the State of California, as set forth in Executive Order W-59-93, is that the Water Boards' regulation of dredged or fill activities will be conducted in a manner "to ensure no overall net loss and long-term net gain in the quantity, quality, and permanence of wetlands acreage and values…". Those who develop and maintain managed wetlands do so with no commercial purpose. Two-thirds are private landowners and one-third are government agencies. Most of the private managed wetlands are under conservation easements that restrict the use of the land for purposes other than wetland habitat. To encourage these landowners to continue to make efforts to advance the state's wetland policies requires the provision of incentives and the removal of disincentives. Overlapping and redundant regulatory burdens and costs are disincentives.	Many Ecological Restoration and Enhancement Projects by their very nature involve substantial filling or dredging of wetlands and/or state waters. The State Water Board recognizes that generally, the long-term benefits to the aquatic resources from these projects far outweigh any short-term impacts. However, this often depends on how and where the Ecological Restoration and Enhancement Project are done. Under the Procedures, Water Board staff will consult with other agency staff and the applicant on the details of the project. This ensures that the project balances multiple agency priorities and is designed to achieve the greatest net environmental benefit. Overlapping and redundant regulatory burdens and costs disincentives wetlands creation, but as explained in section 1 "Economic Considerations" of the Draft Procedures' Staff Report, the Procedures are not expected to add additional regulatory burdens and costs. Instead, the Procedures will streamline and clarify section 401 permitting in California, and thereby reduce overall costs of section 401 permitting.
15.22	The Board is underestimating the time and expense of developing and maintaining a parallel wetland definition and the delineation methods and manuals to support a new permitting regime.	The Procedures will not bring significant change to existing wetland determination procedures. Under the Procedures, delineation methods will be in accordance with the Corps' delineation manual and regional supplements; and the Water Boards shall defer to the Corps delineation determinations for waters of the U.S. The Water Board's wetland definition identifies a wetland based on the presence of the same three parameters as the federal definition: wetland soils, plants and hydrology. The definition also recognizes areas devoid of vegetation that have wetland soils and hydrology as wetlands unlike the federal definition, where areas without wetland vegetation are not considered wetlands unless the Corps confirms that wetland vegetation is not present due to natural causes or recent disturbances.
25.5	The result of the proposed Permitting Procedures will be new processes, more paperwork, and additional costs which local public agencies such as the City can ill-afford, without any	As discussed in section 11 "Economic Considerations" of the Draft Procedures Staff Report, many of the elements of the Procedures are the same as the federal CWA section 404(b)(1) Guidelines. As such, much of the

17. Economic Impacts & Potential for New Regulation

Comment Number	Representative Comment	Response
	corresponding environmental benefit. For these reasons, the City urges the State Water Quality Control Board not to adopt the proposed Permitting Procedures.	Procedures are already applicable to projects in waters of the U.S. The expected outcome of the Procedures will be to streamline existing section 401 permitting procedures with 404 requirements in California, thereby reducing both regulatory redundancy and cost of section 401 permitting, while protecting California's aquatic resources.
43.17, 3.47, 3.48, 35.6, 43.25	**43.17:** The Proposed Amendments propose a number of additional steps and documents beyond the requirements of the current CWA Section 401 Certification program. Many of these changes will apply to all Individual, Regional, and Nationwide Permits issued by the Corps Districts. By far, the most frequent authorizations issued by the three Corps Districts in California are Nationwide Permits and approximately 700 are authorized annually throughout the State (Table 2). Therefore my analysis focused on the 401 Certification costs associated with Nationwide Permits. If the Proposed Amendments were implemented, they would substantially increase time and costs associated with the 401 Certification process and place further demands on Regional Board staff who are already burdened with a heavy work load. I have developed an analysis of the potential additional costs associated with the CWA Section 401 Certification process (Table 3) for projects otherwise subject to the Nationwide Permit program. The analysis provides a list of the additional materials that will be required beyond those currently included in applications to the Corps and Regional Boards. For each of these materials, I have provided an estimate of the typical cost associated with producing these documents by a consultant on behalf of an applicant, the estimated time that Regional Board staff may require to review these materials or conduct the necessary field work, and the delay that may be entailed in order to process these requests. On the latter estimate, I have used my experience in working with various	The provided detailed analysis of the potential additional steps and costs associated with processing a section 401 Certification for a Nationwide Permit under the Procedures is appreciated but, the analysis is flawed because it (1) assumes the additional costs of Table 3 apply fully to all Water Board permits issued for nationwide permits, (2) does not account for current staff cost associated with the activities in Table 3, and (3) does not account for potential project cost savings related to avoidance of waters . The Water Boards currently issue a general order certifying a number of Nationwide Permits by the Corps. Table 3 lists three requirements: delineation of wetlands and non-federal waters, alternatives analysis and compensatory mitigation. These requirements are for the most part currently required in Water Board permits to some degree based on the amount of impacts. As such, the Procedures will only incrementally add to these costs. The degree to which these requirements will apply is difficult to predict as discussed in section 11 "Economic Considerations" of the Staff Report. However, it is not reasonable to assume, as does this analysis, that all projects will require additional mapping for state wetlands, additional wet season data, and verification of waters of the state, climate change assessment, alternative analysis, and compensatory mitigation. Regarding the delineation procedures, applicants are already required to provide a map of potential waters affected, including state waters, as part of the application. Water Board staff also already verify state water delineations, as necessary. In general, very few projects involve state-only

17. Economic Impacts & Potential for New Regulation

Comment Number	Representative Comment	Response
	Regional Board staff when processing applications. Finally, I have provided information on training that will be required by Board staff to understand the information being submitted and to process the requests.	waters (on average, less than 3% per year) and would require these additional steps. The "new" wetland definition would not change this, as the definition is based on existing Water Board regulatory practices (see response to 15.22). Regarding the application process, the requirement to consider potential impacts associated with climate change related to the proposed project and any proposed compensation is not meant to be onerous, but rather a reminder that it is prudent to consider climate change vulnerabilities when in the planning phase of a project. Please also see staff response to Comments # 1.8 and 45.39 on the "Climate Change Analysis" comment response sheet for further discussion of the issue. The requirement to prepare full alternatives analysis will depend on the extent and complexity of project impacts and an extensive analysis will not be required in every case. The Procedures provide some flexibility as to the extent of the required alternatives analysis. For example, the Procedures provide for some exemptions from the alternatives analysis, and also limitations as to the degree of analysis based on level of impacts to waters. Since 80% of Water Board Orders are issued for impacts of less than one-tenth of an acre to waters of the state (see section 11, Staff Report, pg. 190), the level of effort for an alternatives analysis may be relatively small. In some cases, the alternatives analysis requirements may be at least partially satisfied if the project is subject to a CEQA EIR which requires an analysis of feasible alternatives to avoid or substantially lessen significant effects of the project. An EIR requires an applicant to compile extensive documentation on environmental impacts, and avoidance, minimization and compensatory mitigation strategies which could be used in the alternatives analysis for a complex project. Finally, as discussed in section 11 "Economic Considerations" of the Staff Report, by selecting the LEDPA, applicants may avoid significant regulatory costs associated with

17. Economic Impacts & Potential for New Regulation

Comment Number	Representative Comment	Response
		compensatory mitigation, listed and sensitive species, and zoning requirements. The requirements shown in Table 3 related to a watershed profile are currently included in the watershed approach applied by the Corps under the CWA section 404(b)(1)Guidelines (see 40 CFR 230.93(c) Watershed Approach). Thus it can be assumed the costs to the applicant of providing this information would be largely incurred under current practices. Most of these costs can be limited for the applicant by using existing map information on the type and amount of aquatic resources in the project area. Tools such as EcoAtlas[1] are available and free of cost to generate a profile and map, given the required information has been compiled for the project area. Condition of aquatic resources may be obtained from rapid field assessment methods (such as CRAM) or best professional judgement based on surrounding land use and associated environmental stressors. Finally, the requirement to notify an Airport Authority if a proposed mitigation site is within a five miles radius is intended to avoid unwanted interaction between aircraft and waterfowl. FAA Advisory Circular (AC) 150/5200-33B, "Hazardous Wildlife Attractants on or Near Airports", provides guidance on locating certain land uses having the potential to attract birds to or in the vicinity of public-use airports, such as wetland mitigation areas.
46.33, 47.2, 6.9	**46.33:** We urge the Water Board to consider the costs of the proposed regulation on Caltrans, other state agencies, local partners, taxpayers, and other stakeholders. Please consider incorporating our recommendations and evaluate the anticipated benefits to aquatic resources in comparison with	Section 11 "Economic Considerations" of the Staff Report provides an analysis of compliance with the Procedures, including methods for achieving compliance, and the associated costs. Additionally, please see staff response to Comments # 25.5 and 43.17.

[1] See www.ecoatlas.org

17. Economic Impacts & Potential for New Regulation

Comment Number	Representative Comment	Response
	additional costs to implementing agencies.	

18. Areas and Activities Excluded from the Application Procedures (section IV.D.)

Comment Number	Representative Comment	Response
6.49	Operation and maintenance activities conducted under certain NWPs do not contribute to significant loss of wetlands or adverse impacts to aquatic features, since they are focused on acquiring monitoring information and/or conducting maintenance activities for already permitted existing infrastructure. The CEQA document required for a blanket 401 certification for these NWPs would not be burdensome, given that the activities authorized by these commonly used maintenance and monitoring NWPs do not result in new permanent fills or losses of wetlands. Recommendation: Exempt from all application procedures, and thereby also exempt from preparing any alternatives analysis, at least the following NWPs: 3 (maintenance); 6 (survey activities); 12 (utility line activities); 13 (bank stabilization); 18 (minor discharges); 20 (minor dredging); 32 (maintenance of existing flood control facilities); 32 (completed enforcement actions); 33 (temporary construction, access, and dewatering); 35 (maintenance dredging of existing basins); 37 (emergency watershed protection and rehab); 41 (reshaping existing drainage ditches); 43 (stormwater management facilities); 45 (repair of uplands damaged by discrete events); and 46 (discharges in ditches).	The comment correctly notes that the State Water Board would need to conduct a full CEQA review to certify certain NWPs related to routine operation and maintenance activities. However, the time between the Corps' finalization of the NWPs and the date that the prior NWPs expire is too short to prepare a CEQA document. Therefore, the State Water Board only certified NWPs that the State Water Board deemed CEQA exempt. For a list of pre-certified Nationwide Permits please refer to the State Water Board's General Order, here: http://www.waterboards.ca.gov/water_issues/programs/cwa401/generalorders.shtml. The alternatives analysis requirement and the exemptions are applicable to individual orders, not general orders.
6.59	Section IV states the Procedures would apply to applications submitted after the effective date of the Plan Amendment incorporating the Procedures. We understand this to mean the	If the Water Boards amend/extend existing Orders on or after the effective date of the Procedures, then these Orders must comply with the Procedures, which will be part of a water quality control plan. As such,

18. Areas and Activities Excluded from the Application Procedures (section IV.D.)

Comment Number	Representative Comment	Response
	Procedures would not apply to renewals or extensions of Water Board-issued WDRs, water quality certifications, or other approvals for which the original application was submitted before the effective date, even if the renewal or extension occurs after the effective date. Revisiting previously issued permits - particularly to conduct a new alternatives analysis as the Procedures might be construed to authorize - would be disastrous for permittees that have relied on those permits to plan, fund and/or construct portions of a project and would create major conflicts with the decisions of local land use authorities. The same rationale supports excluding discharges from application of the Procedures if they are subject to, and consistent with, a Corps-approved SAMP that was approved before the effective date of the Procedures, whether or not the Water Boards participated in the SAMP process. As explained in Part III.A.3 of these comments, a SAMP reflects a multi-year investment of time and resources by multiple agencies and participating landowners that leads to settled expectations about the location and type of impacts to covered resources that should be permitted. Recommendation: In order to provide reasonable certainty for permittees, revise the Procedures to clarify that the Procedures will not apply to discharges for which a permit application was submitted before the effective date of the Procedures, even if a Water Board reopens, revises, renews	existing or new permittees under such Orders will be subject to the Procedures to the extent required by the Order. Otherwise, permittees of Orders approved prior to the effective date of the Procedures would not be subject to the Procedures with the exception of updating any requirements related to wetland waters of the state as defined by the Procedures. Existing Orders may need to be amended to correctly address requirements related to state wetlands outside of federal jurisdiction.

18. Areas and Activities Excluded from the Application Procedures (section IV.D.)

Comment Number	Representative Comment	Response
	or extends the permit after the effective date. Revise the Procedures to clarify that the Procedures will not apply to discharges that are subject to and consistent with a Corps-approved SAMP approved before the effective date of the Procedures, even if an application for Water Board authorization or certification of the discharge is submitted after the effective date.	
10.2	The Sanitation Districts strongly recommend that the Procedures specifically discourage compensatory mitigation requirements for waterbody restoration or maintenance efforts, including actions to service required mitigation. Such efforts benefit these waterbodies and requiring compensatory mitigation essentially amounts to requiring mitigation for a mitigation effort. Requiring compensatory mitigation in such cases would provide a disincentive for parties to undertake restoration and maintenance and, as such, would be detrimental to the efforts to protect and enhance waterbodies.	The Procedures do not require compensatory mitigation for projects that qualify as Ecological Restoration and Enhancement Projects. Likewise, under the Procedures, activities to develop and maintain a compensatory mitigation site regulated under an approved compensatory mitigation plan would not require additional mitigation. This plan should include provisions of ongoing and long term monitoring and maintenance of compensatory mitigation areas.
20.28	There is no direction for an emergency situation discharge. For example, there are situations where a levee is about to break or a road or freeway is being undermined and fill material (i.e. heavy rock) must be discharged into the waters of the state to avoid loss of life and property. In these situations there may not be an Army Corp Regional General Permit with a corresponding	The State Water Board has certified Corps Regional General Permits for Repair and Protection Activities in Emergency Situations. There is a regional general permit for each Corps district in California and has specific instructions for gaining authorization for dredge or fill activities in emergency situations. These general orders contain specific conditions and requirements for applicants to follow that are related to these activities. If a

18. Areas and Activities Excluded from the Application Procedures (section IV.D.)

Comment Number	Representative Comment	Response
	401 WGC. To address this possible scenario, CSAC and RCRC recommend that the State Board and Regional Boards avoid potential liabilities in an emergency situation and allow a discharger to correct the emergency situation without an application but submit an 'after the fact' report.	project qualifies for one of these general orders, they would not be subject to the application requirements set forth in the Procedures.
24.14, 21.14	**24.14:** NWP Pre Certification Process As the U.S Army Corps of Engineers (USAGE) works to reissue its Nationwide Permits (NWP) in March of 2017, the utilities (and other CCEEB represented industries) would like to work with the SWRCB to expand the scope of the precertification of NWP 12 (and other NWPs). Pre certifying a greater range of NWP activities would serve to provide significant streamlining to the process. In fact, in addition to pre certifying these activities, Water Board staff should consider finding them exempt from the Draft Procedure's application process. This would create significant efficiencies for many activities, particularly repair and maintenance activities that are already identified as having minimal impacts to water quality.	See response to Comment # 6.49 (above).
28.10	The only natural fed lake in San Diego County, 'Lindo Lake,' was cut off by a Dam that now forms Lake Jennings. When the lake was cut-off from Lake Jennings, wells were used to fill and preserve wetland habitat. The County is currently preparing construction documents to improve Lindo Lake water quality	Comment noted. Additionally, the Procedures would only apply if dredge or fill activities were proposed at Lindo Lake.

18. Areas and Activities Excluded from the Application Procedures (section IV.D.)

Comment Number	Representative Comment	Response
	and is concerned about any future limitation that would restrict San Diego River well water from being used to fill Lindo Lake. When revising any future regulation, please consider the impact this will not only have on this community, but also consider that further restriction may generate loss of wetland habitat. The County recommends that Lindo Lake be exempt from SWRCB's regulations that could limit well water for this wetland habitat.	
28.22	Please clarify if activities excluded from the application procedures (starting at Line 359) are also exempt from being regulated under the Proposed Procedures.	As explained in Section IV.D., "The application procedures specified in section IV.A and IV.B do not apply to proposed discharges of dredged or fill material to waters of the state from the following areas or to the following areas." The Water Boards retain the authority to issue or waive waste discharge requirements for the excluded activities.
28.23	Please include exemptions for the operation and maintenance of the following: a. Drainages excavated in an upland area. b. Essential water infrastructure including Municipal Separate Storm Sewer System (MS4s) and constructed wetlands.	The Procedures provide a clear framework for determining whether a wetland falls under the jurisdiction of the Water Boards. Based on this framework, the features noted by the commenter that contain wetlands may not be subject to Water Board regulation, unless special conditions of the framework apply
32.4, 32.2	**32.4:** The proposed Amendments do not include an express exemption for artificially irrigated managed wetland areas, which could create confusion for managed wetland owners and managing agencies. It is not practical, nor is it good policy, for the SWRCB to deviate from long-established resource-beneficial federal exemptions for artificially managed wetlands, in order to	The Procedures provide a clear framework for determining is whether a wetland falls under the jurisdiction of the Water Boards. The U.S. Army Corps (Corps) determines federal jurisdiction over wetland areas based on the federal definition of waters of the United States and associated statutes, regulations and procedures. If an irrigated wetland is determined to be a water of the U.S. then the wetland is always a water of state. If an

18. Areas and Activities Excluded from the Application Procedures (section IV.D.)

Comment Number	Representative Comment	Response
	impose new regulations on wetland habitat management practices through a permitting process. Accordingly, GWD requests that section D.2 of the proposed Amendments be revised as follows: 2. Areas excluded from application procedures in sections IV.A and IV. B: [cont] d. Discharges of dredged or filled materials into existing artificially irrigated (managed) wetlands in the Central Valley that serve the primary purpose of providing habitat for wetland dependent species. The exclusion applies to the extent the discharges of dredged or filled materials are in furtherance of the provision of habitat for wetland-dependent species. Areas excluded from application procedures in sections IV.A and IV.B: d. **Discharges of dredged or filled materials into existing artificially irrigated (managed) wetlands in the Central Valley that serve the primary purpose of providing habitat for wetland-dependent species. The exclusion applies to the extent the discharges of dredged or filled materials are in furtherance of the provision of habitat for wetland-dependent species.**	irrigated wetland is determined not to be a water of the U.S., the Water Boards may determine it to be a water of the state based on the wetland definition and jurisdictional framework outlined in the revised Procedures. If the wetland is determined to be jurisdictional by the Water Boards, and dredge or fill activities are proposed, then the application requirements for the discharge of dredged and fill material as stated in the Procedures would apply.

18. Areas and Activities Excluded from the Application Procedures (section IV.D.)

Comment Number	Representative Comment	Response
43.8	In addition to the exclusions and exemptions included within the federal regulations cited above and addressed in applicable federal guidance, I also recommend adopting an exemption for an additional type feature from the scope of 'water of the State' for regulatory purposes: industrial, food, and agricultural waste and processing ponds. These features are often artificially created, and have specific purposes for processing or storing materials that are considered pollutants. Examples include manure and other dairy waste processing ponds, stabilization and settling ponds for industrial processing, poultry and other food processing wash water storage ponds, and processed water storage ponds for oil drilling industry. All of these features are generally un-vegetated and therefore could be considered wetlands if the definition in the Proposed Amendments was adopted. These features, like wastewater treatment ponds, require continual maintenance and management to assure their proper operation and treatment and storage of waste. The liquids contained in these features cannot be discharged to receiving waters without proper permits from the Regional Boards. Because these features require maintenance to avoid discharges, classifying these features as wetlands and/or requiring permits to conduct routine maintenance and operation would be counterproductive to assuring protection of 'waters of the State,' create additional burden on Regional Board staff, and create additional regulatory requirements with no meaningful	Comment noted. The revised Procedures provide a clear framework for determining whether a wetland falls under the jurisdiction of the Water Boards. The framework excludes from Water Board jurisdiction a number of artificial features including industrial and municipal waste water treatment facilities.

18. Areas and Activities Excluded from the Application Procedures (section IV.D.)

Comment Number	Representative Comment	Response
	environmental benefit. An exemption would recognize what is already self-evident, i.e., that these types of features do not contain 'waters of the State' subject to regulation pursuant to the Porter Cologne Water Quality Control Act and, by doing so, the State Board would provide greater clarity for project applicants and professionals conducting wetland delineations.	

19. Federal Consistency

Comment Number	Representative Comment	Response
3.53	Second, it bears emphasizing that the Executive Order [W-59-93] also stated a primary objective "[t]o reduce procedural complexity in the administration of State and Federal wetlands conservation programs." The proposed Program, however, does not appear to achieve this stated objective; it substantially increases, rather than reduces, the procedural complexity in the administration of the federal and state regulatory programs.	For the reasons discussed in section 6.5 of the Staff Report, the Procedures will clarify and streamline existing Clean Water Act section 401 certification procedures in California, thereby reducing regulatory redundancy and increasing the consistency of section 401 authorizations, while better protecting California's aquatic resources. Overall, regulatory certainty will be increased through consistent regulatory practices across all Regional Water Boards. Consistent regulatory practices will reduce procedural complexity in the administration of the state and federal regulatory programs. Most of the requirements listed in the Procedures reflect current practice, although they are not applied consistently across the Boards. One new requirement is the alternatives analysis. Applicants seeking to discharge dredged or fill material to waters of the state will be required, with some exceptions, to conduct an analysis of practicable alternatives to determine the LEDPA. However, the level of effort associated with this requirement will be commensurate with the project impacts. For the reasons discussed in section 11.3 of the Staff Report, this requirement is not expected to add to the current cost of compliance.
24.45	Regarding Section IV.A.l.b./lines 105-107 of the Proposed Procedures: Smaller projects often qualify as 'Non-notifying under the USACE Nationwide Permit program and no report is submitted to the Corps. Suggested revision: If wetlands that are waters of the state are present, a delineation of those wetlands as described in section III. In addition, if waters of the U.S. are present, any preliminary or final wetland delineation report. ~~that was submitted to the Corps.~~	This requirement reflects that all wetland waters of the state, whether they are inside or outside of federal regulation, require delineation. Those delineations prepared to satisfy Corps application requirements may be submitted to the Water Boards to satisfy state application requirements.
36.10	Has the Board secured the Corps' concurrence on adoption of its process?	The State Water Board has conferred with the Corps regarding the scope and content of the Procedures in order to achieve consistency with the Corps' practices where possible. Adoption of the Procedures does not,

19. Federal Consistency

Comment Number	Representative Comment	Response
		however, require approval by the Corps.
41.7, 1.4, 3.10, 6.3, 41.11, 42.3	**41.7:** USACE is concerned about the proposed Procedures' consistency with the USACE Regulatory Program and how it may impact the quality and timeliness of decision-making. To avoid conflicts and impacts on the regulated public, the proposed Procedures should be aligned with the USACE Regulatory Program to the maximum extent possible. Where alignment cannot be achieved, deference should be given to the USACE Regulatory Program requirements for activities resulting in the discharge of dredged and/or fill material into waters of the United States subject to section 404 of the CWA, especially with regards to aquatic resource delineations; restrictions on discharges, including determinations on the least environmentally damaging practicable alternative (LEDPA) under the EPA's Section 404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material (Section 404(b)(1) Guidelines); determinations of the appropriate amount and type of compensatory mitigation; and the approval of final mitigation and monitoring plans.	The Procedures aim to align with the USACE Regulatory Program to the extent practicable, while still protecting California's aquatic resources, in order to reduce regulatory redundancy and make the overall 404/401 regulatory process as efficient and consistent as possible. Further, the Procedures encourage coordination with USACE on all the issues mentioned during the application stage of a project (as they routinely do with other agency staff) to ensure, when possible, that any mitigation and monitoring requirements overlap and to ensure regulatory consistency. However, the Clean Water Act expressly contemplates that state requirements may be more stringent than federal requirements. Specifically, Section 401(d) provides that certifications shall set forth limitations necessary to assure compliance "with any other appropriate requirement of State law," which would include the Procedures. The Procedures would require an independent review of a proposed discharge of dredged or fill material to state waters, including waters that are also waters of the United States. Such an independent review is necessary to ensure state waters are protected in accordance with state law, which includes the Porter-Cologne Water Quality Control Act and the California Environmental Quality Act.
41.8	The proposed Procedures, including any subsequent Memorandum of Understanding (MOU) entered into between the USACE and SWRCB, cannot add more time or extra steps to the USACE review process. USACE will not work on a MOU until after the proposed Procedures are in place and our concerns raised in comments 1 through 4 above have been addressed to our satisfaction.	Comment noted. It would not be appropriate to work on an MOU unless and until the Procedures are adopted.

20. Fees

Comment Number	Representative Comment	Response
7.6, 9.11	**7.6:** As stated in our July 15, 2013 comment letter, a fee structure for permitting projects needs to be provided. Knowing required fees up-front will aid in project planning and budgeting. It will take less time for RWQCB staff to review applications for Ecological Restoration and Enhancement Projects than many other types of projects. Therefore, the permit fees for Ecological Restoration and Enhancement Projects should be lower than for other types of projects. In addition, many of these projects are funded with grant dollars and the funding entities desire that most of those dollars be applied directly to on-the-ground restoration and enhancement activities. Also, lower permit fees for these projects will encourage voluntary wetland conservation efforts, which in turn, will help achieve the Discharge Procedures' objective of achieving, '...no overall net loss and a long-term net gain in the quantity, quality, and diversity of waters of the state, including wetlands.'	Applicants seeking coverage for a dredged or fill project are subject to the fee schedule outlined in section 2200(a)(3) of the California Code of Regulations, available online, from the State Water Board's website: http://www.waterboards.ca.gov/resources/fees/docs/fy1617_fee_schedule.pdf In addition to the fee schedule, an online calculator tool is available, and may be used to estimate project fees: http://www.waterboards.ca.gov/resources/fees/water_quality/docs/dredgefillcalculator.xlsm The Water Boards supports Ecological Restoration and Enhancement Project (EREP) activities. Fees for projects meeting the EREP definition are currently subject to substantially lower fees than other activities.
28.12	No information was provided in the Proposed Procedures regarding application and permitting fees. Please disclose any proposed application and permitting fees and allow for public review and input on proposed fees prior to finalization of the Proposed Procedures.	Applicants seeking coverage for a dredged or fill project are subject to the fee schedule outlined in section 2200(a)(3) of the California Code of Regulations, available online, from the State Water Board's website: http://www.waterboards.ca.gov/resources/fees/docs/fy1617_fee_schedule.pdf In addition to the fee schedule, an online calculator tool is available, and may be used to estimate project fees: http://www.waterboards.ca.gov/resources/fees/water_quality/docs/dredgefillcalculator.xlsm Fees are subject to change on an annual basis. A schedule for stakeholder meetings regarding fees are posted on the State Water Board's website: http://www.waterboards.ca.gov/resources/fees/stakeholder/.

21. Final Compensatory Mitigation Plan

Comment Number	Representative Comment	Response
11.5, 20.23, 20.22, 26.5	**20.22:** For the same reasons stated for exemptions from Alternatives Analysis, no compensatory mitigation should be required by the State for operation and maintenance of existing publicly owned infrastructure, or for actions undertaken to prevent or mitigate an emergency condition that threatens the public's health, safety or water supply. The state's water quality and beneficial use objectives are not served if operation and maintenance of existing publicly owned infrastructure or response to emergency conditions (e.g., disasters) are penalized. Along the same lines, we have expressed concern over the application of compensatory mitigation against 'legacy' projects that were built prior to the advent of the Clean Water Act, the California Environmental Quality Act (CEQA), the California Endangered Species Act (CESA) and the similar protective statutes. The uncertainly of 'if and how' mitigation might be required raises a host of issues among the counties.	Compensatory mitigation requirements are determined on a project-by-project basis and are based the applicant's ability to demonstrate that they have taken a sequence of actions to first avoid, then to minimize, and lastly compensate for adverse impacts to waters of the state. Compensatory mitigation ensures that there is no net loss to California's aquatic resources and that the beneficial uses of water resources now present are maintained for future generations. For this reason, projects that are carried out for public safety or emergency response must still comply with this mitigation sequence. Note that several of the Corps Regional General Permits for emergency situations have already been certified and those permits include provisions allowing for compensatory mitigation on a case-by-case basis.
17.5, 17.8	**17.8:** Section IV.B.5.b. Proposed Language Change: Where feasible, the permitting authority will consult and coordinate with any other public agencies that have concurrent mitigation requirements in order to achieve multiple environmental benefits with a single project, thereby reducing the cost of compliance to the applicant. **If the applicant is a participant in SAMP and/or an MSAA approved by the Corps and/or CDFW prior to the Effective Date of these Proposed Procedures that has specified compensatory mitigation requirements, the permitting authority shall accept a compensatory mitigation plan that is consistent with the terms of the SAMP and/or MSAA.**	The Procedures would apply to only applications received after the effective date of the Procedures. Applications submitted before the effective date would not be subject to the Procedures. To the extent that an application is submitted after the effective date, the definition of a watershed plan has been revised to indicate that it include SAMPs. If the SAMP is approved by the permitting authority and analyzed in an environmental document, the Procedures provide that the amount of compensatory mitigation will generally be less. When considering whether the compensatory mitigation requirements are appropriate, it is expected that the permitting authority would consider whether the requirements are in compliance with a SAMP that has been approved by the Corps. In addition, all future SAMPs and MSAAs should be planned in collaboration with the appropriate Water Board.
24.68, 5.3, 45.36	**24.68:** Section IV.B.5 e./328-331 This section states: "The permitting authority may include as a condition of an Order that	It is the goal of the Water Boards to work with the project proponent during the application review and approval stage to approve compensatory

21. Final Compensatory Mitigation Plan

Comment Number	Representative Comment	Response
	the applicant receive approval of a final mitigation plan prior to discharging dredged or fill materials to waters of the state. In this case, the permitting authority will approve the final mitigation plan by amending the Order." Based on this section it appears that an Order can be adopted prior to the finalization of the mitigation plan, however discharge of dredge or fill materials to waters of the state cannot start before the mitigation plan is approved through amending the Order. This process could significantly impact the schedule of a project. It would be preferable to not have the start of a dredge or fill activity dependent on the approval of the mitigation plan, but rather just the adoption of the Order.	mitigation plans before issuing an Order. This is to ensure that compensation for adverse impacts to waters of the state are well thought out and compensatory mitigation projects are successful. If the applicant does not provide a final compensatory mitigation plan prior to issuance of an Order, the Water Boards would include a condition in the Order that final approval of a mitigation plan must occur prior to when the permittee commences work in waters of the state. In these cases, the Water Boards would approve the mitigation plan by amending the original Order to include the final compensatory mitigation plan. This provision provides the Water Boards with flexibility where there is insufficient time to finalize a compensatory mitigation plan before the issuance of the Order, while ensuring that waters of the state are not adversely affected because the plan must be approved before work in waters of the state commence.
24.78, 3.55	This section [Subpart J, Section 230.94 (c)(i); Lines 1274-1275] would require preparation and approval of the final mitigation plan prior to commencing work in waters of the state. This section provides a different description of how the final mitigation plan is approved than provided in Section IV.B.S.e. (Lines 328 331). Please see our comments on Section IV.B.5.e.	The requirement in section 230.94 is consistent with the requirement listed in section IV.B.5.(e) in that final compensatory mitigation plans must be approved prior to commencing work in a water of the state. Section IV.B.5.(e) provides a mechanism for how the final plan will be approved by the Water Board in the event it is submitted by the permittee after the issuance of the Order. Please see response to comment 24.68.
41.40, 41.57	**41.40:** Section IV (B)(5): USACE recommends the State defer to compensatory mitigation requirements determined by USACE for all discharges of dredged or fill material into waters of the United States subject to section 404 of the CWA. For the Civil Works Program, the USACE determines and approves the final compensatory mitigation plan, not the State. However, the USACE welcomes the permitting authority's suggested edits and comments on the USACE's compensatory mitigation plan. The State must recognize that the USACE is unable to adhere to this section of the proposed Procedures because we must comply with the requirements of section 2036(a) of the Water Resources Development Act of 2007 and associated USACE	Section IV.B.4 of the Procedures states that, where feasible, the permitting authority shall consult and coordinate with other public agencies regarding compensatory mitigation in order to achieve multiple environmental benefits with a single mitigation project. As such, the permitting authority will coordinate with the Corps whenever possible in developing compensatory mitigation requirements. However, because the Water Boards and the Corps have different statutory authorizations and different jurisdictions, it would not be appropriate to defer to the Corps regarding compensatory mitigation for discharges of dredged or fill material to waters of the U.S. in all cases. Instead, as is consistent with current practices, the permitting authority will continue to develop appropriate compensatory mitigation requirements based on the particular circumstances of the

21. Final Compensatory Mitigation Plan

Comment Number	Representative Comment	Response
	Headquarters guidance in developing compensatory mitigation plans and determining the amount, nature, type and location of compensatory mitigation. In addition, for the Civil Works Program, the USACE is not able to provide any financial security to the State or commit to long-term management funding.	proposed project; the permitting authority is not bound by the Corps' compensation mitigation determinations. As for setting appropriate compensatory mitigation requirements for the Civil Works Program, it is expected that the permitting authority will give consideration to any relevant regulations or other constraints that the Corps identifies as applicable to a particular project. As explained by Section IV.B.5.f. financial securities are required only when deemed necessary by the permitting authority. As further explained by Appendix A, Subpart J, section 230.93(n)(2), financial assurances may be provided in a variety of forms, including legislative appropriations. Where the applicant is a federal agency, a financial security may not be necessary.
45.37	Suggested in text language change to section IV.B.7.: The permitting authority will review and approve the final monitoring and reporting requirements for all projects. Monitoring and reporting **shall** ~~**may be required to**~~ demonstrate compliance with the terms of this Order.	For cases when project activities include in-water work or water diversions, a water quality monitoring plan will be required to monitor compliance with water quality objectives. The referenced requirement in the "Permitting Authority Application Review and Approval" section requires the Water Boards to ensure water quality monitoring plans demonstrate compliance with an Order, if a water quality monitoring plan is required.
46.27	Section IV.B(f)- Caltrans requests to be exempted from the financial security provision. Furnishing the forms of financial security identified in this section of the Procedures could conflict with Article XVI of the California Constitution, section 6, and Government Code section 16305.3. We request that you include an option for documenting financial security that governments can provide, such as a letter committing to payment, and documenting that funds are set aside for the purpose of completing mitigation. We have attached our current interim policy for providing similar financial assurances to the California Department of Fish and Wildlife to meet their requirements under California Fish and Game Code sections 2080.1 and 2081.	Section IV.B.5. (f) and Appendix A, Subpart J section 230.93(n)(2) state that financial assurances may be provided in a variety of forms and do not preclude the option of financial security provided by a governmental agency as a letter committing to payment based on funds being set aside for this purpose. Further, financial securities are only required when deemed necessary by the permitting authority. Where the applicant is a state agency, a financial security may not be necessary.

22. Financial Security/Terms of Mitigation Obligation

Comment Number	Representative Comment	Response
10.1	The Sanitation Districts believe that regulating effluent-dependent waterbodies as though they were natural is inappropriate, since these waterbodies would not exist without the recycled water discharges. Routine maintenance and repairs of such facilities are required to assure compliance with regulatory permits, avoid nuisance to beneficial uses, and preserve the waterbodies. For example, levee maintenance and dredge activities have been necessary to maintain acceptable water quality, reduce hydrological modification due to sediment accumulation and plant overgrowth, and preserve other characteristics. In such situations, the Procedures could add regulatory requirements to permitting processes that significantly impede our ability to complete needed maintenance and thereby result in permit violations. Therefore, the Sanitation Districts recommend that the Procedures be modified to provide streamlined procedures or requirements for maintenance of effluent-dependent waterbodies.	Many natural waterways in California that historically flowed only during the rainy season, now flow year-round due to additional flow from effluent and urban runoff. While these waterways have been hydrologically altered, they are still considered waters of the state under the Porter-Cologne Water Quality Control Act and must be protected as such. These waterways also provide valuable habitat in urban areas. However, streamlined permitting for the maintenance of flood control drainages may be appropriate, and many Regional Water Boards have general permits that cover such activities.
20.26, 26.2, 37.9	**20.26:** Regarding the financial security requirements [for compensatory mitigation], the proposed procedures should clearly specify what types of financial securities are allowable. In addition, public agencies should be allowed to utilize "pledges of revenue" for their projects.	The Procedures do not preclude the use of "a pledge of revenue" provided by a governmental agency to satisfy the financial assurance requirements (see section Appendix A, Subpart J section 230.93 (n) of the Procedures). Various forms of financial security are permissible, subject to the approval of the Permitting Authority. Please also see staff response to Comments #45.33 and 46.27.
45.33	The draft policy's mitigation requirements also need to be modified to require a financial security for every approved mitigation plan. See Draft Policy at IV(B)(5)(f). Requiring a letter of credit, performance bond, or other financial security is a standard practice, and is important for ensuring promised mitigation benefits materialize. We therefore recommend the following changes to section IV(B)(5)(f) of the draft policy: Financial Security: "~~*Where deemed necessary by the permitting*~~	Requiring a letter of credit, performance bond, or other financial security may be an appropriate practice when requiring compensatory mitigation depending on project specifics and the applicant. Also, some applicants, such as federal or state agencies may not need to provide letters of credit, as it is understood that they have sufficient revenue to provide for any required mitigation.

22. Financial Security/Terms of Mitigation Obligation

Comment Number	Representative Comment	Response
	*~~authority, p~~**P**rovision of a financial security (e.g., letter of credit or performance bond) shall be a condition of the Order. ~~In this case, t~~**T**he permitting authority will approve the financial security to ensure compliance with compensatory mitigation plan requirements."*	

23. General Orders

Comment Number	Representative Comment	Response
20.27	CSAC and RCRC appreciate the inclusion of a general orders as an option for classes of dredged or fill discharge activities and would encourage the Regional Boards to utilize this option.	Comment noted.
24.26	General Orders Section C of the Draft Procedures state that the State or Regional Boards may adopt General Orders for specific types or classes of activities that require similar conditions or limitations to minimize adverse impacts and are more appropriately regulated by a general order. While this is arguably a helpful approach, another possibility would be to more clearly recognize the USACE's Nationwide Permits and provide streamlined processing for activities that qualify for these permits. They are categories of discreet activities with minimal impacts. A further concern with this approach is that it will create inconsistencies among the regional boards in terms of how certain types of activities are regulated.	The State Water Board has historically certified a limited number of nationwide permits that qualify as CEQA exempt. For non-CEQA exempt projects, there are currently insufficient resources to complete a full CEQA review in a limited amount of time (usually 90 days between the final Federal Register Notice and the expiration date of March 17) for all classes of activities covered under approximately 50 nationwide permits for impacts in all areas of California. The commenter expresses concern that General Orders will create inconsistencies among the regional boards in terms of how certain types of activities are regulated. However, an activity is not regulated any less under a General Order than under an individual Order; the efficiency lies in the ability to bulk process permits under a General Order.
27.3	Concern regarding Lines 246 – 265 of the Proposed Procedures: It is not clear in the proposed language that general permits can be issued in a manner similar to the General Permits that can be issued by the USACE for Habitat Conservation Plans and Natural Community Conservation Plans that have an integrated conservation strategy for wetland s. Language should be provided that specifically allows general permits to satisfy the requirements included in the Draft Procedures for Habitat Conservation Plans and Natural Community Conservation Plans with an integrated wetland strategy.	General Orders will be regulated by Section IV.C. The section referenced in the comment, exemptions from alternative analyses, are application to only individual orders.
46.31	Appendix A, general- Please change all references to 'General Permits' to reflect that the board issues 'General Orders.'	The recommended change has been made to Appendix A.

24. Implementation

Comment Number	Representative Comment	Response
3.8	To the extent the State Water Board is concerned about the Regional Water Boards using standard forms and templates for applications and orders and such, that concern may readily be addressed by providing them with standard forms and templates. To the extent the State Water Board is concerned about the Regional Water Boards applying different standards in evaluating and acting on applications, that concern may readily be addressed by providing guidance on appropriate standards. Neither concern calls for creation and implementation of a major new regulatory program.	The Water Boards have collaborated to produce a common organizational structure for Orders to streamline the issuance of Orders, promote consistency across the Water Boards, and provide added clarity to applicants. It is also anticipated that a Water Board standard application form will be made available if the Procedures are adopted. The proper vehicle for giving guidance regarding the appropriate standards in evaluating and acting on applications is the Procedures, which are subject to public notice and comment and therefore vetted by stakeholders before being presented to the Board for adoption. Otherwise, such guidance could be considered impermissible "underground regulations." The Procedures do not constitute a major new regulatory program. The only "new" requirements in the Procedures are the expanded alternatives analysis, and the use of a watershed profile to analyze impacts, and these procedures are already being required by several Regional Water Boards. As noted in section 11 "Economic Considerations" in the Staff Report, many of the elements of the Procedures are already applied as part of federal 404 permitting. Consequently, the Draft Procedures will not significantly change the regulation of those projects, but will bring a consistent regulatory approach to projects discharging dredged or fill material to non-federal waters. The latter projects make up a very small percentage, less than 3%, of the total projects permitted by the Water Boards per year. Please also see the response to Comment # 43.17.
36.5	Will Water Board staff attend training by the USACE?	Yes, Water Board staff attends permitting-related training offered by the USACE/USEPA and plans to continue to do so. However, Water Board staff must also ensure that state laws and regulation, such as Porter-Cologne and CEQA requirements, are followed when issuing orders/certifications, which USACE training does not address.
43.26, 43.28	**43.26:** The State Board must explain how the Regional Boards will fund and staff the implementation of this new program so	The Procedures will streamline section 401 permitting procedures in California, thereby reducing both regulatory redundancy and costs, while

24. Implementation

Comment Number	Representative Comment	Response
	there will not be significant delays in the permitting process and the associated impacts on public and private infrastructure projects and the California economy.	protecting California's aquatic resources. See the response to Comment # 43.17 for further discussion. The Procedures do not constitute a major new regulatory program. The only "new" requirements in the Procedures are the expanded alternatives analysis, and the use of a watershed profile to analyze impacts, and these procedures are already being required by several Regional Water Boards. As noted in section 11 "Economic Considerations" in the Staff Report, many of the elements of the Procedures are already applied as part of federal 404 permitting. Consequently, the Procedures will not significantly change the regulation of those projects, but will bring a consistent regulatory approach to projects discharging dredged or fill material to non-federal waters. The latter projects make up a very small percentage, less than 3%, of the total projects permitted by the Water Boards per year.
44.6	Online Information: USEPA continues to support a digital ('401 Online') approach to application, and recommend the Procedures require project information and uniform monitoring (in most circumstances, California Rapid Assessment Method), made available to the public on the EcoAtlas platform.	The USEPA's support for a digital ('401 Online') approach to application is appreciated. Developing an online application form and granting public access through EcoAtlas (which can be accessed at www.ecoatlas.org) are both ongoing projects. However, some funding and technical issues remain to be addressed before it becomes a reality. Meanwhile, the public have access to project information through the California Integrated Water Quality System (CIWQS), a database used by the Water Boards to track permits, billing, inspections, violations, and enforcement activities. The public can access CIWQS through the following link: http://www.waterboards.ca.gov/water_issues/programs/ciwqs/publicreports.shtml

26. Legal, Procedural, Process Obligation

Comment Number	Representative Comment	Response
3.2	Review of the Comparison and the State Supplemental Dredged or Fill Guidelines attached as Appendix A of the proposed Program, however, reveals that the Comparison does not accurately show the modifications-additions or deletions---of the federal Guidelines purportedly included in the State Supplemental Dredged or Fill Guidelines as Appendix A. For instance, the Comparison shows section 230.10 of the federal Guidelines deleted (i.e., struck out) in its entirety. (Comparison 8-9.) The State Guidelines, however, after noting that the numbering scheme of the federal Guidelines has been retained, includes a lengthy section 230.10 that largely corresponds to section 230.10 of the federal Guidelines but differs in important particulars. (Proposed Program 16-17.) One reading the Comparison would be misled to think that section 230.10 of the federal Guidelines had been deleted from the State Guidelines. Moreover, one would read the Comparison in vain to find a description of the actual differences between the respective sections 230.10 in the two Guidelines. In another particular, the Comparison shows that a phrase 'and the costs of the compensatory mitigation project' in section 230.93 is deleted. (Comparison 26.) Yet that phrase appears intact in section 230.93 of the State Guidelines. (Proposed Program 25.) Faced with these two conflicting documents, the public cannot know whether the State Board means to delete or retain this phrase.(2) With the above discrepancies in place, the notice does not accurately inform the public of the State Board's proposal and it undercuts the ability and opportunity of the District and the rest of the public to review and comment on the State Board's proposal. (2) The district favors retaining it. The cost of mitigation is an obvious, pragmatic, and important consideration in determining the mitigation required in a permit.	Portions of Section 230.10 relevant to state regulation were retained in the State Supplemental Guidelines, but were struck from the cross reference document in error. Specifically, the following statement from section 230.10 has been retained in the State Supplemental Guidelines: “An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.” The cross reference document has been updated to correct this mistake. In addition, the Procedures, as well as accompanying documentation will be made available for further public review and comment so that the public can adequately review the regulations in their entirety.

26. Legal, Procedural, Process Obligation

Comment Number	Representative Comment	Response
3.4, 3.3	The State Board should issue a new, accurate notice with a corrected Comparison, and afford the public sufficient time to review and comment on its proposal.	See response to comment 3.2 (above).
6.1, 6.65, 20.1, 24.27	**6.1:** We understand that a revised draft of the Procedures will be released for public review and comment prior to the State Board taking action. We request that the second comment period be a minimum of 45 days, be open to comments on all aspects of the Procedures, and include additional outreach by the State Board in the form of a workshop during that period of time. While we understand that the State Board typically limits comments on subsequent drafts to revisions that were made, we believe that practice is inappropriate in this particular situation. The scope of the program that would be set up by the Procedures is sweeping. It would apply to all impacts to waters of the state, not just wetlands (contrary to prior efforts that were subsequently abandoned). Many of the processes required by the Procedures are only vaguely defined. Even with the brief extension to the initial comment period, the sixty-day comment period in the middle of the summer when many affected parties were on vacation is not enough to fully assess the impact of the Procedures and their implications for permitting of discharges to both federal and state waters. Given that the State Board has been considering efforts to regulate discharges to waters of the state for many years, the need to finalize the Procedures is not so urgent that affected parties should not be given a reasonable opportunity for review and comment.	Comment noted.
14.1, 24.36	**14.1:** The Authority supports the State Board's efforts to ensure protection of important environmental resources, if done in a way that does not force in-progress projects like the Authority's to go backwards and if done in a way that is very clear and	The Procedures are being developed in part to ensure more consistent regulation of dredged or fill discharges to waters of the state across the Water Boards. Consistent and clear regulation should allow linear projects that transverse regional board boundaries to be authorized more efficiency

26. Legal, Procedural, Process Obligation

Comment Number	Representative Comment	Response
	certain for those subject to the Policy. (Footnote 1: Whether the Authority's project would be subject to the Policy, or whether the Policy would be preempted by the federal Interstate Commerce Commission Termination Act, has not been finally determined.)	and with a higher degree of transparency and certainty, while also ensuring protection of aquatic resources. Existing Orders will not be affected by adoption of the Procedures; however, future Orders must meet these requirements.
15.2	The State Board should take small, incremental steps in rolling out new regulations considering how infrequent the new permitting regulations will be used. Roll out the permitting process before rolling out new wetlands definitions.	Please note that the Procedures would apply to ***all*** future authorizations of dredged or fill discharges to waters of the state. It would not be practical to implement the regulations in smaller, incremental steps, as it would entail years of continuous regulatory change for both the Water Boards and the regulated community, likely leading to increased uncertainty and delays. The proposed wetland definition would provide consistent identification standards for aquatic features that are sometimes difficult to identify in the field. A technical Advisory Team, charged with recommending a wetland definition for the state of California found that the proposed definition would better serve the goals of the Procedures and California's unique ecological conditions.
22.6	The proposal for the State's new process for dredge and fill permits is untimely and duplicative and adds regulatory ambiguity to agricultural operations. As such, we respectfully request that the Board withdraw this proposal at this time.	As set forth in Section D, and as described in the Staff Report on page 72, agricultural activities that are exempt under Clean Water section 404(f) are excluded from the application procedures requirements set forth in the Procedures. Examples of excluded activities include normal farming, ranching and silviculture activities; constructing and maintaining stock or farm ponds and irrigation ditches; constructing or maintaining farm, forest, or mining roads; and maintaining or reconstructing structures that are currently serviceable. For these reasons, it is expected that the Procedures would not add regulatory ambiguity to agricultural operations, nor would the Procedures add duplicative requirements.
24.0	Although the Policy (and now Amendments) have been years in the making, the draft Amendments represent a significant change in direction from previous proposals. There is a concern	Comment noted. The revised Procedures provide a framework for determining whether an aquatic feature that meets the proposed wetland definition is water of the state and subject to Water Board regulation.

26. Legal, Procedural, Process Obligation

Comment Number	Representative Comment	Response
	that there is a rush to adopt these Amendments even though they have just been released for public review after almost three years since the last document. At this point, they do not seem to be suited for use in the Water Quality Control Plan Ocean Waters of California and Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California, due to the many cases in which the language is ambiguous as to what the applicable requirements will be (e.g., application information). Further, the Procedures are incomplete in that they do not provide all of the criteria that would be used to determine whether a specific feature identified as a wetland is within the jurisdiction of the SWRCB pursuant to the California Water Code (Water Code). To not provide these criteria eliminates the opportunity for all stakeholders to provide comments on this critical component of this rulemaking.	
24.15	The draft Procedures do not specify how they amend existing State Water Board Documents. The Draft Procedures lack any specific proposed revisions to the Water Quality Control Plan Ocean Waters of California (Ocean Plan) and Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays & Estuaries of California (Implementation Policy) that are needed to reference to the Draft Procedures or to explain how the Draft Procedures interact with the balance of the Ocean Plan and Implementation Policy. For example, the Ocean Plan states (at Introduction Section C.2.) that: 'This plan is not applicable to discharges to enclosed' bays and estuaries' or inland waters of control of dredged material.' Will this statement be revised and, if so, to what extent will the Ocean Plan be applicable to the control of dredged material or to wetlands? What other revisions are contemplated? Proposed	The Procedures will be included in the Ocean Plan as well as the Water Quality Control Plan for Inland Surface Waters and Enclosed Bays and Estuaries and Ocean Waters of California (ISWEBE), which the State Water Board intends to create by amending the current Water Quality Control Plan for Enclosed Bays and Estuaries. Section C.2 of the Ocean Plan will not need to be amended because the Ocean Plan will continue to have the same scope. Instead, the Procedures will be placed into both the Ocean Plan and the ISWEBE so that they will be application to all proposed discharges of dredged or fill materials to waters of the state, including oceans. The Procedures will be inserted in Section III. Program of Implementation for the Ocean Plan and Section IV. Implementation of Water Quality Objectives in the ISWEBE. The State Supplemental Dredge or Fill Guidelines will be included as an Appendix in each plan. Prior to consideration of adoption, the State Water Board will publicly notice the exact text that it intends to include in the plans. The proposed amendments

26. Legal, Procedural, Process Obligation

Comment Number	Representative Comment	Response
	revisions to the Ocean Plan and Implementation Policy need to be incorporated into the proposed amendments so that interested stakeholders are provided the opportunity to review and comment on these important components of the amendments.	to the plans will involve only non-substantive changes to the numbering scheme so that the Procedures will match the organizational structure of the plans.
28.11, 47.3	**28.11:** Please provide information on how comments submitted during this comment period will be addressed and if they've resulted in changes to the Proposed Procedures.	All public comments submitted during the comment period were considered and responded to. The responses indicate when changes were made to the Procedures based on the submitted comment, and describes what the changes were. The responses to comments will be made available to the public.
29.1, 39.1, 42.1	**29.1:** We request that the comment period be extended so that commenters can provide thoughtful and thorough review on a document that could have large and lasting consequences on various activities performed throughout the State of California.	The State Water Board received several requests from the public to extend the comment period, and it was extended 14 days. The overall length of the comment period was 62 days.
35.1	While Orange County Transportation Authority acknowledges the efforts of the State Water Board to create a more consistent statewide regulatory scheme for protecting wetlands, we are concerned that a redefinition of "wetlands" would lead to additional environmental compliance processes that could adversely impact the development and delivery of vital transportation projects by exposing these projects to additional costs and review. We encourage the State Water Board, prior to adoption, to consider arid provide full cost implications associated with the proposed changes, define how this proposal could impact permitted projects currently undergoing the environmental review process.	The proposed wetland definition would provide consistent identification standards for aquatic features that are sometimes difficult to identify in the field. A Technical Advisory Team, charged with recommending a wetland definition for the state of California found that the proposed definition would better serve the goals of the procedures and California's unique ecological conditions. The staff report reviews the potential costs of implementing the Procedures (please see section 11 of the Staff Report). Also, please note that the Procedures will not affect projects that have already received authorization.
35.4	As part of Orange County Transportation Authority's Environmental Mitigation Program, we have conducted an extensive County-wide jurisdictional delineation mapping effort, including a wetlands assessment. Based on the results of this	To the extent that Orange County Transportation Authority's delineation purported to delineate all waters of the state, it is likely that it includes all features that would meet the proposed definition that are jurisdictional. However, it may be the case that some wetlands that do not meet the

26. Legal, Procedural, Process Obligation

Comment Number	Representative Comment	Response
	mapping effort, future freeway impacts have been estimated and advanced mitigation is currently underway. By partnering with state and federal agencies, Orange County Transportation Authority can be assured that these efforts are consistent with existing federal and state standards and definitions. Accordingly, appropriate mitigation has been developed and committed to by Orange County Transportation Authority. However, with the adoption of a new wetlands definition, the efforts made to perform these calculations and advanced mitigation would be compromised. Without specific technical information and a detailed timeline for the implementation of this new definition, the costs associated with these proposed amendments have not been factored in with the development of the M2 project budgets. Additional costs associated with these Proposed Procedures may create additional financial constraints, leaving less funding for project implementation efforts.	federal definition were not classified as "wetlands." If that is the case, and there were some features that were originally classified as another aquatic type, such as playas or mud flats, the delineation may need to be revised to indicate that those features are wetlands per the Water Board's definition. Because compensatory mitigation is required for impacts to all aquatic features, re-classifying one aquatic type to a wetland type is not likely to have a significant impact on the cost of the advanced mitigation planning effort.
35.5	The Proposed Procedures also do not provide enough background Information on how this expanded definition will impact already permitted projects. Projects not previously considered to impact wetlands may now be determined to have impacts under the proposed expanded definition of 'wetlands.' The SWRCB should consider a grandfather provision which will protect projects approved under the current framework.	The Procedures would apply to all applications that are received after approval by the Office of Administrative Law.
36.7	Will the Water Boards also adopt the shorter timelines of the Corps?	As is the current practice, the Water Boards will continue to meet applicable federal timelines, but new regulatory timeframes will not be adopted. However, various program improvement projects have, and will be, implemented with the goal of improving processing times.
37.5	It is not clear whether these procedures/applications will replace or supplement the 401 Water Certification process. This should be clarified in the procedures. If the procedures are to	The Procedures would apply to all future authorizations of dredged or fill discharges to waters of the state, regardless of whether the Order is a 401 certification, a WDR, or a combination thereof. One goal of the Procedures

26. Legal, Procedural, Process Obligation

Comment Number	Representative Comment	Response
	supplement 401 Water Certification this would require additional staff time and resources on applicants and the permitting agencies to address.	is to supplement existing procedures to align with federal requirements, to the extent practicable, while simultaneously applying the same procedures to discharges that are outside of federal regulation consistently across all regional water boards. Implementation of the Procedures is not expected to require a substantial increase in staff time and resources.
38.3	Riverside County Transportation Commission also embraces Orange County Transportation Authority's recommendation the State Water Board consider including in the Proposed Amendments a grandfather provision for projects approved under the existing regulatory framework to avoid compromising projects already permitted.	The Procedures would apply to all applications that are received after approval by the Office of Administrative Law.
41.10	The proposed Procedures do not address applications for a Section 401 Water Quality Certification received from USACE for non-regulatory actions. This leaves unaddressed how the proposed Procedures apply to the USACE Civil Works Program, including USACE Operations and Maintenance (O&M) activities or projects (Civil Works Program). State staff, at the recent workshop held in Los Angeles, expressed the position that the proposed Procedures would apply equally to all applications. This status is untenable and not sustainable. Federal regulations (33 C.F.R. § 336.1 (b)(8)) clearly provide for a separate Section 401 Water Quality Certification process that is procedurally very different for USACE. Federal regulations governing the application for Section 401 Water Quality Certification for the USACE Regulatory Program can be found at 33 C.F.R. § 325.2(b)(1). USACE believes the proposed Procedures should acknowledge and clearly spell out the procedural difference. Issuing procedures that do not recognize these procedural differences will set USACE and the State up for conflict, reducing the chances for a cooperative consultation. USACE believes the	The Procedures are equally applicable to Federal applicants, including the USACE. The State Water Board disagrees that federal regulations require that a separate process be set forth for projects undertaken by the USACE. Generally, the Clean Water Act requires the USACE to seek state water quality certification for discharges of dredged or fill material to waters of the U.S. (33 C.F.R. § 336.1(a)(1).) Section 336.1(b)(8) describes generally applicable procedures for obtaining a 401 water quality certification, but none of the specified procedures are in conflict with the Procedures. The regulations state that the USACE is required to submit "information and data demonstrating compliance with state water quality standards," and the Procedures set forth the information and data that is necessary. This subsection also sets forth a timeline for issuing a state water quality certification. As further explained in the response to Comment 41.4 below, the Procedures do not purport to extend any federally mandated timelines for certifications, and the Water Boards expect to continue to work with the USACE to meet all applicable deadlines.

26. Legal, Procedural, Process Obligation

Comment Number	Representative Comment	Response
	proposed Procedures should include procedures applicable to Federal applicants.	
41.4	Insofar as the State Water Board may have authority to issue individual or general permits for discharges of dredged or fill materials, applications for such permits should be separate and distinct from applications for permits or certifications which State Water Board issues under provisions of CWA. State regulations require a Water Board, upon receipt of an application, to determine if it is complete. "If the application is incomplete, the applicant shall be notified in writing no later than 30 days after receipt of the application of any additional information or action needed." 23 CCR § 3835(a). Further, "[a] request for certification shall be considered valid if and only if a complete application is received by the certifying agency." 23 CCR § 3835(d). A water quality certification under Section 401 of the CWA, 33 U.S.C. § 1341, is required before a Section 404 permit may be issued, but the requirement is deemed waived if the Water Board does not act within a reasonable time, and USACE regulations contains provisions for deeming certification waived. See 33 C.F.R. §§ 325.2(b)(1)(ii) and 336.1 (b)(8). Unless applications for water quality certifications are separate and	State regulatory timeframes pertaining to the issuance of 401 certifications are established by the California Permit Streamlining Act (PSA), California Government Code § 65920 et seq., which was enacted in 1977. As has been the case since the Water Board established the state water quality certification program [in 1990], the Water Boards and the Corps have successfully coordinated to meet applicable PSA requirements and federal timelines. The Water Boards expect to continue to work with the Corps to meet all relevant deadlines. The Procedures do not introduce any new requirements that would conflict with the PSA, or add elements that would extend certification timeframes, and therefore should not change existing informal coordination processes in place by the two agencies. As is the current practice, where necessary to comply with regulatory timeframes, where there is a project involving federal and non-federal waters of the state such that a 401 certification and a waste discharge requirement is required, the permitting authority may issue the 401 certification portion of the Order separately to comply with required deadlines. Consistent with current practice, the permitting authority will endeavor to issue the 401 certification and waste discharge requirement concurrently whenever possible.

26. Legal, Procedural, Process Obligation

Comment Number	Representative Comment	Response
	distinct from an application to discharge dredged or fill material, USACE will be uncertain as to how to apply sections 325.2(b)(1)(ii) and 336.1 (b)(8) when a Water Board finds an application to be incomplete. This subject is discussed further below in the comments on Section IV of the proposed procedures.	
45.42, 45.43, 45.44, 45.45, 45.46, 45.47, 45.48	The Draft Staff Report/SED fails to adequately or accurately identify significant and potentially significant impacts to the environment that will result from adoption of the proposal, fails to adequately analyze those impacts it does identify, and as a result fails to fully address needed alternatives and mitigation measures to avoid or minimize impacts from the proposed regulatory changes or to analyze the reasonably foreseeable methods of compliance with the proposed procedures that will ensure impacts are avoided, minimized and mitigated.	The SED is an assessment of environmental effects conducted at a programmatic level, which is more general than a project-specific analysis. Implementing the Procedures will not cause any direct impacts to the environment. All potentially significant environmental impacts are indirect effects associated with implementation, which will occur at some future time and will be subject to individual project-specific environmental review under CEQA. The SED considers any reasonably foreseeable outcome of implementing the Procedures for any one wetland project that could conceivably have a significant effect on an environmental resource despite the implementation of mitigation measures. Environmental reviews can be expected to identify project-specific environmental effects; the lead agency must identify any project-specific environmental effects and either mitigate them to less-than-significant levels or adopt a statement of overriding considerations for approving the project despite the potential for significant environmental impacts.
46.4	The proposed Procedures are characterized as supplements to existing regulations. To carry out the augmentation/revision of the affected regulations, will the Procedures progress through the rulemaking process of the Administrative Procedures Act? If so, what is the proposed time line for filing and publication?	The Administrative Procedures Act has a specific section that governs adoption or revision of water quality control plans, and exempts the State Water Board from the remainder of the Act. (Gov. Code, § 11353.) This section requires, among other things, that the State Water Board follow all procedural requirements of Division 7 of the Water Code, which includes the opportunity for public comment and a public hearing. The State Water Board will follow all of these requirements in considering the Procedures for adoption. As part of a water quality control plan, if adopted, the Procedures will have the same force and effect as a regulation, but it will not be included as part of the California Code of Regulations.

26. Legal, Procedural, Process Obligation

Comment Number	Representative Comment	Response
46.9	Section III of the Procedures states that the permitting authority shall rely on any wetland area delineation approved by the USACE for the purposes of determining waters of the U.S. This produces a procedural issue where we often will not receive approval of a wetland area delineation from the USACE until we receive our CWA Section 404 permit, however the USACE cannot issue a CWA Section 404 permit prior to the Water Board issuing a CWA Section 401 Water Quality Certification. We appreciate that you are accepting the USACE wetland delineation methodology, but request that you accept wetland area delineations completed under that method and verify the acreage of waters of the State independently of the USACE verification process. This comment also applies to Section IV.B(2).	The Procedures have been revised to reflect that the permitting authority shall rely on any final aquatic resource report, with a preliminary or approved jurisdictional determination issued by the Corps to determine the boundaries of any wetlands within the waters of the U.S.

27. Monitoring and Assessment

Comment Number	Representative Comment	Response
2.9	Monitoring and adaptive management are necessary to ensure that projects are implemented and regulatory requirements are met; to determine whether projects are on track to achieve their habitat protection and restoration goals; how well they meet, in aggregate, anticipated landscape evolutionary trajectories (i.e., position on a performance curve); and, if they are not on track, to make changes to the project or suite of projects so that they individually and cumulatively meet performance standards. The Procedures present an opportunity to contribute to effective monitoring which could inform adaptive management programs and help track restoration across the state. For compensatory mitigation projects, the Procedures will require baseline information, a description of parameters to be monitored, performance standards, an adaptive management plan, and financial assurances. As the State Water Board finalizes these procedures, we recommend that language be added that would require that permits for habitat protection and restoration include monitoring and adaptive management requirements, as appropriate to the scope of the proposed action. Given the watershed approach presented in the proposed procedures, such requirements could support coordinated monitoring programs at the watershed/landscape scale. Such monitoring data could also contribute to the adaptive management of Delta ecosystem restoration required by the Delta Plan.	Monitoring and adaptive management can be helpful mechanisms to ensure successful implementation of any type of habitat protection or restoration project. Coordinated monitoring programs at the watershed/landscape scale would provide valuable data. However, requiring additional monitoring for Ecological Restoration and Enhancement Projects, which are voluntarily undertaken, would be inappropriate because monitoring requirements may already exist in the enhancement or restoration agreement and such requirements could deter restoration and enhancement projects. The Procedures have been revised to require Ecological Restoration and Enhancement Projects to submit a draft assessment plan that includes project objectives, performance standards, protocols for condition assessment, the timeframe and responsible party for performing the condition assessment, and an assessment schedule. The plan must include at least one assessment of the overall condition of aquatic resources and their likely stressors, before and after any restoration or enhancement. The Procedures require an adaptive management plan for compensatory mitigation projects because compensatory mitigation projects are held to higher standard than voluntary restoration projects. Compensatory mitigation projects serve to offset expected adverse impacts to aquatic ecosystems from a proposed activity or project, whereas voluntary restoration projects generally result in a net gain in wetland acreage and/or function.
2.10	Finally, we feel that monitoring data from all project types, restoration or otherwise, should be made publically available through the use of powerful existing tools such as EcoAtlas, which provides easy access to wetland and waterway data for California, including the Delta.	Some regional boards have been working on making certain monitoring data available through EcoAtlas; however, a long-term funding mechanism for the ongoing support and maintenance of the platform has yet to be determined and is outside of the scope of these Procedures.
7.2, 9.2, 9.3,	**9.4:** Because the projects its constituent members [Central	It is recognized that some binding agreements for the restoration of

27. Monitoring and Assessment

Comment Number	Representative Comment	Response
9.4, 9.9, 21.9	Valley Joint Venture] engage in are inherently beneficial to the environment and advance the state policy of 'no net loss' of wetlands, the Discharge Procedures should recognize the monitoring and reporting requirements included in agreements with funding agencies and other wildlife regulatory agencies and programs. A representative list of these monitoring and reporting requirements is provided below. To require additional and redundant monitoring and reporting plans as part of the Discharge Procedures will consume resources and serve as a disincentive to undertake important conservation efforts.	streams or wetlands include provisions for monitoring and reporting. Those provisions may be submitted in an assessment plan to satisfy application requirements. The Procedures have been revised to require Ecological Restoration and Enhancement Projects to submit a draft assessment plan that includes project objectives, performance standards, protocols for condition assessment, the timeframe and responsible party for performing the condition assessment, and an assessment schedule. The plan must include at least one assessment of the overall condition of aquatic resources and their likely stressors, before and after any restoration or enhancement. Many restoration projects by their very nature involve substantial filling or dredging of wetlands and/or state waters. Generally, the long-term benefits to the aquatic resources from these projects far outweigh any short-term impacts, but this often depends on how the project is done, when it is done, where it is done, who is doing the restoration and/or enhancement, and for what ultimate purpose. The draft assessment plan will provide better data regarding the project's success. The commenter was part of the Central Valley Joint Venture stakeholder group, which met with Water Board staff on April 16, 2013, to discuss the group's concerns with the preliminary draft Wetland Policy, now known as the Procedures. The CVJV followed up with a letter dated July 15, 2013, in which the CVJV requested specific revisions to the Procedures. Many of these revisions were incorporated into the Procedures, but not all.
7.10, 9.15	**9.15:** Regarding Project Application Submittal (Pages 5-6, lines 195-203): Replace Subsection g, with "Monitoring and reporting to ensure that Ecological Restoration and Enhancement Projects are being managed and maintained consistent with their intended purpose shall be limited to that which is required by the binding stream or wetland enhancement or restoration agreement or wetland establishment agreement through which the project was undertaken (private lands) or which is routinely	It is recognized that some binding agreements for the restoration of streams or wetlands include provisions for monitoring and reporting. Those provisions may be submitted in an assessment plan to satisfy application requirements. If a binding stream or wetland restoration agreement does not include provisions for the assessment of projects then an applicant must submit an assessment plan that provides for at least one assessment of the overall condition of aquatic resources and their likely stressors, using an appropriate assessment method subject to the approval of the

27. Monitoring and Assessment

Comment Number	Representative Comment	Response
	conducted by the managing resource agency to assess progress in accomplishing habitat management objectives (public lands) (see definition of Ecological Restoration and Enhancement Projects). These Discharge Procedures do not require any additional monitoring or reporting for these projects."	permitting authority, prior to the restoration and/or enhancement and two years following restoration and/or enhancement to determine success of the restoration and/or enhancement. Please note, revisions have been made to the application requirements outlined in the Procedures to better reflect information needed in order to deem an application complete. The requirement has been revised as follows: For all Ecological Restoration and Enhancement Projects, a draft ~~**monitoring**~~ **assessment** plan including~~**, at a minimum,**~~ the following: Project objectives; description of performance standards used to evaluate attainment of objectives; protocols for ~~**monitoring and data**~~ condition assessment; the timeframe and responsible party for **performing condition assessment**; ~~**determining attainment of performance standards;**~~ and ~~**monitoring**~~ **assessment** schedule. ~~**For Ecological Restoration and Enhancement projects, monitoring**~~ A draft assessment plan shall ~~consist of~~ **provide for** at least one assessment of the overall condition of aquatic resources and their likely stressors, using an appropriate assessment method subject to the approval of the permitting authority, prior to restoration and/or enhancement and two years following restoration and/or enhancement to determine success of the restoration and/or enhancement.
9.5	As discussed at the April 16, 2013 meeting between the CVJV Stakeholder Group and SWRCB personnel, Ecological Restoration and Enhancement Projects are already subject to monitoring and reporting as required by the binding stream or wetland enhancement or restoration agreement or wetland establishment agreement through which the project was undertaken (private lands) or through routine assessments conducted by the managing resource agency to determine progress in accomplishing habitat management objectives (public lands). Therefore, SWRCB personnel agreed that the	Please see response to Comment # 9.15 (above).

27. Monitoring and Assessment

Comment Number	Representative Comment	Response
	Policy will not require any additional monitoring or reporting for these projects but requested examples of representative agreements documenting those monitoring and reporting requirements.	
12.15	A water quality monitoring plan to be developed by the project proponent Is a new requirement. Currently, the RWQCB stipulates monitoring requirements in their permits based on their specific water quality concerns for the area and project activities. It seems more appropriate to follow the current process rather than attempting to anticipate the RWQCB's requirements in developing a monitoring plan.	As drafted, the Procedures would require an applicant to submit a draft water quality monitoring plan if project activities include in-water work or water diversions. This requirement will assist applicants in complying with regional water quality control plans and thus avoid delays in application review. The applicant may work with the Water Boards in developing a draft water quality monitoring plan.
20.17	Regarding the requirement for a draft monitoring plan for all Ecological Restoration and Enhancement Projects, the proposed procedures refer to assessment of conditions of resources 'using an appropriate method.' The Proposed Procedures need to include a provision requiring the Regional Boards to clarify and post on their web sites, the most current methods deemed 'appropriate' for specified resources in waters of the state.	The Procedures require that the assessment method measures the "overall condition of the aquatic resources and likely stressors," but does not identify a method type. This allows greater flexibility to the applicant in developing an assessment plan. Because the plan is subject to the Water Board's approval, it is expected that the applicant will consult with the Water Board on all aspects of the plan, including identifying an appropriate assessment method.
23.8	The Water Board should consider that restoration projects that seek to improve conditions or return to historic conditions are not trying to replace or make up for a quantifiable loss from a development project. In fact, one could argue that any amount of success or improvement in ecosystem function from a restoration project justifies its execution, and holding it to the same standard as a compensatory mitigation project will only decrease the amount of resources that can be put toward further restoration efforts. More specifically, the Conservancy is concerned that for larger, landscape scale [restoration] project the proposed "minimum" monitoring plan requirements may not provide sufficient flexibility. While these requirements may be more appropriate for a mitigation project or smaller scale	Water Board staff fully support voluntary wetland restoration and enhancement efforts, and strive to encourage such activities, not impede them. However, many restoration projects by their very nature involve substantial filling or dredging of wetlands and/or state waters. Generally, the long-term benefits to the aquatic resources from these projects far outweigh any short-term impacts, but this often depends on how the project is done, who is responsible, and for what ultimate purpose. Larger, landscape scale restoration projects, such as those undertaken by the Conservancy, often benefit from much better planning, oversight, and monitoring than very small-scale restoration projects taken on by a landowner. In order to fulfill the application requirements for Ecological Restoration and Enhancement Projects, an applicant should propose provisions for monitoring and reporting that are relevant to the project that

27. Monitoring and Assessment

Comment Number	Representative Comment	Response
	restoration projects, they could be onerous and irrelevant for an effort such as the South Bay Salt Pond (SBSP) Restoration Project, the largest wetland restoration effort on the west coast of the United States. The discussion below illustrates how these requirements, could be problematic for the SBSP Restoration Project.	is being proposed. Those provisions should be in line with the revised requirement, as follows: For all Ecological Restoration and Enhancement Projects, a draft ~~**monitoring**~~ **assessment** plan including~~**, at a minimum,**~~ the following: Project objectives; description of performance standards used to evaluate attainment of objectives; protocols for ~~**monitoring and data**~~ condition assessment; the timeframe and responsible party for **performing condition assessment**; ~~**determining attainment of performance standards;**~~ and ~~**monitoring**~~ **assessment** schedule. ~~**For Ecological Restoration and Enhancement projects, monitoring**~~ A draft assessment plan shall ~~consist of~~ **provide for** at least one assessment of the overall condition of aquatic resources and their likely stressors, using an appropriate assessment method subject to the approval of the permitting authority, prior to restoration and/or enhancement and two years following restoration and/or enhancement to determine success of the restoration and/or enhancement.
23.9	Requiring 'an assessment of the overall condition of aquatic resources and their likely stressors, using an appropriate method subject to the approval of the permitting authority prior to restoration ... .and two years following ... ' implies that there is a commonly agreed upon methodology for such assessments for all habitat types and that two years after the project is appropriate. This is not the case. For example, CRAM, probably the most commonly applied wetland condition assessment methodology, has limited applications to some pre-restoration sites such as former salt-evaporation ponds. Also, CRAM and other methodologies cannot capture the habitat values of upland transition zones that restoration ecologists around San Francisco Bay agree arc essential features to incorporate into wetland restoration projects. Furthermore, tidal wetlands can take decades to evolve which means the two-year timeframe	A draft assessment plan must be developed by the applicant and approved by the Water Boards. A minimum assessment of aquatic resource condition, and any stressors in the vicinity that would have a negative effect on condition, is required once before the start of restoration, and two years following completion of restoration. This requirement does not restrict applicants to using one specific assessment method, but rather allows for the use of an assessment method that best fits the landscape/aquatic resource and the skillset of the practitioners.

27. Monitoring and Assessment

Comment Number	Representative Comment	Response
	could yield little useful data. We agree that baseline data is essential and recommend that project assessments should focus on measuring success as defined by the restoration project and be flexible enough to take into consideration each site's unique conditions.	
28.29	The Proposed Procedures also do not specify how the entity conducting dredging or beach replenishment activity must monitor water quality. The County recommends that these two omissions [public notice & monitoring] be corrected for dredging or beach replenishment activities in marine waters.	Water quality monitoring requirements are based on multiple factors, including analysis of potential project impacts on water body beneficial use and impairment designations made in regional water quality control plans. Although water quality monitoring may be included as a condition to certification, the intent of the proposed Procedures is not to replace staff's project level analysis, nor do the proposed Procedures outline any other water quality testing requirements. As such, these requirements will continue to be determined during project-specific analysis. Please see the requirement listed in section IV.A.2 (e).
45.19	We also note that it is inappropriate to rely exclusively on the draft policy's wetland definition to monitor the status of California's wetlands and the state's compliance with the nonet-loss mandate. Executive Order W-59-93 focuses on wetlands generally and does not distinguish between CCC wetlands and SWRCB wetlands. Because many important wetlands will meet the one-parameter CCC wetland definition but not the more restrictive proposed SWRCB definition, monitoring wetlands based on the SWRCB definition alone would provide an incomplete and misleading picture of the health of California's wetlands. Therefore, for purposes of tracking the status of wetlands under the no-net-loss policy, if the SWRCB adopts the proposed more restrictive definition rather than the one-parameter test, the definition of wetlands for tracking must be broader and more inclusive than the SWRCB's definition.	Comment noted.
46.22	Section IV.A. (2)(e):This requirement is included in Caltrans Statewide Construction General Permit (2012-006-DWQ), which	If an applicant has prepared a water quality monitoring plan in compliance with another board Order, they may submit that plan to fulfill application

27. Monitoring and Assessment

Comment Number	Representative Comment	Response
	covers all Caltrans construction activities. We request that this requirement be amended to allow the acceptance of existing permits that also cover this requirement.	requirements for under the proposed Procedures.

30. Other

Comment Number	Representative Comment	Response
12.23	Page 32, line 1150 of the Proposed Procedures: What does IV B.7(a) refer to? There is no part (a).	The commenter is correct; there is no section IV B.7(a) in the Procedures. The typographic error has been corrected to reference the correct section.
16.1	I am for saving what little wetlands we have left in California at all costs. I am adamantly against any further destruction of wetlands in California.	Comment noted.
16.2	I feel it is our responsibility to save the space and protect the remaining wildlife in California especially on the coast.	Comment noted.
18.1	The San Joaquin County Department of Public Works supports the comment letter provided by the California State Association of Counties (CSAC) and the Rural County Representatives of California (RCRC).	Comment noted.
32.7	Grassland Water District works closely with organizations such as Ducks Unlimited and Defenders of Wildlife to support the preservation and restoration of California's last remaining wetlands. Grassland Water District supports the comments and suggestions submitted by these organizations.	Comment noted.
41.5	On the State's website it states the proposed Procedures, formerly known as the Wetland Riparian Area Protection Policy, has been renamed in order to communicate that the proposed Procedures apply to all discharges of dredged or fill material to waters of the State, not just wetlands. Despite the name change, throughout the document the State continues to refer to the proposal as "Policy."	The Procedures and accompanying Staff Report have been revised to change the word "Policy" to the word "Procedures" where appropriate.
41.9	U.S. Army Corps of Engineers recommends that there be consistency in terminology throughout the proposed Procedures related to the use of aquatic resources and waters.	Comment noted. The term "aquatic resource" includes both the biotic and abiotic components of waters. The term is not necessarily interchangeable with "water."
45.38	The policy must support wetland enhancement, restoration, and management efforts. Due to the highly modified nature of California's waterways, many of the state's remaining wetlands have to be actively irrigated and managed to continue providing	The Procedures establish specific procedures for Ecological Restoration and Enhancement projects that encourage Ecological Restoration and Enhancement Projects. Specifically, the Procedures exempt Ecological Restoration and Enhancement Projects from compensatory mitigation and

30. Other

Comment Number	Representative Comment	Response
	habitat values. Additionally, wetland enhancement and restoration efforts add important acres and functions to our portfolio of wetlands. The final policy must support rather than impede efforts to enhance, restore, and manage wetlands. The Central Valley Joint Venture, Grassland Water District and Grassland Resource Conservation District have particular knowledge and expertise regarding wetland restoration, enhancement, and management efforts, and we urge the State Water Board to pay careful attention to the comments submitted by those organizations.	alternatives analysis requirements.
46.29	Page 15, line 526 of the Proposed Procedures (Appendix A, Subpart A, §230.3(n)): Please change reference from "Policy" to "Procedures" to reflect the title of the Procedures for Discharges of Dredged or Fill Materials to Waters of the State.	Please see the response to Comment # 41.5.
46.32	Page 17, line 581 of the Proposed Procedures: There appears to be a typo where the word "nor" was used in place of the word "not."	The typographic error has been corrected, as suggested, by replacing the word "nor" with the word "not."
46.8	The term "permitting authority" is used throughout the Procedures, however it is unclear who this is referring to and if it is referring to a specific party. While it is defined in the Definitions, for clarity, we request that you define it when it is first introduced in the Procedures, and that you capitalize the term throughout the Procedures as it is a defined term.	The term 'permitting authority' is clearly defined as the entity or person issuing the Order (i.e., the applicable Water Board, Executive Director or Executive Officer, or his or her designee).

31. Overall Opposition

Comment Number	Representative Comment	Response
3.11	The Staff Report asserts that "current regulations have not been adequate to prevent losses in the quantity and quality of wetlands in California" *(id.* at I) and "compensatory mitigation throughout the state has not been adequate to prevent loss in the quantity and quality of wetlands .... " *(id.* at 48). There is little to support these assertions, and in any event the proposed Program appears ill-suited to address them. Section 5.2 of the Staff Report, which is cited to explain that current regulations have not been adequate to prevent wetland losses, does not support that claim and indeed shows largely the opposite. It observes that California experienced "historical" wetland losses. (Staff Report 28.) Such historical losses naturally do not evidence any inadequacy of the current regulatory regime to protect wetlands. Nor do they justify the proposed Program, since it would be unlawful to call on current permittees to mitigate historical wetland losses lacking any nexus with their proposed projects. The Staff Report recognizes that wetland loss "has slowed in recent years." (Id.) Even that understates the trend to no net loss and indeed net gain of wetlands. The Staff Report's tables confirm that in recent years the acreage of compensatory mitigation was roughly double the acreage of filled waters and wetlands. Table 5-2 shows permanent impacts in FY 2014-15 of 196.76 acres. (Id. at 22-23.) (It also shows temporary impacts of392.67 acres.) Table 5-3 shows compensatory mitigation. Although the total compensatory mitigation is not identified, the sum of all such compensatory mitigation amounts to 474.87 acres-more than double the permanently impacted acreage. (Jd.at 24-25.) Table 5.4 confirms that compensatory mitigation in California in 2004-	Although agency required compensatory mitigation is replacing what acreage is currently being lost through development, it will not be known for many decades whether these newly created or restored wetlands will actually replace lost wetland functions and services. Current information on the success of compensatory mitigation is limited. However, there is some evidence that although compensatory mitigation is meeting permitting requirements, wetland functions and services are not being fully restored. For example, the Ambrose study of mitigation sites permitted in California between 1991-2002 concluded that although acreage has been replaced, the biological health of these wetlands was low (Ambrose, Callaway and Lee, 2007). Similar studies in other states support these findings. The insufficiency of current compensatory mitigation referred to in the staff report and as referenced by the commenter, refers to both acreage as well as qualitative metrics. Addressing this deficiency in replacing wetland losses in functions is a major objective of the Procedures. Specifically, the Procedures seek to set forth compensatory mitigation requirements that will improve the likelihood of achieving stated ecological goals and monitoring the success of the project. A more effective regulatory program is needed in the face of expected future growth and development in California. Future development is expected to put increasing pressure on remaining wetland areas as open space is converted to developed space. Further, a more comprehensive regulatory program will help address wetlands losses stemming from other events including natural processes, such as erosion, indirect effects, such as altered hydrology in nearby wetlands, and illegal conversions. Given the ecological importance of wetlands, and the role they may play in climate change strategies, the goal of ensuring that effective compensatory mitigation for wetlands gains is imperative.

31. Overall Opposition

Comment Number	Representative Comment	Response
	2009 consistently created substantially more wetland acreage than was filled and thus added net wetland acreage. (Id. at 31.) The Staff Report does not discuss the relative quality of either the impacted or mitigation wetlands reflected in those tables. In a discussion of literature later in the report, the staff notes that one author (Ambrose) writing in 2007 found that compensatory mitigation wetlands from projects permitted in 1991-2002 "are largely meeting their permit requirements in terms of area and/or establishment of wetland vegetation." (Id. at 30.) Ambrose added, though, that "most sites do not achieve stated ecological performance goals." According to these criteria, he said, the average mitigation site was "suboptimal." (Id.) Review of Ambrose's report reveals that the goals and criteria by which he grades the mitigation as suboptimal are entirely of his own making independent of agency permit conditions. In that report, he states: "Despite relatively high permit compliance, most mitigation sites were not optimally functioning wetlands based on the criteria we established from reference wetlands across the state." (Ambrose, An Evaluation of Compensatory Mitigation Projects Permitted Under Clean Water Act Section 401 by the California State Water Resources Control Board, 1991-2002 at iii (Aug. 2007).) Those reference wetlands were chosen with an eye to their high quality. (Id. at 24-25.) While acknowledging that it would have been useful to sample reference sites paired with impact sites to allow for something akin to comparison of impact sites with mitigation sites, Ambrose did not do that because it was not possible. (Id.) It cannot be concluded from Ambrose, thus, that mitigation wetlands did not prevent loss of wetland quality as asserted in	

31. Overall Opposition

Comment Number	Representative Comment	Response
	the Staff Report. The most that can be concluded is that mitigation wetlands sometimes fell short of the "optimal" conditions of the reference sites. The evidence provided by the State Water Board thus establishes largely the opposite of what the Staff Report suggests. Compensatory wetland mitigation generally has (1) more than offset the loss of wetland acreage from permitted projects and, indeed, has contributed to a net gain of wetland acreage, (2) compensatory wetland mitigation has largely met permit requirements with respect to wetland acreage and vegetation, and (3) compensatory wetland mitigation may well have offset other qualitative aspects wetland impacts; certainly, there is no evidence showing that it has failed to do so. There is nothing in the Staff Report to support its conclusion of "insufficient compensatory mitigation" (Staff Report 31), nor is there anything in the report showing anything about compensatory mitigation that needs or warrants fixing at all, let alone by a new regulatory program.	
3.5	No showing of need for this proposed new regulatory program: The first and most basic question to ask of a proposal for a new regulatory program is: Why? What is the need for it? What is the problem it is proposed to solve? The State Water Board staff proffers three problems or needs as reasons for proposing this new regulatory program. Each should be carefully analyzed to determine (1) whether it withstands scrutiny and actually is a real problem or need and (2) whether any such problem or need is of sufficient magnitude to warrant the burden and expense of creating and implementing a new regulatory program. A) Fill the So-Called SWANCC Gap; B) Address Inconsistency Among Regional Boards; C) Address Inadequacy of Current Regulations	The Procedures have many objectives, one of which is to ensure protection for wetlands that are no longer protected under the Clean Water Act due to Supreme Court decisions. In addition, the proposed Procedures aim to promote consistency across the Water Boards for requirements for discharges of dredge or fill material into waters of the state and to prevent further losses in the quantity and quality of wetlands in California. The Staff Report explains the need for the Procedures in the Project Need section.

31. Overall Opposition

Comment Number	Representative Comment	Response
	to Prevent Wetland Loss. [See comment letter for detailed information.]	
5.1, 6.53, 20.3	**20.3:** We are concerned that the Proposed Procedures will result in substantial uncertainty for applicants, increase the potential for litigation over proposed projects, impose significant costs without attendant environmental benefit, and provide no assurance for timely project approval which is of particular importance to those counties that have a narrow window to complete projects.	One goal of the Procedures is to reduce application processing time by clarifying the information needed for a complete application and the criteria for permit approval. Uniform statewide procedures allow for orders to be organized similarly and common application forms to be used, which should further expedite the permitting process.
6.11	Defer finalizing the Procedures until the challenges to the Clean Water Rule are resolved and the scope of federal jurisdiction is clear, and to allow time for an adequate cost-benefit analysis and opportunity for full stakeholder participation. Before finalizing the Procedures, clearly identify the legal authority for the State Board's action and demonstrate that the benefits outweigh the costs and that Water Boards can allocate the necessary staff and funding to implement the Procedures without compromising their existing mission.	The Water Boards' jurisdiction over California waters is much broader than federal jurisdiction and is not dependent on federal jurisdiction. Please see Section 5.1, Regulatory Background in the Staff Report for further discussion. The Clean Water Rule is expected to be rescinded or revised, and waiting for resolution regarding federal jurisdiction would unduly delay the adoption of the Procedures. Delaying adoption of the Procedures would delay the opportunity to address current gaps in protection for state water, provide uniform procedures for the review and approval of dredge and fill material discharge applications, and improve restoration outcomes for wetlands and waters of the state. Please note that while the State Water Board is not legally required to do a cost-benefit analysis, an analysis of possible costs to implement the proposed Procedures has been provided (see Section 11, Economic Considerations in the Staff Report). Likewise, extensive stakeholder outreach over a period of years has been conducted.
6.63	The current need for a new program to fill the SWANCC gap is even more questionable given the given USACE and USEPA's recent promulgation of the Clean Water Rule revising the regulatory definition of WOUS, which has been challenged in federal court. At this time it is not even clear which waters may fall outside federal jurisdiction when and if the new regulations are implemented. If the State Board is dissatisfied with the Corps' implementation of the Clean Water Act section 404	The CWA requires a state 401 certification of federal permits. In order to issue a 401 certification, the Water Boards must independently insure that the project meets the state's water quality control plans and policies. Thus, applicants must obtain approvals from both agencies. This process has been in place since 1990 when the Water Boards first adopted water quality certification procedures. The Procedures are intended to clarify for applicants what is required for a complete application and the criteria for permit approval, which will be consistent across the Water Boards. The

31. Overall Opposition

Comment Number	Representative Comment	Response
	program, the answer is not to duplicate the Corps' efforts. The Water Boards already can and do impose stringent conditions on section 401 water quality certifications for Corps permits. If the state believes that further authority is needed, the Water Boards with EPA approval can assume responsibility for administering the section 404 program - as the Legislature has authorized. See Water Code § 13370 et seq. The Staff Report considered and rejected this alternative because of 'significant administrative costs' and because it would require addressing 'additional complexities of meeting federal requirements.' Staff Report, p.174. Instead, it recommends adoption of a new, duplicative program, without the benefit of federal funding that would be available if the state assumed section 404 permitting responsibility under the Clean Water Act and with significantly more case-by-case determinations than currently required of the Water Boards or the Corps under the federal program. This is not a rational response to concerns about cost and complexity.	result will be reduced processing time and greater regulatory certainty for applicants. The Procedures are also intended to be consistent with federal requirements. As such, regulators will be applying essentially one rule book for dredge and fill permitting. As an analogy, consider how the complexity of traffic law compliance is reduced by having one state motor vehicle code instead of codes that vary by county. Ideally, this effort should make the permitting process more transparent and predictable, and thus more streamlined for the applicant. Please note also that there is no assurance of federal funding should the state assume section 404 permitting responsibility under the Clean Water Act. Finally, the Clean Water Rule is expected to be rescinded or revised, and waiting for resolution regarding federal jurisdiction would unduly delay the adoption of the Procedures. Please also see response to Comment # 6.11.
8.7	The proposed Procedures is overreaching and create unfair regulatory burden. Coachella Valley Water District respectfully suggests withdrawing the proposed Procedures and creating a policy based on scientific and technical rationale that provides clear definition of waters of the state subject to regulation which are consistent with the purpose of the California Water Code and federal regulations.	Comment noted. However, as explained in the SED Project Description, the Procedures are based on scientific and technical rationale. The wetland definition was crafted by a Technical Advisory Team and peer reviewed according to Health and Safety Code §57004. In addition, while not addressing all state waters, the revised Procedures do clarify wetland waters of the state subject to the Water Board's jurisdiction. Finally, the dredge and fill procedures are adapted from the Corps' regulatory program and, as such, benefit from the considerable technical guidance and legal history for the program developed over the past decades.
9.6, 42.2	**9.6:** California Waterfowl is concerned that, if the Discharge Procedures document is adopted as written, such work that occurs in waters of the state, regardless of whether those areas are also waters of the U.S., would be subject to the more rigorous permitting requirements of the Procedures. The	The Water Boards regulate dredge and fill activities associated with restoration projects, ensuring that these projects meet applicable water quality control plans and policies. Recognizing the environmental value of Ecological Restoration and Enhancement Projects, the Procedures allow for reduced monitoring requirements, and also exempt these projects from

31. Overall Opposition

Comment Number	Representative Comment	Response
	Procedures could adversely impact the ability of California Waterfowl and the other conservation partners of the Central Valley Joint Venture and other joint ventures in California, including the San Francisco, Sonoran, and Intermountain West Joint Ventures, to deliver on-the-ground wetland restoration and enhancement.	alternatives analysis and compensatory mitigation. Instead of adding to the "rigor" of current regulations, the Procedures would streamline requirements for restoration projects, and also ensure regulatory consistency across all Water Boards. This will result in greater regulatory certainty for restoration proponents.
15.15	What do the current regulations accomplish? The Staff Report on page 28 states: "As with the rest of the nation, wetland loss in California has slowed in recent years; between January 2007 and April 2009, the Corps recorded an annual rate of 300 to 400 acres of wetlands and other jurisdictional aquatic habitat losses in the state." Table 5-4 documents that the compensatory mitigation acres in 2007 and 2008 totaled 2,932 acres (Staff Report, page 31). To be fair, Ambrose et. al. (Staff Report, page 30) discounts the value or quality of the wetland mitigation projects that were approved by resource agencies. Nevertheless, for the two year period of 2007-08, California projects mitigated for 600 to 800 acres of impact at a ratio of somewhere between 3.7:1 and 4.9: 1.	Please see response to Comment # 3.11.
15.18	Do not experiment with new wetlands definitions until you have a permitting program in place.	The discharge of dredged or fill material is already regulated by 401 certifications and/or waste discharge requirements. The Procedures would not create a new regulatory program.
15.20	Only after you have feedback on the successes and problems of the new permitting program for non-Section 404 CWA wetlands should you consider expanding the wetland definition.	The discharge of dredged or fill material to non-federal wetlands are already regulated by waste discharge requirements. Applying separate permitting rules and wetland definitions for federal and non-federal waters and wetlands would add undue complexity and needless cost to the Water Board's dredge and fill program, and could result in higher permitting fees. In addition, applicants would be faced with a more complex permitting and wetland delineation process, adding time to project schedules, thereby increasing project costs.

31. Overall Opposition

Comment Number	Representative Comment	Response
24.1	While we applaud the State Water Board and staff in its efforts to more closely align the proposed amendments for regulating discharges of dredged or fill materials to the federal requirements and to provide statewide consistency as they apply to waters of the state, after thorough review the California Council for Environmental and Economic Balance has identified a number of concerns with the Draft Procedures that may create significant and unreasonable burden on a host of regulated entities seeking to maintain regulatory compliance.	Comment noted.
24.12	The Draft Procedures are taking the approach of "one size fits all," which is not an appropriate way to permit various activities that occur throughout California. Additional thought is required to tease apart requirements associated with activities that result in minimal impacts. Given the intense Water Board staff workload, this approach ensures that staff time is focused on those projects that truly require additional analyses and more comprehensive permitting.	The Procedures provide staff flexibility in several important areas. The Procedures specifically provide that staff may adjust permit requirements based on the size and nature of direct and indirect impacts to waters of the state (see Appendix A, §230.6 Adaptability). The requirements of the Procedures only apply to individual orders. Staff may choose to issue general orders to streamline permitting for classes of dredge or fill projects with similar impacts. Where there is a general order, the enrollees are subject only to the terms and conditions of the general order, and the specific requirements of the proposed Procedures do not apply. Finally, some activities are exempted from the application procedures, such as activities exempt under CWA section 404(f) and such activities may be subject to other authorities of the Water Board. In summary, the Procedures do not limit the Water Boards to a "one size fits all" approach.
24.7, 24.11	**24.7:** Additionally, a number of the provisions are vague, inconsistent and even present conflicts that will impact the Procedures' implementation, the National Pollution Discharge Elimination System (NPDES) permitting requirements, and result in inconsistent application by Regional Water Boards.	Comment noted. An explanation of how the Procedures will promote consistent regulation of the discharge of dredged or fill material is set forth in the Staff Report in the "Project Need" section. An explanation of how the Procedures will fit into the current regulatory scheme is described in the Staff Report under "Regulatory Background."
27.1	The County of Placer requests revisions to the Draft Procedures to ensure consistency with and avoid redundant analyses and new regulatory schemes that would otherwise conflict with	The Procedures are not expected to conflict with aquatic resources programs planned or proposed to be integrated with state and federal Natural Community Conservation Plans and Habitat Conservation Plans.

31. Overall Opposition

Comment Number	Representative Comment	Response
	aquatic resources programs planned or proposed to be integrated with state and federal Natural Community Conservation Plans and Habitat Conservation Plans. The following lines represent areas of concern that should Incorporate the work of Placer County and other similar Plans, either previously adopted or in process, throughout the state. The current Draft Procedures seemingly ignore these important tools in the conservation and mitigation of waters of the state.	Please note that the Water Boards may issue a general permit for dredge and fill activities in the plan area, and if so, a prospective enrollee in the general order would not be subject to the individual order application requirements of the Procedures. If individual orders are issued instead, and the Procedures apply, then applicants may qualify for special conditions if complying with an eligible watershed plan. In this case, alternative analysis would not be required, and compensatory mitigation ratios would account for a probable lower risk of failure.
31.2	The Staff Report states "between January 2007 and April 2009, the USACE recorded an annual rate of 300 to 400 acres of wetlands and other jurisdictional aquatic habitat losses in the state." This statement is based upon the California Natural Resources Agency's 2010 State of the State's Wetlands Report. THAT is not what the Report states. It states "Based on records from January 2007 through April 2009, the USACE has recorded 300 to 400 acres per year of impacts to wetlands and other jurisdictional aquatic habitats in California." The Staff Report does not quantify the loss of wetlands in federal waters, state waters, within federal jurisdiction or solely within state jurisdiction. Which, begets the question of why are these proposed amendments necessary?	Comment noted. The Staff Report will be revised to correct this statement. As for the purpose of the proposed Procedures, please see pertinent sections of the Staff Report. The "Project Need" section of the Staff Report describe wetland trends monitored by the U.S. Fish and Wildlife Service. While overall loss of wetlands seems to have slowed in California, the extent and health of remaining wetlands are still threatened by a host of factors, including habitat fragmentation, altered hydrology, altered sediment transport and organic matter loading, dredging, filling, diking, ditching, shoreline hardening, pollution, invasive species, excessive human visitation, removal of vegetation, and climate change. However, the loss of wetlands is not the only reason these Procedures are necessary. The "Project Need" section of the Staff Report describe the other reasons why the proposed Procedures were developed, including the need to provide consistency for the Water Boards regulation of discharges of dredged or filled materials, and align these procedures with federal requirements, including alternatives analysis and the use of the watershed approach to mitigation.
31.7	At this time, it appears that a bureaucracy is developing a bureaucratic plan for a problem that may or may not exist.	Please see the response to Comment # 31.2.
34.1	NextEra Energy is submitting these comments in order to support those submitted by the coalition of business, public	NextEra Energy's support for the comments submitted by the business, public agency, labor, and natural resource associations is hereby noted. As

31. Overall Opposition

Comment Number	Representative Comment	Response
	agency, labor, and natural resource associations which includes the Large Solar Association, the Association of California Water Agencies, and the California Building Industry Association. We urge the State Water Resources Control Board to delay the publication of these procedures until stakeholders can come together and develop a product that accomplishes both the wetland protection and California's development and renewable energy goals in the most effective and efficient manner. If the SWRCB decides to further develop these procedures, NEE looks forward to working with all stakeholders in the development of practical and protective procedures.	described in the Staff Report, Section 4: Introduction, State Water Board staff has conducted extensive stakeholder outreach since 2008, and has held numerous workshops to discuss the Procedures.
35.8	To ensure the timely delivery of M2 capital projects, Orange County Transportation Authority believes that voter-approved sales tax-funded projects should be exempt from any new wetlands definition and any of the additional review requirements included in the Proposed Amendments.	The Procedures clarify application requirements and approval criteria for projects subject to individual certifications, such as the future M2 transportation projects referred to. The result is expected to be reduced permit processing time and greater regulatory certainty for applicants.
36.13	In conclusion, the State Board should not adopt the 404(b)(1) process, neither as it is, nor as proposed with the substantive alterations to make the Corps' process more to its liking. The Water Boards should read the Guidelines to mean what the Corps and EPA read them to mean. They should not, through interpretation, modification and cherry-picking, adopt or implement their own, different version of the Guidelines. The 401 process should remain as intended by the federal Clean Water Act. For Individual Permits, the Corps conducts its 404 analyses of the proposed discharge, identifies the LEDPA and makes a determination that it intends to issue a permit. Then the Water Board determines whether or not that discharge is in compliance with applicable state water quality requirements. The Water Boards should do their job and let the Corps do theirs.	By incorporating a state version of the 404(b)(1) Guidelines, proposed dredge or fill projects applying for individual certifications will be subject to similar approval and mitigation requirements. This will improve regulatory certainty for the applicant. The process will be streamlined because the steps in the mitigation sequence will be applied equally by both agencies under the tenets of the Guidelines for individual permits. This will not limit or alter either agency's obligation to ensure compliance with their respective statutes, regulations, and policies. The regulatory process established by the CWA requiring each agency to determine separately whether to approve a project will not change. However, the fact that agencies will be using a common set of requirements for permit approval and compensatory mitigation will reduce regulatory complexity.

31. Overall Opposition

Comment Number	Representative Comment	Response
45.6	It also creates a permitting program that fails to establish clear expectations for project proponents, will likely result in inconsistencies across the Regional Boards, will increase workload for already-overburdened Regional Board staff, sets the stage for 'clarification' of this policy through excessive and burdensome litigation, and fails to do what it set out to do - protect California's remaining wetlands.	In general, the Procedures will ensure clear dredge and fill application requirements, standard certification approval criteria, and consistent compensatory mitigation requirements. These improvements are expected to address the concerns raised in this comment.
47.1	Recognizing the importance of addressing California's mobility needs while protecting California's environment, at the same time, the competing demands for declining transportation revenue, the Commission is concerned with the degree to which the California Department of Transportation (Department) and other transportation stakeholders can comply with the proposed procedures.	Based on the economic analysis provided in the SED, the proposed Procedures will not increase costs to applicants. To the extent that the proposed Procedures provide consistency with the Corps and across the Water Boards in dredge and fill permitting, costs to applicants may in fact be reduced.

32. Overall Support

Comment Number	Representative Comment	Response
2.1, 2.2	**2.1:** The amendments would promote consistency between state policies and the CWA, and between the State and Regional Water Boards, as well as clarify definitions of and extend protections to waters of the state and facilitate permitting of habitat restoration projects. Council staff congratulates the State Water Board on nearing completion of more than a decade of work to provide increased protection for California's aquatic resources. We appreciate the importance of the *Procedures* in addressing current gaps in protection for state waters and addressing current gaps in protection for state waters and inconsistencies in procedures for the review and approval of applications between the State and Regional Water Boards, and the State Water Board and the USACE. The *Procedures* address these issues and support improved protections and restoration outcomes for wetlands and waters of the state, including those found in the Delta and the Suisun Marsh. Overall, we are supportive of the Water Board's Procedures, which will improve opportunities for restoration, regional permits, and adaptive management and monitoring.	The commenter's support for the Procedures is noted.
2.7	The proposed Procedures would require that applicants first avoid, then minimize, and finally compensate through mitigation for impacts from discharges of dredged or fill material to waters of the state. Council staff supports this approach.	The commenter's support for the mitigation sequence is noted.
12.1	Department of Water Resources appreciates the State Water Board's efforts toward alignment with federal application, alternatives analysis, definitions, etc.	The commenter's support for the Procedures' alignment with federal application, alternatives analysis, and definitions is noted.
23.1	The State Coastal Conservancy supports the State Water Board's efforts to update its former "Wetlands Policy" in order to comply with the State's "no net loss" of wetlands policy. As an agency focused on the voluntary conservation and enhancement of wetlands, we appreciate the importance of having a strong	The commenter's support for the Procedures is noted.

32. Overall Support

Comment Number	Representative Comment	Response
	regulatory environment to protect natural resources and facilitate their restoration.	
24.3	The California Council for Environmental and Economic Balance appreciates the State Water Board's interest in providing consistency across the state and improving protections for waters of the state not covered by the CWA.	The commenter's support for the Procedures is noted. However, the Procedures apply to all waters of the state, both federal and non-federal.
45.1	We continue to believe that having a strong State Water Resources Control Board ('SWRCB') wetlands policy is essential because federal jurisdiction under the Clean Water Act is limited and fails to safeguard many wetland types in California, and because the Regional Boards' current approach to regulating discharges of dredged or fill materials into waters of the state is failing to stop the destruction of wetlands.	Comment noted.

33. Prior Converted Cropland (PCC) Exclusion

Comment Number	Representative Comment	Response
2.11	Application Exclusion for Working Lands, With Limitations. The Procedures will be consistent with exemptions to application procedures for select farming activities, specified under CWA section 404 and USACE regulatory guidance letters. The Procedures will also continue to exclude certain prior converted croplands (PCC) from the application procedures for discharges of fill and dredged materials. However, the PCC exclusion will now not apply if the PCC is abandoned or changes to a non-agricultural use. Council staff commends the State Water Board for taking note of and respecting exemptions granted for working agricultural lands, while recognizing the value of restoration in some prior converted croplands that have transitioned into wetlands. This is especially important in the Delta, where some previous agricultural areas have flooded and now provide essential fish and wildlife habitats or support other ecosystem functions.	Comment noted.
4.6	Exemptions Could Result in Wetlands Losses; Do Not Allow Exemptions for Prior Converted Cropland (PCC), Constructed Treatment Wetlands, or Irrigation Ditches. The exemptions in the Preliminary Draft Policy are concerning and may result in net losses of wetlands. The Draft Policy excludes wetlands that have been certified as Prior Converted Cropland (PCC) from the permitting requirements. This provides a loophole where a landowner could convert a PCC into an agricultural use and then could convert that agricultural use into a development, resulting in complete loss of wetland habitat. PCCs can provide important wetland functions and excluding them from the permitting requirements allows for a loophole in which wetlands may be lost. Constructed treatment wetlands and irrigation ditches may provide important habitat and ecological functions. Complexity excluding them from permitting requirements is a mistake. For	Changes have not been made to the prior converted croplands exclusion. Language provided in the Procedures mirrors federal language for the definition of agricultural use and provisions that allow for the recapture of prior converted croplands if they are abandoned or converted to non-agricultural use. As explained in Section IV.D., although the Procedures do not apply to the activities and discharges described in this section, the Water Boards retain authority to regulate such activities and discharges to the extent authorized under the Water Code. Because developing a program to specifically regulate PCC would be a complex process that would generate substantial interest, particularly if different from Corps and NCRS practices, any efforts to develop PCC-specific policy should be handled separately from the Procedures. The constructed treatment wetland exclusion has been deleted from the Procedures because revised framework has been provided to determine

33. Prior Converted Cropland (PCC) Exclusion

Comment Number	Representative Comment	Response
	instance, a constructed treatment wetland could serve as an important stop for a bird migratory fly over path, offering food, water and safety to important species. Potential impacts to and loss of this habitat should be mitigated for. The definition of irrigation ditches needs further clarification. For instance, soft bottom creeks with concrete side channels (such as portions of Compton Creek and Los Angeles River) may be classified as 'irrigation ditches' or 'engineered maintenance channels but they provide important habitat and services to the ecosystem. Any impacts to these habitats should be properly avoided, minimized, or mitigated. We recommend that a precautionary approach be applied and that PCC, constructed treatment wetlands, and irrigation ditches engineered maintenance channels be included in the Policy and that the onus be on the applicant to prove otherwise that they are exempt from the Policy.	jurisdiction to wetland waters of the state. Artificially created industrial or municipal wastewater treatment wetlands would be excluded as waters of the state, unless that treatment wetland meets any of the other criteria provided for in the revised framework. Definition of irrigation ditches: The State Board directed staff to address the definition of wetlands. It is not within the project scope to define other types of waters of the state, though the Board could direct that as a future project.
6.34, 6.33, 6.32, 6.31	**6.34:** Delete Section IV.D.2.(a)(1), given the current state of the Stockton Rules. Revise Section IV.D.2.(a) to expand 'planted' to 'cropping, management or maintenance activities related to agricultural production.' Additionally, a new provision, IV.D.2.(a)(iii) should be added: 'For the purposes of D.2(a), abandonment is the cessation for five consecutive years of management or maintenance operations related to the use of a farmed wetland or a farmed-wetland pasture and positive indicators of all mandatory wetlands criteria, including hydrophytic vegetation, must be observed.'	That the exclusion from application procedures is not applicable to PCC that has been converted to non-agricultural use or has been abandoned is consistent with federal practice and with the joint guidance from the Natural Resources Conservation Service and the Army Corps of Engineers Concerning Wetland Determinations for the Clean Water Act and Food Security Act of 1985 dated February 25, 2005, which was unaffected by the litigation related to the Stockton Rules. The definitions in Section IV.D.2.a. are derived from this joint guidance, and accordingly have not been revised. The suggested revision to the definition of abandonment was not made because it would be inconsistent with federal practice and with the Procedures' wetland definition, which does not require the presence of hydrophytic vegetation.
45.27, 45.28, 45.29	**45.27:** In the current draft policy, wetlands on lands designated as PCCs are excluded from the application procedures unless the PCC (1) changes to a non-agricultural use, or (2) is abandoned.	Changes have not been made to the prior converted croplands exclusion. Language provided in the Procedures mirrors federal language for the definition of agricultural use and provisions that allow for the recapture of

33. Prior Converted Cropland (PCC) Exclusion

Comment Number	Representative Comment	Response
	Draft Policy at IV(D)(2)(a). The exclusion and overly-limited recapture provision leave open the possibility that important wetlands on lands designated as PCCs could be destroyed without any oversight from the Regional Boards. In particular, the draft policy would not require a landowner to receive a permit to destroy wetlands on a PCC if the land is still being used for agriculture. This means a landowner could, without any permitting oversight, deep rip or even fill wetlands on a PCC to plant an orchard. Once the wetlands are gone, the landowner could replace the orchard with development. The loss of wetlands on PCCs to either incompatible agricultural uses or development is enormously problematic and inconsistent with California's no-net-loss policy. The best way to remedy this problem is to eliminate the exclusion for PCCs. Under this approach, wetlands on PCCs would be subject to the same permitting requirements as any other wetlands. Eliminating the exclusion would help to create a policy that is clear, consistent, and protective of wetlands. If the PCC exclusion is not eliminated, we alternatively request that the recapture provision be strengthened to ensure wetlands on PCCs are not converted to incompatible agricultural uses without oversight from the Regional Boards. In particular, the recapture provision found in section IV(D)(l)(a) of the draft policy, which applies to agricultural activities on lands not designated as PCCs, should be applied to PCCs as well. To make this change, the PCC exclusion in section N(D)(2)(a) of the draft policy should be revised to state: Discharges of dredged or fill material that occur within wetland areas that have been certified as prior converted cropland (PCC) by the Natural Resources Conservation Service. The PCC	prior converted croplands if they are abandoned or converted to non-agricultural use. As explained in Section IV.D., although the Procedures do not apply to the activities and discharges described in this section, the Water Boards retain authority to regulate such activities and discharges to the extent authorized under the Water Code. Because developing a program to specifically regulate PCC would be a complex process that would generate substantial interest, particularly if different from Corps and NCRS practices, any efforts to develop PCC-specific policy should be handled separately from the Procedures.

33. Prior Converted Cropland (PCC) Exclusion

Comment Number	Representative Comment	Response
	exclusion will no longer apply if: (1) the PCC changes to a non-agricultural use, or (2) the PCC is abandoned, meaning it is not planted to an agricultural commodity for more than five consecutive years and wetland characteristics return, and the land was not left idle in accordance with a USDA program. **Additionally, any discharge of dredged or fill material to a water of the state is not exempt and shall be subject to the application procedures in sections IV.A. and IV.B., if (1) the purpose of the activity is bringing a water of the state into use to which it was not previously subject, where the flow or circulation of water of the state may be impaired or the reach of such waters be reduced, or (2) the discharge contains any toxic pollutant listed in CWA section 307.**	

34. Pre-Application Consultation

Comment Number	Representative Comment	Response
24.81, 24.41, 33.7, 41.21	**24.41:** Pre-application consultation to determine the need to obtain a certification or for regulatory guidance would be very helpful and could improve overall permitting timeframes and avoidance strategies. Clearer guidance should be provided to the Regional Boards. Suggested revision: "The applicant may consult with the Water Boards, **prior to submitting a permit application**, to determine whether a project could result in impacts to waters of the state."	Please see response to comment # 40.2 (below).
40.1	Scope and Timing of Application Processing: The current Procedures require Regional Board staff to evaluate projects, make recommendations and take actions that will potentially influence the scope and nature of a given project. However, in most cases, projects are considered and acted on by local land use agencies (e.g., cities, counties) (Lead Agencies) under the umbrella of CEQA and local zoning and regulation. In most cases, Lead Agencies begin making decisions on projects relying on Regional Board involvement related to dredge and fill permitting through direct comment in the Lead Agency preparation of CEQA documents. This ordinary sequencing is reflected in existing Regional Board policies which require the completion of CEQA review before a 401 application will be processed. The Procedures, as currently written, will result in Regional Board staff having to contend with a project that is likely already through CEQA and Lead Agency certification. Potential reopening of project elements after CEQA documents have been approved and certified will lead to an increase in the complexity and time involved for all parties involved and will potentially create conflicts between the Regional Boards and Lead Agencies if project decisions and actions are incongruent. **Recommendation:** The Procedures should recognize that there are elements within the Procedures where local input is not only	The lead agency is the public agency with the principal responsibility for supervising or approving the project as a whole. In the Lead Agency role, the Water Boards work directly with the project proponent ensuring that the project design will meet permitting requirements. When Water Board is a Responsible Agency, then the Water Board must respond to consultation by the Lead Agency during project scoping, planning and CEQA document preparation stages (CEQA Guidelines, section 15096). As this is a requirement for Responsible Agencies under CEQA, it does not need to be repeated in the Procedures. A project proponent may apply for a water quality certification early on in the CEQA review process. As set forth in California Code of Regulations, title 23, section 3856(f) (requirements for a complete water quality certification application), the applicant shall include in its application "[a] copy of any draft or final CEQA document(s), if available, prepared for the activity. Although CEQA documentation is not required for a complete application, the certifying agency shall be provided with and have ample time to properly review a final copy of valid CEQA documentation before taking a certification action." If an applicant applies during the early stages of the project when the CEQA review process is underway and project design is still being finalized, then any permitting concerns can be more readily addressed. The Water Boards encourage early consultation by applicants.

34. Pre-Application Consultation

Comment Number	Representative Comment	Response
	warranted but desired. Several of these elements are discussed in more detail in this letter. The Procedures and Future Guidance should identify these elements and work to ensure that the Regional Boards are engaged with Lead Agency and that Lead Agencies are given deference during the NOP process. The Procedures should strongly encourage the Regional Boards to provide adequate comment and guidance to Lead Agencies such that the ultimate CEQA document and analysis supports the inherent goals of the Procedures. In short, the Procedures are attempting to ensure that certain processes and resource protection actions are undertaken to ensure aquatic resource related environmental protection and benefits. Lead Agencies, in many cases, are in a better position to ensure these goals as long as the Regional Boards engage adequately and systematically.	
40.2	**Pre-consultation Comment:** The Procedures require that substantial materials be submitted before an application can be deemed 'complete.' For example, on a 'case by case basis' the Regional Boards can require submission of an alternatives analysis and detailed information pertaining to an applicant's proposal for compensatory mitigation. In many cases, these 'application documents' will also need to be approved by other regulatory agencies. For example, the alternatives analysis and mitigation information mentioned previously would need to be approved by the U.S. Army Corps of Engineers (ACOE) and, potentially, other agencies. Significant conflicts can occur when different regulatory agencies consider the same materials, but in isolation. Due to the fact that each agency has its own unique set of rules and regulations, it is likely that two agencies could have vastly different perspectives on a single document (i.e., Corps typically will not consider impacts to Waters of State in their LEDPA analyses, whereas State will likely be looking at	Language in the Procedures has been revised to clarify that applicants may consult with the Water Boards early in the application process (see parenthetical below). Pre-application meetings or informal consultation with the Water Boards benefit the applicant by providing useful information which could prevent delays during application review. For complex projects, this should be done ideally during the early planning stage of the project. As to agency coordination, the Water Boards are committed to increasing interagency coordination in order to streamline application review for all parties involved and expect to try and reach agreements with other agencies that facilitate coordination. However, the Water Boards cannot mandate a pre-application process that must be followed by other agencies and any effort to reach interagency agreements should be pursued after the Procedures are adopted. Applicants should keep Water Board staff informed of all scheduled agency reviews and pre-application site visits so that staff may participate and provide applicants with any information that may assist in preventing delays later. For example, applicants should notify the Water Boards if the Corps is

34. Pre-Application Consultation

Comment Number	Representative Comment	Response
	Waters of United States (WOUS) AND Waters of State (WOTS). These conflicts, in turn, translate into substantial and expensive delays in an already lengthy permitting process for applicants. Consequently, there is a need for a robust pre-application process to ensure that applicants, Regional Boards and agencies, including ACOE, coordinate as early in the process as possible and remain connected and coordinated throughout their respective application processing. This, by definition, means that all parties- the applicant, the Regional Boards and any other relevant agencies- must invest significant time and resources at the outset. The Procedures will need to ensure that all parties understand, and buy into, the process and timelines of this pre-consultation. Successful coordination will help create certainty for applicants (and other agencies) that decisions and commitments made during pre-application will "stick" for example, if an applicant receives feedback from Agency A during pre-application consultation and the applicant incorporates Agency A feedback into their application, it will be imperative that they not later receive conflicting or incongruent feedback/decisions from Agency B for the same issue. Ideally, during pre-consultation, Agency A would have consulted with Agency B prior to issuing feedback and project application(s) processed on this issue in a coordinated manner. **Recommendation:** The Procedures should identify and describe the pre-application process to be followed by applicants, the Regional Boards and other agencies. The Procedures and/or guidelines should clarify that Regional Boards will accept draft application materials, where appropriate, and to enter into pre-consultation with applicants and relevant agencies PRIOR to application completeness determination. The Procedures should	reviewing their project during the Corps' regularly scheduled "pre-application" meetings, which may be attended by Water Board staff. In reference to above, the Procedures have been revised as follows: Applicants must file an application to the Water Boards for any activity that could result in the discharge of dredged or fill material to waters of the state in accordance with California Code of Regulations, title 23, section 3855. The applicant may consult with the Water Boards to determine whether a project could result in impacts to waters if the state **and/or discuss submittals that would meet the application requirements listed below.**

34. Pre-Application Consultation

Comment Number	Representative Comment	Response
	also require that the Regional Boards enter into agreements with ACOE and any other relevant agencies, such as memoranda of understanding (MOU), which will identify the goals of pre-consultation, set forth the agencies respective responsibilities regarding pre-consultations and identify a process for resolving conflicts, should they arise, during the pre-consultation process. To this end, we recommend highly that the Procedures and or related guidance support the formation of an inter-agency working group (similar to the Interagency Review Team (IRT) used to review banking proposals) to meet on a defined schedule and calendar to conduct pre-application consultation on projects with anticipated impacts to waters of US/waters of State. To support this, the Regional Boards will need to set aside adequate funding and staff time to meaningfully participate. This will result in more time up-front but much less time responding later in the project when the eventual conflicts evolve following the Regional Board completeness determination on a given application.	
43.18	The Proposed Amendments make frequent use of the term 'case-by-case.' Because the proposed definition of wetland is not the same as the one used by the Corps of Engineers, there will be great uncertainty in how the definition will be applied. In addition, many of the exclusions and exemptions contained in the federal regulations (see Section 1.2 of this letter) are not adopted by the Proposed Amendments. In recognition of this problem, the Preliminary Draft states 'project proponents are strongly encouraged to contact the Water Boards for assistance prior to submitting an application for dredged or fill projects' [Preliminary Draft at 2]. Such clarification may be necessary prior to field work so that appropriate mapping can be conducted, but pre-application consultations will likely increase project delays,	The Procedures have been revised to reduce the number of case-by-case determinations and put further limitations on the Water Boards' discretion. The adoption of the Corps 1987 Delineation Manual and Regional Supplements for determining the presence and boundaries of wetlands should reduce uncertainty regarding applying the proposed wetland definition. In addition, the proposed revisions to the Procedures include a jurisdictional framework for the wetland definition that will reduce uncertainty associated with determining which wetlands will be regulated as a water of the state. Even so, pre-application consultations prior to delineation field work may clarify any Water Board concerns and thus prevent project delays. For example, comprehensive delineations by expert wetland scientists may be advised by the Water Boards for projects with complex aquatic resource sites or potentially contentious regulatory issues.

34. Pre-Application Consultation

Comment Number	Representative Comment	Response
	particularly if Regional Board resources for administrating this entire program are stretched. In addition, the Regional Board staff may cause substantial delay and cost by requiring rainy season data, especially if the initial field work is initiated in the spring or summer of any year [Preliminary Draft at 4]. Such data is not required by the Corps as the 2008 Regional Supplements provide indicators to be used during the dry season.	As another example, in areas where wetland indicators are difficult to resolve due to annual variability in hydrology, substrate or vegetation, delineating wetlands in the wet season may be advisable. In general, it is expected that pre-application consultation would greatly benefit applicants and Water Board staff by identifying potential problems in the application or project design before it is too costly to fix those problems.

35. Public Noticing Requirements

Comment Number	Representative Comment	Response
3.46, 6.52	**3.46:** Apart from the dual 30-day reviews of the completeness of applications, the proposed Program provides for a dual public notice process. It requires one public notice and then, if comments are received or there is substantial public interest, provides for a second public notice to be issued again inviting public comment. (Proposed Program 9.) This unnecessary and cumbersome two-notice process should be removed. One notice, particularly one that actually accomplishes its purpose as evidenced by receipt of public comments, suffices to afford the public notice and opportunity to comment. There is no need for a routine second notice. Indeed, such a process invites abuse by those who would seek to delay the process by the expedience of submitting pro forma comments.	Public participation is a valued component of the Order drafting process. California Code of Regulations, title 23, section 3858 requires a 21-day public notice of applications for 401 certifications. The public notice provides summary information about the project and contact information. The public is invited to comment on the project to assist the Water Boards in reviewing the project application. As stated in the Procedures, for projects where comments are received on the application or there is substantial public interest, public notice of the draft Order will be provided unless circumstances warrant a shorter notice period. The additional public notice applies to the draft Order, rather than just the application, so that the public has the opportunity to comment on the regulatory measures proposed by the Water Board for project activities that may impact water quality. Public notice regarding the draft Order is not likely to cause undue delay because it is limited to situations where comments were received on the application or where there is substantial public interest, and such notice period may be shortened where circumstances warrant a shorter period.
28.3	The Proposed Procedures do not require that dredgers or dischargers make basic information concerning their activity easily accessible to the public on the internet. The County recommends that the Proposed Procedures be revised to include a requirement that dredgers or dischargers make general information concerning their activity available to the public for marine waters via the internet. This recommended amendment would allow for concerned persons to be easily referred by the monitoring agency to that information online.	Currently, the Water Boards post notices regarding pending 401 certification applications, which include summary information on the proposed project, on their websites. The notices also include contact information where comments or questions may be directed. To locate the appropriate regional water board website, please use the map application at the following link: http://www.waterboards.ca.gov/waterboards_map.shtml.
28.4	Make a project description and summary available to the public via the internet that also includes a project contact for the public.	Please see response to Comment # 28.3 (above).
28.5, 28.7	**28.5:** For those projects adjacent to recreational beaches, regardless of permitting requirements, notify the local beach and recreational water quality monitoring and reporting	The Procedures outline application requirements and the criteria for review and approval of a water quality certification. Specific monitoring requirements for a project would be included as conditions of the water

	authority as soon as possible, but not less than one week before activity, of: i. Date(s) which the overall project activity will begin and end; and the date or dates upon which the discharge will take place. ii. A detailed description of the location of waters proposed to receive a sand/water discharge including map(s) of sufficient detail. iii. Any changes in project parameters, including duration, location, etc.	quality certification, and would be based on factors such as the characteristics of the discharge, site parameters, location and timing. The Order would also ensure the applicant complies with the project CEQA mitigation and monitoring requirements related to water quality and beneficial uses, including recreation. Members of the public that are interested in receiving notifications regarding the dredge and fill program, including notification of 401 certification applications and draft WDR orders, should visit the appropriate Water Boards' website for information about public noticing.

37. Restoration Plan for Temporary Impacts

Comment Number	Representative Comment	Response
3.57	The proposed Program calls for submission of a 'restoration plan for restoring areas of temporary impact to pre-project conditions.' (Proposed Program 5.) What the State Board has in mind when it speaks of 'temporary impact,' it does not say. The District notes that it makes little sense to arbitrarily designate a single period of time to distinguish permanent and temporary impacts in this context. The District suggests that the State Board instead clarify that a restoration plan may be submitted for any water or wetland that is not permanently filled or otherwise destroyed by a project and that is susceptible of being restored to pre-project conditions. Depending on the nature of the pre-project conditions, naturally the time needed to restore them (and thus the 'temporariness' of the impact) will vary from site to site. Restoration of annual grasses and the like, for instance, generally can be accomplished more quickly than restoration of large woody vegetation. Ultimately though, as long as the pre-project conditions can be and are restored, the impacts on those conditions are temporary.	Water Board staff will identify permanent and temporary impacts to waters in consultation with the applicant and other permitting agencies considering project and site parameters. Temporary impacts are commonly understood as those which eventually reverse, allowing the affected resource to return to its previous state. As the commenter notes, it does not make sense to differentiate between permanent and temporary impacts based on an arbitrarily defined time period. (Instead, the concept of “temporal loss” applies to the loss of environmental benefits for a period of time.) Consequently, distinguishing between permanent and temporary must be based on site specific information including the type of water, the severity and duration of the impact, type of equipment and environmental conditions. For example, a wetland may only be temporarily filled, but the impact could be considered permanent if wetland functions are permanently degraded. During the application process, Water Board staff will review and confirm temporary and permanent impacts with the applicant. The Procedures provide that the applicant submit a restoration plan for all temporary impacts such that the site is stabilized and temporality impacted waters and upland areas are returned to pre-project conditions.
5.8, 12.9, 24.84, 24.64	**24.64:** This section states: 'Prior to issuance of the Order, the permitting authority will review and approve the final restoration plan for temporary impacts.' As written, this section appears to prevent the permitting authority from issuing an Order prior to approving the final restoration plan for temporary impacts. To prevent potentially significant delays in a project, we recommend that the applicant be required to provide a draft restoration plan prior to approval with a condition that the final restoration plan must be implemented once approved. We recommend the following revision: At a minimum, ~~**P**~~**p**rior to issuance of the Order, **the** ~~**permitting**~~	The Procedures require the submittal of a final restoration plan prior to issuance of the Order to ensure that all requirements necessary for restoring temporary impacts are included as conditions of the Order. It is appropriate to include the restoration plan as conditions of the Order to provide regulatory certainty to the applicant.

37. Restoration Plan for Temporary Impacts

Comment Number	Representative Comment	Response
	~~**authority will review and approve the final restoration plan for temporary impacts**~~ **applicant shall submit a draft restoration plan for temporary impacts upon which the Order can be issued. Upon finalization by the applicant and approval by the permitting agency, the applicant shall implement the approved restoration plan for temporary impacts.**	
21.8	Page 5 lines 184-192 discuss the requirement of restoration plans for restoring areas of temporary disturbance. Beneficial wetland conservation projects as well as EREPs should be exempt from this requirement. This requirement has the potential to increase costs on beneficial wetland conservation projects, and may already be covered under normal Storm Water Pollution Prevention Permit obligations.	All project applicants are required to submit a draft restoration plan to restore areas of temporary impact to pre-project conditions. In the case of EREPs, the restoration plans submitted as part of the requirements of applicable binding agreements with funding agencies or in compliance with the conditions of another state or federal permit may satisfy this requirement.
24.54	This section calls for a detailed restoration plan for all cases where temporary impacts are proposed ' ... including, at a minimum, the following: the objectives of the restoration plan; a work schedule; plans for grading of disturbed areas to pre project contours; a planting palette with plant species native to the area; seed collection locations; an invasive species management plan; a description of performance standards used to evaluate the attainment of objectives; the timeframe for determining attainment of performance standards; and maintenance requirements ... For small O&M projects with very small temporary impacts this is more information than is needed. Utilities often have projects, such as pole replacements and access road repair, with temporary impacts (e.g.,<100 square feet) within previously disturbed habitat. It would be overly burdensome to require this type of detailed restoration plan for each of these projects. This section, like others, should	All project applicants are required to submit a draft restoration plan to restore areas of temporary impact to pre-project conditions. In the case of minimally impacting projects, the information required in the plan would be commensurate with the size of the area disturbed. If O&M projects are routine in a given area, then successful site restoration practices, such as weed control, suitable local seed sources, seeding practices and necessary maintenance practices, are known by the applicant. This information can be applied to successive O&M site restoration plans with only minor site-specific modifications necessary. Restoring temporary impacts, even if minor, ensures that long-term erosion is minimized.

37. Restoration Plan for Temporary Impacts

Comment Number	Representative Comment	Response
	include a set of criteria {e.g., a disturbance threshold) which if the criteria are met would not trigger the preparation of a detailed restoration plan.	
46.23	Section IV.A(2): (f) We request that nursery or seed purchase locations be included as options to seed collection locations.	The Procedures require seed collection location information in the draft restoration plan. If seed is purchased from a nursery, then information as to the nursery's seed source should be provided. Ideally the seed should be collected from a close geographic area, which improves the likelihood of survival success.

38. Scope of Procedures

Comment Number	Representative Comment	Response
1.1	Procedures Should Not Apply to Waters Subject to Federal Jurisdiction: According to the State Water Board's June 2016 Staff Report, the proposed Procedures were developed to strengthen protections for waters of the state (WOTS) no longer protected under the Clean Water Act following U.S. Supreme Court decisions. Application of the proposed Procedures should therefore be limited to WOTS that are not waters of the U.S. subject to federal jurisdiction. This will limit unnecessary duplication with federal requirements that are already protective of wetlands, and will streamline the application review process for Regional Water Boards staff that is often constrained by limited time and resources.	The State Water Board developed the Procedures for a number of purposes, only one of which is to ensure protection for wetlands that are no longer protected under the Clean Water Act due to Supreme Court decisions. Another purpose of the Procedures is to promote consistency across the Water Boards for requirements for discharges of dredge or fill material into waters of the state. Establishing Procedures that are applicable to both federal and non-federal waters of the state will help ensure that Water Board actions are consistent regardless of whether the orders are 401 certifications, waste discharge requirements, or a combination thereof and will help ensure consistency across regions.
3.53, 6.12, 6.21, 6.44, 6.2, 20.2, 22.5, 25.2, 25.3, 29.2, 30.1	**20.2:** While we have the utmost respect for the mission of the Water Board, the Proposed Procedures would affect a wide range of county flood protection and transportation related projects and activities that are needed to ensure public safety, economic vitality and quality of life. Generally we have an overarching concern that many of the new requirements would be unnecessarily duplicative of, or largely overlap existing permitting requirements, including the federal Clean Water Act § 404 program and the California Fish and Wildlife Lake and Streambed Alteration program.	In developing the Procedures, the State Water Board has attempted to make the Procedures as consistent as possible with the requirements of the Corps. Where the requirements are the same, the Procedures allow for a streamlined process. For example, where the applicant's federal license or permit application includes any of the project application submittals, the applicant may submit the federal application to satisfy the corresponding state application. However, because the State Water Board and the Corps have different jurisdictional bounds and different statutory mandates, there are some instances in which the State requirements differ from federal requirements. Likewise, given the different jurisdictions and statutory mandates, there may be some instances in which the Procedures' requirements different from requirements set forth by the California Department of Fish and Wildlife.
3.6	Finally, there is an obvious disconnect between any such gap and the proposed Program. The proposed Program, unlike earlier suggestions of the State Board staff, would regulate not just this handful of 'gap' waters, but rather every water in the state.	The State Water Board developed the Procedures for a number of purposes, only one of which is to ensure protection for wetlands that are no longer protected under the Clean Water Act due to Supreme Court decisions. In addition, the Procedures aim to promote consistency across the Water Boards for requirements for discharges of dredge or fill material

38. Scope of Procedures

Comment Number	Representative Comment	Response
		into waters of the state and to prevent further losses in the quantity and quality of wetlands in California.
3.7, 46.3	**3.7:** Address Inconsistency Among Regional Boards: The Staff Report alludes to inconsistency across the regional boards in requirements for discharges of dredged or fill material and notes there is no single accepted definition of wetlands at the state level. (Staff Report 1.) What, if any, actual problems result from these observations, the Staff Report does not say. In the absence of any showing of such problems, assessing the need for a new regulatory program to address them is difficult.	Without a statewide definition of wetlands, there can be inconsistency in interpretation regarding what type of aquatic features are subject to Water Boards jurisdiction. A statewide definition of wetlands also gives certainty to applicants who are trying to determine whether their proposed project affects wetlands. Moreover, a statewide definition will lead to consistency in how wetlands are delineated.
6.20	During hearings on the draft Procedures, State Board staff suggested many of the likely conflicts between the Procedures and the Corps' regulatory program could be resolved through a memorandum of agreement between the Water Boards and the Corps. Even assuming that prediction is accurate, the State Board should not rely on the promise of an undefined and uncertain future agreement with the Corps to resolve problems that are apparent now. Even if the agencies did adopt such an agreement, it would not adequately resolve the issues identified in these comments because the agreement would be unenforceable and either agency could terminate (or fail to comply with) the agreement at any time and for any reason, including lack of resources or changes in agency policy. The better course is to limit the scope of the Procedures and eliminate the provisions that cause the conflicts.	The State Water Board is attempting to eliminate direct conflicts with other regulatory programs as much as possible in the Procedures. However, because agencies have different jurisdictional bounds and different statutory mandates, there are some instances in which the State requirements may differ from requirements of other agencies. If the Procedures are adopted, the State Water Board would endeavor to work with other agencies who have concurrent jurisdiction over wetlands, including the Corps, to make the application process as streamlined as possible and to avoid conflicts between regulatory programs. These efforts may include a memorandum of understanding.
6.5, 6.62, 13.1, 24.4, 24.2, 31.4, 37.1	**24.4:** However, we are concerned about the broad nature of the Draft Procedures that would encompass all impacts to waters of the state, not merely wetlands as prior SWRCB direction would have addressed.	One purpose of the Procedures is to promote consistency across the Water Boards for requirements for discharges of dredge or fill material into waters of the state, which affects all waters of the state, not just wetlands. Establishing procedures that are applicable to all waters of the state will help ensure that Water Board actions are consistent regardless of whether the dredge or fill project affects only wetlands or other types of waters of

38. Scope of Procedures

Comment Number	Representative Comment	Response
		the state as well.
6.6	The staff report for the Procedures indicates that only about one percent of the Water Board's current permitting actions related to filling WOTS are for non-federal waters. Draft Staff Report Including Substitute Environmental Documentation - Procedures for Discharges of Dredged or Fill Materials to Waters of the State (June 17, 2016), p. 4 (Staff Report). It makes little sense to create a sweeping new regulatory program for one percent of discharges - particularly when the Water Boards already regulate these discharges, when necessary, through WDRs. Staff Report p. 4. For the other 99 percent of discharges, the Procedures will impose duplicative and conflicting regulatory requirements on waters that are already adequately protected by federal regulation and will increase the resources needed to process applications by the already understaffed Water Boards.	One purpose of the Procedures is to promote consistency across the Water Boards for requirements for discharges of dredge or fill material into waters of the state. Establishing procedures that are applicable to both federal and non-federal waters of the state will help ensure that Water Board actions are consistent regardless of whether the orders are 401 certifications, waste discharge requirements, or a combination thereof and will help ensure consistency across regions. The Procedures would apply to all discharges of dredge or fill material into waters of the state, not just discharges to waters of the state that are not under federal jurisdiction.
14.4	'Waters of the US' and 'Waters of the State'- Duplicate Regulation of the Same Resource All aquatic features that are considered under federal law as ''waters of the United States' are also 'waters of the State' under applicable State law. However, the definition of ''waters of the State' under State law is broader - i.e., there are 'waters of the State' that are not 'waters of the United States' (but not vice versa). 'Waters of the State' include State 'wetlands.' Early versions of the Draft Policy were initially proposed as a means to consistently regulate only those 'waters of the State' that are not under federal jurisdiction because they were 'isolated' or otherwise no longer regulated after United States Supreme Court cases narrowing federal jurisdiction ('Gap wetlands') (see Solid Waste Agency of Northern Cook County v. US. Army Corps of Engineers (2001) 531 U.S. 159; Rapanos v. US. (2006) 547 U.S. 715). However, the Draft Policy now proposes to cover all 'waters of the State' even	The State Water Board agrees that all waters of the United States within California are waters of the state, but there are also some waters of the state that are outside federal jurisdiction. It is not the goal of the State Water Board to set up duplicative regulations but rather align existing regulations with federal processes to the extent practicable. See response to comment 1.1 (above).

38. Scope of Procedures

Comment Number	Representative Comment	Response
	if also 'waters of the United States' -thereby setting up a duplicative (and potentially conflicting) regulatory process over mostly the exact same resource. This definitional and policy change is significant and is foundational to many of the Authority's concerns.	
24.31, 24.40	**24.40:** Since many discharges to land are regulated as potential discharges to groundwater, this document needs to clarify that these procedures for discharges of Procedures apply only to discharges to surface waters of the state not groundwaters; or if they also apply to groundwaters under some circumstances, those circumstances should be identified. The following sentence should be revised to state. "The purpose of this section is to establish application procedures for discharges of dredged or fill material to **surface** waters of the state, which includes both waters of the U.S. **in California** and non-federal waters of the state." This comment also applies to the balance of the draft Procedures and accompanying documents.	The Procedures apply to all discharges of dredge or fill material to waters of the state. Because some discharges of dredge or fill material occur to wetlands, which can be wholly or partially inundated by groundwater, the proposed clarification to reference "surface water" is not appropriate. In addition, the Water Code defines "waters of the state" broadly to include "any surface water or groundwater, including saline waters, within the boundaries of the state." Also, it is not necessary to specify that the Procedures would not apply to waters of the United States outside of California.
24.32	Language should be revised in Line 9 as follows: 'These (strikeout wetlands) waters provide environmental and economic benefits to the people of this state, including flood…	No change was made in response to this comment. This introductory sentence is describing the specific environmental and economic benefits of wetlands, not all waters of the state.
24.5	Further, the Draft Procedures are duplicative and in some cases we believe are in conflict with the CWA.	The State Water Board is attempting to eliminate direct conflicts with other regulatory programs as much as possible in the proposed Procedures. However, because agencies have different jurisdictional bounds and different statutory mandates, there are some instances in which the State requirements may differ from requirements of other agencies.
24.56	This section identifies findings that staff must make in order to approve (i.e., 'The permitting authority has the discretion to approve a project only if the applicant has demonstrated the	No change was made in response to this comment. Even projects involving existing construction may have the capacity to avoid impacts. Where impacts are unavoidable, the applicant must still minimize and mitigate. By

38. Scope of Procedures

Comment Number	Representative Comment	Response
	following:') an individual order. Subsection B.l.b. requires: 'The potential impacts will not contribute to a net loss of the overall abundance, diversity, and condition of aquatic resources in a watershed;' This specific requirement should only potentially apply to new construction projects rather than to work associated with existing facilities, since impacts adjacent to existing facilities may be unavoidable. New projects may have the ability to be moved to avoid impacts.	taking these steps, projects affecting existing construction can demonstrate that they will not contribute to a net loss of the overall abundance, diversity, and condition of aquatic resources in a watershed.
24.8	Project Objectives Are Not Achieved As described in the Staff Report in Section 6.1, the Draft Procedures include seven specific objectives. Unfortunately, four of the seven objectives clearly would not be fulfilled through implementation of the Draft Procedures: Objective 3 strives for consistency with the federal CWA Section 404 program. The approach described in the Draft Procedures does not fulfill this objective.	See response to comment 24.5 (above).
29.3	Expanding jurisdictional boundaries and definitions for 'wetlands' and 'waters of the state' will have real impacts to landowners and citizens. These new proposed rules will impact canals, constructed waterways, non-vegetated areas, and others which have not historically been identified as 'wetlands' or 'waters of the state' (and have been covered under exemptions), and have no support to be deemed with these terms. Implementation of these terms and rules will impact daily operation and maintenance activities performed by landowners, farmers, ranchers, small privately owned construction companies, and others.	The Procedures have been substantially revised with respect to jurisdiction.
30.5	We request that the proposed amendments undergo another round of editing to ensure that scope is specifically noted for desired wetlands management only, removal overlapping regulatory requirements, with delineations for clear key term definitions.	The State Water Board has released another draft of the Procedures, which will be subject to another round of public review.

38. Scope of Procedures

Comment Number	Representative Comment	Response
31.10	Based on the Staff Report, I request the Board withdraws Resolution 2008-0026 and directs staff to determine exactly what the impacts are to wetlands that are within waters of the state and not within the federal jurisdiction.	Comment noted.
31.3	The Staff Report indicates the major indicators of stress in the west are ditching, damming, normative vegetation, surface hardening and vegetation removal. A question to the Board is which of these major indicators are these Amendment addressing?	Projects that involve any of the listed major indicators will all likely involve discharges of dredge or fill material and accordingly would be subject to the Procedures. Authorization pursuant to the Procedures would ensure that avoidance, minimization, and mitigation activities are undertaken and would better control any impacts to waters of the state.
37.12	If the agencies do not modify the Proposed Rule to address the concerns set forth above, the District is concerned that our ability to effectively construct, operate, and maintain facilities to conserve runoff, to manage runoff water quality, and to protect life and property from flood hazards in a timely manner would be impaired. We, therefore, urge the State Water Board to consider our comments and those of other public agencies across the state and to re-issue the Proposed Rule in light of those comments.	All of the comments that have been submitted in response to the Procedures have been reviewed and responded to. Also, the Procedures are geared to streamline the application process by frontloading items that are needed (and already requested from applicants) to make determinations regarding complete applications.
45.7	Because modifying the draft policy to fulfill these basic purposes will require substantial revisions, we request that the SWRCB reissue the revised draft policy for public comment before it is adopted.	The State Water Board has released another draft of the Procedures, which will be subject to another round of public review.

39. Significant Degradation

Comment Number	Representative Comment	Response
24.58	Regarding Section IV.B.l.c./ lines 213-214: This section states: "*The discharge of dredged or fill material will not violate water quality standards and will be consistent with all applicable water quality control plans and policies for water quality control; and*" This requirement appears to make two stand-alone requirements: 1) no violation of water quality standards; and 2) consistency with all water quality control plan and policies. It is unclear whether a mixing zone may be allowed for a discharge, in which the compliance with the water quality standards would be determined at the edge of a mixing zone instead of at the point of discharge. To eliminate any potential confusion, we recommend linking these two requirements together with the following revisions: "*The discharge of dredged or fill material will not violate water quality standards* ***in accordance*** ~~*and will be consistent*~~ *with all applicable water quality control plans and policies for water quality control; and*"	No change was made in response to this comment. Appendix A, State Supplemental Guidelines, clarifies that disposal site dilution and dispersion must be considered when evaluating a violation of water quality standards (section 230.10(b)(1)). Mixing zone requirements are addressed in the Water Boards plans and policies which contain the applicable water quality standards. To clarify, discharge of dredged or fill material must meet both of these conditions: 1. not violate water quality standards, and 2. be consistent with all applicable water quality control plans and policies for water quality control.

40. Stormwater Facilities Exclusion

Comment Number	Representative Comment	Response
8.6	Operation and maintenance of CVWD's 1,000 acres of groundwater replenishment and 330 acres of storm water retention basins, 73 miles of flood control dikes, and over 100 miles of swales and ditches currently do not require dredge and fill permits for maintenance activities. However, the federal exemption is not clear, and therefore the SWRCB's exemption is not clear, for regulation of groundwater replenishment, stormwater, or flood control facilities. These facilities are critical to life in the desert because they capture and infiltrate water into the drinking water aquifer, as well as protect property and public safety. Groundwater replenishment, stormwater, and flood control facilities should be specifically excluded from the definition of waters of the state.	It is unclear which federal exemption this commenter is referring to. For example, the maintenance of existing flood control facilities is regulated under the CWA section 404 program; NWP 31 has been issued for flood control maintenance activities with minimal impacts. Regardless, the operation and maintenance activities described here may be subject to current Water Board regulations and the Procedures, if adopted. The revised Procedures include a jurisdictional definition of wetlands which excludes certain man-made wetland features as waters of the state. Therefore, please contact the appropriate regional water board to ensure that operation and maintenance activities for the facilities described here are in waters of the state. Finally, if the features are stormwater facilities that are also regulated by another Board Order, they may be excluded from the Procedures.
20.29, 11.7	**20.29:** In addition, the proposed procedures state that 'routine maintenance activities of storm water facilities that are regulated under another Water Board Order' are excluded from application procedures under this proposed regulation. The procedures are not clear on what would happen after the existing Water Board Order expires. For example, will routine maintenance activities of storm water facilities be then regulated under the new procedures, or will the existing Water Board Order be renewed and extended? Will these activities be grandfathered in as not having to comply with new procedures? The proposed procedures need to provide clear direction regarding this issue.	This exclusion was included in the Procedures in an attempt to provide regulatory relief for areas that are regulated under another Board Order that was issued by a different regulatory program at the Water Boards. If an Order expires, an applicant should seek to either renew or reapply for coverage under that Order, or they would be subject to the Procedures.
45.41	The policy should not exempt storm water facilities that were constructed in a water of the state. Under section N(D)(2)(c) of the draft policy, all discharges of dredged or fill material associated with routine maintenance of storm water facilities regulated under another Water Board Order are exempted from the draft policy's procedures. This exclusion is inappropriate for	Areas that are sufficiently regulated through another Board Order would not be subject to the Procedures. This exclusion was included in the Procedures in an attempt to provide regulatory relief for areas that are regulated under another Board Order that was issued by a different regulatory program at the Water Boards.

40. Stormwater Facilities Exclusion

Comment Number	Representative Comment	Response
	storm water facilities that were constructed in waters of the state because those areas may continue to provide significant ecological benefits. We suggest the following modifications to section IV(D)(2)(c) of the draft policy to more appropriately limit the exclusion: Discharges of dredged or fill material that are associated with routine maintenance of storm water facilities regulated under another Water Board Order, such as sedimentation/storm water detention basins~~.~~**, as long as the storm water facility is located in an area that did not historically support wetland areas or other aquatic resources.**	

42. Supplemental Data from Dry Season Delineation

Comment Number	Representative Comment	Response
3.21, 5.7, 6.60, 28.17 12.13	**3.21:** The proposed Program invites regional boards 'on a case-by-case basis' to require applicants 'if the wetland area delineations were conducted in the dry season,' to provide 'supplemental field data from the wet season to substantiate dry season delineations.' This would be a major departure from the USACE method, and could substantially delay the review and approval of projects, perhaps by as much as a year.	Wet season delineations may be necessary in areas with complex aquatic resource sites or where wetland indicators are difficult to resolve due to annual variability in hydrology, substrate or vegetation. Collection of supplemental information in certain situations is an accepted practice and is consistent with recommendations presented in the Corps regional supplements for wetland delineation, which recommends that practitioners return to the delineation site, if possible, during the "normal wet portion of the growing season" (Arid West Regional Supplement, pp. 58, 87; Western Mountains, Valleys, and Coast Regional Supplement, pp. 66, 100) to resolve wetland indicators that were unresolved during the dry-season delineation. To avoid the risk of unanticipated project delays, applicants may consult with the appropriate Water Board regarding whether supplemental data may be necessary before submitting an application.
1.7, 6.30, 6.29, 20.16, 21.5, 26.9	**21.5:** The following comments are for consideration primarily if the above proposed changes to the EREP definition are not incorporated into the draft Procedures. If the definition is changed, then the following comments may not apply. 'Beneficial wetland conservation projects' are those projects that currently do not fit into the draft EREP definition, but would fit with our above proposed definition. Many beneficial wetland conservation projects have elements that are critical to their success, but may not allow them to fit under the current EREP definition. Page 4 lines 129-131 state that the SWRCB may require supplemental delineation data to be completed during the wet season. In requesting additional wet season data SWRCB staff could substantially delay beneficial wetland conservation projects for years (especially if drought conditions are present). Current delineation standards at the federal level do not require field data collection to be completed during a specific time of	A restoration project, including an Ecological Restoration and Enhancement Project, will likely modify wetland boundaries according to a restoration plan such that supplementation information may not be necessary to make a regulatory decision. Collection of supplemental information in certain situations is an accepted practice and is consistent with recommendations presented in the Corps regional supplements for wetland delineation, which recommends that practitioners return to the delineation site, if possible, during the "normal wet portion of the growing season" (Arid West Regional Supplement, pp. 58, 87; Western Mountains, Valleys, and Coast Regional Supplement, pp. 66, 100) to resolve wetland indicators that were unresolved during the dry-season delineation. To avoid the risk of unanticipated project delays, applicants may consult with the appropriate Water Board regarding whether supplemental data may be necessary before submitting an application.

42. Supplemental Data from Dry Season Delineation

Comment Number	Representative Comment	Response
	the year as long as the delineator can make judgements and document conditions based on existing data to define wetland boundaries. We recommend that the federal delineation standards be accepted.	
24.48	This section would allow staff to request supplemental wet season delineation data if only dry season data had been collected and submitted in the application. This could result in long delays to projects, potentially years under the current drought conditions. For utility projects that need to be conducted promptly to ensure the on-going integrity of gas and electric systems, this requirement could delay projects six months or more. This could especially impact maintenance and repair projects that are best conducted during the dry season and consequently result in delaying the performance of the work until the wet season which could be more impactful to the environment. In accordance with the previous comment on Section IV.A.2., we recommend that one of the criteria that is included in the factors, criteria and process for this information requirement be the following sentences: Section IV.A.2.(a); Lines 129-131: If the wetland area delineations were conducted in the dry season**, and the results of the delineation are inconclusive,** supplemental field data from the wet season to substantiate dry season delineations. **This requirement is not applicable to work that needs to be conducted to maintain the integrity of facilities that provide essential public services.**	To avoid the risk of unanticipated project delays, applicants may consult with the appropriate Water Board regarding whether supplemental data may be necessary before submitting an application. Generally, wet season delineations are most likely to be necessary in areas where wetland indicators are difficult to resolve. Collection of supplemental information in certain situations is an accepted practice and is consistent with recommendations presented in the Corps regional supplements for wetland delineation, which recommends that practitioners return to the delineation site, if possible, during the "normal wet portion of the growing season" (Arid West Regional Supplement, pp. 58, 87; Western Mountains, Valleys, and Coast Regional Supplement, pp. 66, 100) to resolve wetland indicators that were unresolved during the dry-season delineation. Because utility companies operate in established service areas, the location of arid areas where wetland indicators are difficult to resolve should be known by utility planners. Therefore, supplemental field information may be collected on these sites during the winter well in advance of scheduled projects.
45.40	The policy must consistently require that dry season wetland delineations be supplemented with data from the wet season. The draft policy permits the Regional Boards to determine, on a case-by-case basis, whether to require that dry season wetland	The Procedures would require supplemental field data to substantiate dry season delineations if warranted. The need for supplemental field information is based on regulatory considerations such as the degree of uncertainty in the dry season delineation, whether there are potential

42. Supplemental Data from Dry Season Delineation

Comment Number	Representative Comment	Response
	delineations be supplemented with field data from the wet season. Draft Policy at IV(A)(2)(a). This approach fails to set clear expectations for permit applicants, will lead to inconsistencies across the Regional Boards, will cause increased workload for Regional Board staff, and will likely under-protect wetlands. Supplementing dry season delineations with field data from the wet season is critical to avoiding wetland impacts, and should be required in all cases. We suggest the following changes to section N(A)(2)(a) of the draft policy to make sure wetlands are consistently protected: ~~**If required by the permitting authority on a case-by-case basis, i**~~I**f** the wetland area delineations were conducted in the dry season, supplemental field data from the wet season **of a normal rainfall year** to substantiate dry season delineations.	contentious aquatic resource issues, and the environmental effects of the impact. Collection of supplemental data on a case-by-case basis is consistent with federal practice. According to the Corps regional supplements for wetland delineation, evaluation of the site during the "normal wet portion of the growing season" is not required in every instance. (Arid West Regional Supplement, pp. 58, 87; Western Mountains, Valleys, and Coast Regional Supplement, pp. 66, 100.) For these reasons, it would not be appropriate to require data from the wet season for every application.

43. Water Board Regulatory Authority

Comment Number	Representative Comment	Response
6.10, 41.3	**41.3:** The introduction to the State Water Board's proposed Procedures for the regulation of discharges of dredged or fill material refers to the Water Boards' authority under the Porter-Cologne Water Quality Control Act (Water Code,§ 13000 et seq.) to regulate the discharge of waste that may affect quality of waters of the State. Section 13050(d) of the Water Code defines "waste" to include "sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal." The definition of waste does not include discharges of dredge or fill material. Further, the Porter-Cologne Act does not contain provisions specifically authorizing the State to regulate dredge and fill operations. Chapter 5.5 of the Water Code is the only chapter that mentions dredge or fill material. Section 13372 of the Water Code specifically states, the provisions of Section 13376 requiring the filing of a report for the discharge of dredged or fill material and the provisions of this chapter relating to the issuance of dredged or fill material permits by the state board or a regional board shall be applicable only to discharges for which the state has an approved permit program, in accordance with the provisions of the Federal Water Pollution Control Act, as amended, for the discharge of dredged or fill material. California has not applied to administer the CWA section 404 program. EPA has approved only a California program to administer and enforce section 402 and 403 of the CWA, 33 U.S.C. §§ 1342-43.	It is the longstanding interpretation of the State Water Board that the definition of "waste" set forth in Water Code section 13050(e) includes dredged or fill material. (Mem. from William R. Attwater, State Water Resources Control Board, to Danny Walsh, Board member (July 28, 1987).) As explained in more detail in the referenced memorandum, principles of statutory construction support the conclusion that "waste" includes substances such as dredged and fill materials that could adversely affect water quality. The Act defines waste broadly. The definition uses the term "includes," which is ordinarily a term of enlargement rather than limitation. (*Flanagan v. Flanagan* (2002), 27 Cal.4th 766, at p. 774.) Further, the language of the statute should be construed so as to accomplish the purpose of the statute. (See *People v. Hubbard* (2016) 63 Cal.4th 378, at p. 386 ["Essential is whether [the court's] interpretation, as well as the consequences flowing therefrom, advances the Legislature's intended purpose."]; *State Farm Mut. Auto. Ins. Co. v. Garamendi* (2004) 32 Cal.4th 1029, at p. 1043 [statutes are to be construed so as to effectuate the purpose of the law].) The legislative history of the Porter-Cologne Act indicated an intention to include in the definition of waste all materials that the Attorney General had previously interpreted as waste under the Dickey Water Pollution Act, the predecessor statute to the Act. Attorney General opinions had previously concluded that waste included earthen materials. An inclusive definition is also consistent with past State Water Board practice. For the past 13 years, there have been general waste discharge requirements applicable to all 401 certifications. (State Water Board Order 2004-0004-DWQ.) The State Water Board has long interpreted its authority to adopt or approve discharge prohibitions, prohibiting the discharge of waste in certain areas or under certain conditions (Water Code § 13243), to include authority to prohibit discharge of earthen materials. In 1970, it approved the discharge prohibition of "soil, silt, clay, sand, and other organic and earthen materials to lands below the high water rim of Lake Tahoe or within the 100-year flood plain of any tributary to Lake Tahoe." In

43. Water Board Regulatory Authority

Comment Number	Representative Comment	Response
		1980, the State Water Board adopted a similar prohibition that prohibited "all discharges or placement of building or fill material in environment zones for the purpose of new development." Moreover, the Water Boards' authority under the Porter-Cologne Act to create water quality control plans is not confined to regulating "waste." Indeed the Water Boards have the authority to address *any* factor affecting water quality. A state policy for water quality control must conform to the policies set forth in section 13000 of the Porter-Cologne Act, including the declarations that "the quality of all the waters of the state shall be protected for use and enjoyment by the people of the state" and that "the state must be prepared to exercise its full power and jurisdiction to protect quality of waters in the state from degradation." Further, as defined by the Act, "water quality control" "means the regulation of any activity or factor which may affect the quality of the waters of the state . . . ." That the Porter-Cologne Act grants the Water Boards the authority to address any factor affecting water quality, not just waste discharges, is supported by the legislative history of the Act. The Procedures will be included in a state policy for water quality control, the Water Quality Control Plans for Inland Surface Waters and Enclosed Bays and Estuaries and Ocean Waters of California. As such, any waste discharge requirements would need to implement the Procedures and any other applicable water quality control plan (Water Code § 13263) and the Procedures may be implemented through the State Water Board's certification authority (Water Code § 13160). It is correct that only Chapter 5.5 of the Act explicitly mentions dredged or fill material. Chapter 5.5 was enacted in response to the 1972 amendments to the Clean Water Act, which, as subdivisions (a) and (b) explain, provides a mechanism for states to assume the administration of Section 404 permits. Importantly, subdivision (c) also finds that "[i]t is in the interest of

43. Water Board Regulatory Authority

Comment Number	Representative Comment	Response
		the people of the state, in order to avoid direct regulation by the federal government of persons already subject to regulation under state law pursuant to this division, to enact this chapter . . . .” This finding indicates that the Legislature understood that the Water Boards already had authority to regulate discharges of dredged or fill material, although additional authority would be necessary to provide full conformity with all Clean Water Act requirements and regulations setting forth requirements to States to assume the permitting program. Because the State Water Board is not seeking approval to administer the section 404 program at this time, Chapter 5.5 is not currently applicable.
6.64	Further, even if the Water Boards had authority under state law to issue waste discharge requirements for dredged or fill material discharges, they would not be authorized to conduct an alternatives analysis under the State Supplemental Dredged or Fill Guidelines, Appendix A of the Procedures. The purpose of an alternatives analysis is to evaluate alternative locations, designs and/or configurations for a proposed project that could involve less impact to waters than the proposed activity, and to require such changes to the project if the Water Boards determine they are practicable. See Procedures § IV.B.3; Appendix A, § 230.10(a). Requiring such changes would violate Water Code section 13360, which prohibits waste discharge requirements or any “other order” of the Water Boards from “specify[ing] the design, location, type of construction, or particular manner” of compliance (with limited exceptions not relevant here). Water Code § 13360(a).	Water Code section 13360 does not preclude the Water Boards from conducting an alternatives analysis as described by Appendix A, the State Supplemental Dredged or Fill Guidelines. The discharge restriction in the Procedures is that the proposed alternative must be the least environmentally damaging practical alternative in light of all potential, direct, secondary, and cumulative adverse impacts on the physical, chemical, and biological elements of the aquatic ecosystem. The restriction does not set forth a particular design, location, or type of construction that must be used to achieve compliance. If, for any given project, more than one alternative could be designated the LEDPA, the discharger would be able to choose between those alternatives because all alternatives would be in compliance with the restriction on discharge. However, where there is one available option for compliance due to constraints imposed by present technology and laws of nature, there is no violation of Water Code section 13360. (*Tahoe-Sierra Preservation Council v. State Water Resources Control Bd.* (1989) 210 Cal.App.3d 1421 at p. 1438.) The *Tahoe-Sierra* court rejected the argument that if there is only one manner of meeting a discharge standard, the Water Board may not prohibit the discharge. To read section 13360 as requiring the Water Boards to approve an alternative that has greater adverse effects on water quality would be contrary to the purpose and intent of the Porter-Cologne Act.

43. Water Board Regulatory Authority

Comment Number	Representative Comment	Response
8.3, 15.1, 30.2, 36.1	**8.3:** Although the proposed procedures for discharges of dredge and fill material attempt to streamline and improve regulatory effectiveness, the new procedures are overreaching, go beyond regulating discharges to wetland waters of the state, and create additional confusion by expanding the scope of potential waters to be protected. The proposed procedures include all waters of the U.S. already regulated under the Clean Water Act's section 404 permitting program and section 401 certification requirements, and non-wetland waters of the state already regulated under the California Department of Fish and Wildlife's streambed alteration program. The proposed procedures exceed the SWRCB's authority and would functionally expand the SWRCB' s jurisdiction to regulate facilities not currently regulated as waters of the state. The SWRCB is committed to increasing the quantity of wetlands that qualify as waters of the state, increasing duplication and confusion, and decreasing regulatory effectiveness. Overlapping authorities will ultimately create delays, not consistency. Instead, the SWRCB should focus on establishing a regulatory program to protect waters that fall outside federal regulation.	The Porter-Cologne Water Quality Control Act defines waters of the state broadly. "'Waters of the state' means any surface water or groundwater, including saline waters, within the boundaries of the state." (Water Code, § 13050(e).) The definition of a wetland area would not encompass any aquatic features that would not already be interpreted as fitting within Porter-Cologne's broad definition of waters of the state. Accordingly, the definition of wetland would not expand the State Water Board's existing jurisdictional authority. It is appropriate and within the State Water Board's authority to regulate waters of the state that are also subject to federal regulation. Pursuant to the Clean Water Act, section 401(d), the Water Boards' water quality certifications should set forth limitations necessary to assure compliance with various provisions of the Clean Water Act "and with any other appropriate requirement of State law set forth in the certification." The Procedures will be included in a state policy for water quality control, the Water Quality Control Plans for Inland Surface Waters and Enclosed Bays and Estuaries and Ocean Waters of California. As part of a water quality control plan, the Procedures will have the same force and effect as a regulation, and accordingly it is appropriate to include limitations necessary to assure compliance with the Procedures in water quality certifications. In implementing the Procedures, the State Water Board would try to coordinate as much as possible with other agencies with overlapping jurisdiction.
8.4	The proposed procedures create unnecessary and inappropriate	The Porter-Cologne Water Quality Control Act defines waters of the state

43. Water Board Regulatory Authority

Comment Number	Representative Comment	Response
	SWRCB regulatory jurisdiction of CVWD's groundwater, stormwater, flood control, and irrigation facilities. The proposed procedures will cause CVWD's facilities to be regulated based on the state's definition of 'wetland,' and would require a project application submittal to operate, maintain and repair critical facilities. CVWD operates and maintains 123 miles of canal, 1,000 acres of groundwater replenishment basins, 13 0 acres of percolation ponds, 3 30 acres of storm water retention basins, 73 miles of flood control dikes, and over 100 miles of swales and ditches. By expanding jurisdiction to cover these facilities, the proposed procedures will dramatically increase CVWD's regulatory burden and potentially stall critical projects in regulatory gridlock- all without added benefit to waters of the state.	broadly. "'Waters of the state' means any surface water or groundwater, including saline waters, within the boundaries of the state." (Water Code, § 13050(e).) The definition of a wetland area would not encompass any aquatic features that would not already be interpreted as fitting within Porter-Cologne's broad definition of waters of the state. Accordingly, the definition of wetland would not expand the State Water Board's existing jurisdictional authority. The jurisdictional framework has been revised, and some of the identified features may not be considered waters of the state. Further, some features may be excluded from regulation under the Procedures or may be eligible for existing general orders governing routine flood control maintenance. Under the Procedures, a discharger may also work with the Regional Water Board or State Water Board to develop a general order for ongoing similar activities. Operation, maintenance, and repair activities are appropriate for Water Board oversight because such activities can, if not properly regulated and executed, adversely affect the quality of waters of the state.
8.5	By reference to federal regulation, the SWRCB exempts irrigation and drainage ditch maintenance from requiring a permit for discharges of dredge and fill material. But, also by reference to federal regulation, the SWRCB's exemption does not include ditches and man-made conveyances, many of which are used for farming and ranching. The Coachella Canal is a manmade conveyance that carries Colorado River water 123 miles to supply CVWD's agriculture irrigation system. Ditches, man-made canals, and water conveyances should be specifically excluded from the definition of waters of the state.	As set forth in Section IV.D, certain activities excluded from coverage under the Clean Water Act, such as maintenance of irrigation and drainage ditches, are also excluded from application procedures. Certain artificially constructed aquatic features may not be considered waters of the state under the revised jurisdictional framework. Other man-made conveyances may be appropriate to regulate because they support beneficial uses and may also affect the quality of other waters of the state.
28.24	The Proposed Procedures will expand the authority of the SWRCB to affect projects that are considered as ministerial or exempt from the California Environmental Quality Act, subjecting them to meet Federal Environmental Requirements	Determining whether a project will have a significant effect on the environment for CEQA purposes is a separate analysis from determining the appropriate conditions for waste discharge requirements. The State Water Board has the authority to regulate impacts to waters of the state that are

43. Water Board Regulatory Authority

Comment Number	Representative Comment	Response
	even though there is no federal permit required.	not deemed significant for CEQA purposes, but are nevertheless important to regulate to protect water quality. The Procedures would adopt state law requirements that are similar to federal requirements. Accordingly, all projects that discharge dredged or fill material to waters of the state, regardless of whether they are federal or non-federal, would be subject to the same requirements.
41.1	The State Water Resources Control Board (SWRCB) lacks authority to proceed with its proposed Procedures for the regulation of discharges of dredged or fill material to only those discharges that occur in waters of the State which are not also waters of the United States, as that term is defined by U.S. Army Corps of Engineers (USACE) and U.S. Environmental Protection Agency (EPA) regulations implementing the Clean Water Act (CWA). Section 404 of the CWA, 33 U.S.C. § 1344, (Section 404) preempts State law or regulation with respect to the regulation of dredge and fill operations in waters of the United States. In section 404(g), Congress creates a specific mechanism for a State desiring to administer its own individual and general permit program for the discharge of dredged or fill materials into waters of the United States that are within the State's jurisdiction. Section 404(g) requires the governor of the State to submit a request to the Administrator of the EPA with a full and complete description of the program it proposes to establish and administer under State law, and a statement from the Attorney General of the State that the laws of such State provide adequate authority to carry out the described program. The EPA Administrator is required to distribute the program and statement submitted by the State to the Secretary of the Army and the Secretary of the Interior, acting through the Director of the U.S. Fish and Wildlife Service, to obtain their comments. Under Section 404(h), the EPA Administrator, taking into	Section 404 does not preempt state law or regulation with respect to the regulation of dredge and fill operations in waters of the United States. There are two types of preemption: (1) conflict preemption and (2) field preemption. (*See generally Jones v. Rath Packing Co.* (1977) 430 U.S. 519, at p. 525-26.) Either type of preemption can be express or implied. In a case with conflict preemption, a state law is invalid to the extent that it actually conflicts with a federal statute. Such a conflict may be implied where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. The Corps' comments do not identify any actual or implied conflicts between the Procedures and existing federal regulation such that a discharger could not comply with both state and federal law. Accordingly, the State Water Board assumes that the Corps' comment refers to field preemption. The Clean Water Act does not contain an explicit statement of preemption with regarding to dredge and fill permits (*Bartell v. State* (1979) 284 N.W.2d 834, at p. 837), so the State Water Board assumes that the Corps' comment refers to implied field preemption. Preemption may be inferred when federal legislation is sufficiently comprehensive to make reasonable the inference that Congress left no room for supplementary state regulation. (*Int'l Paper Co. v. Ouellette* (1987) 479 U.S. 481, at p. 492.) In determining whether implied field preemption exists, courts examine the federal legislation as whole, including its purpose and history. (*Id.*) In 1977, Congress amended the Clean Water Act to expressly provide that it was not Congress' intent to preempt the field with respect to the regulation of dredge or fill materials: "Nothing in this section shall preclude or deny the right of any State or interstate

43. Water Board Regulatory Authority

Comment Number	Representative Comment	Response
	consideration the comments of the other agencies, determines whether the State program meets the standards set forth in that section, and whether the State agency has the requisite legal authority to implement the program. If the EPA Administrator's determinations are affirmative, it approves the program and, upon notice from the State that it is administering such program, USACE must suspend the issuance of permits under Section 404(a) or 404(e) for activities with respect to which a permit may be issued under the State program. There is no provision in Section 404 that permits parallel or overlapping State and Federal regulation of discharges of dredged or fill material in waters of the United States. Because Congress created a specific process for States to obtain authority to regulate dredge and fill operations, it intended to prohibit States from otherwise asserting such authority. With respect to the current proposal, the SWRCB has not followed the section 404 procedures to obtain the EPA Administrator's approval of its program and therefore is prohibited by the CWA from implementing it insofar as it applies to waters of the United States.	agency to control the discharge of dredged of fill material in any portion of the navigable waters within the jurisdiction of such State . . . ." (*Bartell*, supra, at p. 837 [holding no preemption for activities that do not involve the navigability of the waters].) Moreover, the two provisions in the Clean Water Act that waive sovereign immunity, 404(t) and 313(a), are both premised on the assumption that States may have additional local pollution laws. Such language runs directly contrary to the contention that Congress intended to preempt the field regarding the regulation of dredge or fill material. The State Water Board is not seeking approval to administer the section 404 program at this time. The Army Corps will remain responsible for issuing section 404 permits. Should the State Water Board seek approval to administer the section 404 program in the future, it would follow the procedures for assumption outlined in section 404.
41.18	Lines 79 and 80 and 87-90: As noted in comment 3 above, it is unclear what State requirements exist for discharges of dredged or fill material into waters of the United States, which are regulated by USACE under section 404 of the CWA. Federal projects and federal permits do not require waste discharge requirements, only 401 water quality certifications pursuant to 23 CCR, Division 3, Chapter 28, Article IV. These proposed Procedures cannot expand or revise existing state regulations without following rulemaking procedures.	Discharges to waters of the state that are also waters of the U.S. are subject to the Water Boards' authority to issue certifications and waste discharge requirements. It is the longstanding practice of the State Water Board to have water quality certifications also serve as waste discharge requirements. The State Water Board has issued general waste discharge requirements that are applicable to all 401 certifications for the last 13 years. (State Water Board Order 2004-0004-DWQ.) Further, the Procedures will be included in the water quality control plan for inland surface waters and enclosed bays and estuaries and ocean waters of California. Water quality control plans have the same force and effect as regulations. The Procedures do not require revisions to the California Code of Regulations.

43. Water Board Regulatory Authority

Comment Number	Representative Comment	Response
41.2	Pursuant to sovereign immunity, USAGE and other Federal agencies are not subject to SWRCB regulations, unless Congress explicitly authorizes such regulation. The CWA contains a waiver of sovereign immunity when the SWRCB is exercising CWA authority delegated to the State by the EPA or by the CWA itself. Section 404(t) contains a limited waiver of sovereign immunity requiring Federal agencies to comply with State or interstate requirements both substantive and procedural to control the discharge of dredged or fill material to the same extent that any person is subject to such requirements. The control of discharges of dredged or fill material does not equate to the regulation of discharges of dredged or fill material. Therefore, section 404(t) does not explicitly and unambiguously waive sovereign immunity with regard to State regulation of the discharge of dredged or fill material. Consequently, State procedures for the regulation of discharges of dredged or fill material that are not contained in a program submitted to the EPA Administrator in accordance with Section 404(g) and approved pursuant to section 404(h) may not be enforced against any Federal agency.	There are two provisions in the Clean Water Act that expressly waive sovereign immunity: Section 313(a) and 404(t). (*Friends of the Earth v. U.S. Navy* (1988), 941 F.2d 927, at p. 934. ["Congress waived the federal government's sovereign immunity with respect to state regulation of dredging and water pollution."]) Sovereign immunity has been waived under section 404(t) because the Procedures constitute a state program "to control the discharge of dredged or fill material" and under section 313(a) because the Procedures are a state requirement "respecting the control and abatement of water pollution." Section 404(t) is specifically related to the discharge of dredged or fill materials. It states, "Nothing in this section shall preclude or deny the right of any State . . . agency to control the discharge of dredged or fill material in any portion of the navigable waters within the jurisdiction of such State, including any activity of any Federal agency, and each such agency shall comply with such State . . . requirements both substantive and procedural to control the discharge of dredged or fill material to the same extent that any person is subject to such requirements." Congress amended the Clean Water Act in 1977 in response to a court of appeals case that held that a federal agency was not subject to state pollution control laws. Among other changes, it added section 404(t), which provides that federal agencies should be bound by the same requirements as any other discharger into state waters. As the legislative history states, "[t]he act has been amended to indicate unequivocally that all Federal facilities and activities are subject to all of the provisions of State and local pollution laws." S.Rep. No. 95–370, at 67 (1977), reprinted in 1977 U.S.C.C.A.N. 4326, 4393. As the Procedures include requirements to control the discharge of dredge or fill materials, and the Procedures apply to federal entities and private entities alike, Section 404(t) waives sovereign immunity. Even if Section 404(t) did not waive sovereign immunity, Section 313(a) of the Clean Water Act also contains a waiver of sovereign immunity. Section 313(a) states: "Each department, agency, or instrumentality of the executive, legislative, and

43. Water Board Regulatory Authority

Comment Number	Representative Comment	Response
		judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants, and each officer, agent, or employee thereof in the performance of his official duties, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as any nongovernmental entity including the payment of reasonable service charges." It is inappropriate to draw a distinction between "[t]he control of discharges of dredge or fill material" and "the regulation of discharges of dredged or fill material" (emphasis added) where, as in this case, the State Water Board's regulatory program will result in the control of discharges of dredged or fill material. The State Water Board is unaware of any case law or other authority to explain the basis for making such a distinction.
41.20	Lines 84-85: The section states it applies to all applications for discharges of dredged or fill material into waters of the State. It appears the SWRCB is attempting to require CWA section 401 water quality certifications for all waters of the State, even in non-Federal waters. Congress limited water quality certifications for discharges to waters of the United States. See 33 U.S.C. § 1341(a). Further, state regulations at 23 CCR § 3831 (u) state, 'water quality certification means a certification that any discharge or discharges to waters of the United States, resulting from an activity that requires a federal license or permit, will comply with water quality standards and other appropriate requirements.' Thus, any requirement to seek and obtain water quality certification for discharges to non-Federal waters is beyond the State's authority.	The discharge of dredge or fill materials to non-federal waters of the state does not require a 401 certification. Such discharges would, however, need to obtain waste discharge requirements. One of the purposes of the Procedures is to make the requirements under 401 certifications and waste discharge requirement similar as possible. Aiming to provide consistency across the programs is not, however, the same as requiring dischargers who discharge to non-federal waters of the state to obtain 401 certifications.

43. Water Board Regulatory Authority

Comment Number	Representative Comment	Response
41.36, 41.37	**41.36:** Section IV(B)(3)(d)(i): It is unclear under what authority the permitting authority would determine whether a proposed activity meets the terms and conditions of a USACE General Permit, as that determination is made by USACE.	The Procedures have been revised to remove this exemption from the alternatives analysis requirement.
41.39	Section IV (B)(4): For the Civil Works Program, the USACE determines and approves the final restoration plan, not the State. However, the USACE welcomes the permitting authority's suggested edits and comments on the USACE's restoration plan. For USACE Regulatory permit actions, the permitting authority's review and approval should be limited to the State's authority under CWA section 401.	Implementing the Procedures is within the State's authority under Clean Water Act section 401. Pursuant to the Clean Water Act, section 401(d), the Water Boards' water quality certifications set forth limitations necessary to assure compliance with various provisions of the Clean Water Act "and with any other appropriate requirement of State law set forth in the certification." The Procedures will be included in a state policy for water quality control, the Water Quality Control Plans for Inland Surface Waters and Enclosed Bays and Estuaries and Ocean Waters of California. As part of a water quality control plan, the Procedures will have the same force and effect as a regulation, and accordingly it is appropriate to include limitations necessary to assure compliance with the Procedures in water quality certifications.
44.1	State Assumption: Although the Procedures directly incorporate many elements of EPA's 404(b)(1) Guidelines, the intent of these Procedures is not to initiate program assumption as per CWA Section 404(g). EPA recommends that the final Procedures clearly describe the difference between state assumption of the 404 permitting program under 404(g), versus the application of 404 concepts through analogous existing state authorities. To avoid confusion, the State Board would ideally reconsider using different terms than those of the 404 program (much like CEQA and NEPA use different terms for similar concepts). EPA is available to work with the State Board in pursuing formal 404 program assumption should there be interest in the future.	The State Water Board is not seeking to initiate program assumption for Section 404 permitting at this time. The Corps will continue to administer the section 404 program. As such, the Procedures propose deferring to the Corps LEDPA determinations in waters of the United States unless certain criteria for an exception apply, as well as Corps delineations in waters of the United States. The Corps will also continue to be responsible for enforcing the terms of the section 404 permits. The Corps will also continue to consult with other agencies that may also have jurisdiction over the proposed project. The Procedures largely use the same terminology as the section 404 program because such terms are familiar to people already familiar with the section 404 program. The introduction of new state-specific terms could cause confusion regarding the meaning of new terms.

43. Water Board Regulatory Authority

Comment Number	Representative Comment	Response
44.5	Waters of the State: The Procedures are not meant, in present form, to define the state's geographic jurisdiction over waterbodies; the wetland definition and delineation components of the Procedures neither expand nor contract state waters covered by California's permit programs. However, this is an area that can create confusion for the regulated public as well for the Corps and EPA which may have overlapping jurisdiction. The Procedures can be improved by a creating a brief, separate section on jurisdiction (waters of the state), which then introduces the wetland definition separately as a purely technical matter.	The Procedures have been revised to first set forth the wetland definition, and then the definition is followed by a separate paragraph addressing jurisdiction.
45.16	Inserting language into the Basin Plan for the San Francisco Bay Region emphasizing that some wetlands are not waters of the state undermines the Regional Board's ability to unambiguously assert its jurisdiction, and invites a litigious entity like Cargill to challenge the Regional Board's authority.	The section regarding jurisdiction has been revised to set forth defined categories of aquatic features that meet the wetland definition but will not be considered waters of the state. The language providing for “case-by-case” determinations that wetlands are waters of the state has been removed. The intent of the revision is to clarify wetland jurisdiction and thereby lessen legal challenges.

44. Waters of the State Definition/Delineation

Comment Number	Representative Comment	Response
1.3, 3.17, 3.19, 3.22, 5.14, 6.46, 6.47, 7.7, 9.12, 13.2, 20.5, 24.18, 24.17, 28.14, 33.21, 37.3, 38.1, 43.9, 43.7, 48.1	**1.3:** Limit Case-by-Case Considerations: Under the proposed Procedures, the Regional Water Boards would determine on a case-by-case basis whether a particular feature, that is not a water if the U.S., or a WOTS. While we understand the need to fill the gap created by SWANCC through the Porter-Cologne Act, the proposed Procedures fail to define or provide guidance on how to make the determination of what is a WOTS. The State Water Board should provide a clear definition of WOTS, including a list of features that are not jurisdictional. This will provide clarity for the regulated community, streamline the application review process, and support consistency across the different Regional Water Boards.	The revised Procedures provide a clear jurisdictional framework for determining if a wetland is a water of the state. This framework includes a list of features that are not jurisdictional wetlands. Definitions and delineation procedures for other features, such as streams, have not been defined in this version because it is outside of the scope of the project and would add significant delays for adoption of the Procedures. The Board may consider definition of other waters of the state as a future project.
2.4	Expanded Definitions of Waters of the State. As noted in the staff report accompanying the Procedures, several types of waterbodies are not covered under definitions in the Clean Water Act. These waterbodies, which include disconnected and non-navigable waters such as vernal pools (such as those found in the Delta) and ephemeral streams (which provide important habitat for steelhead that migrate through the Delta), are some of the most ecological valuable- and most threatened- in California. Expanding definitions of waters of the state to include such waterbodies is warranted and could help avoid further loss. This change would support the conservation of existing Delta habitats.	Vernal pools would be identified by the wetland definition in the Procedures. However, definitions and delineation procedures of other features, such as streams, have not been addressed in this version because it is outside of the scope of the project and would add significant delays for adoption of the Procedures. The Board may consider definition of other waters of the state as a future project.
3.23	The proposed Program sows further confusion by requiring applicants to submit maps to 'accurately show ... all aquatic resources that may qualify as waters of the state.' (Proposed Program 3-4.) It adds that a map submitted for a USACE preliminary jurisdictional determination may satisfy this requirement if it includes all 'potential' waters of the state. As the State Board has not explained which wetlands are waters of	The revised Procedures provide a clear jurisdictional framework for determining if a wetland is a water of the state. This framework includes a list of features that are not jurisdictional wetlands.

44. Waters of the State Definition/Delineation

Comment Number	Representative Comment	Response
	the state and which are not or how to distinguish between the two, how is an applicant to map not just waters of the state, but also all aquatic resources that 'may qualify' as waters of the state?	
3.24, 6.50	**6.50:** While the Procedures define wetlands and specify how to map the boundaries of wetlands by reference to the Corps' 1987 Manual and Supplements, the Procedures provide no guidance on how to map the boundaries of non-wetland WOTS, including linear and ponded features. For WOUS, the Corps defines its jurisdiction up to the ordinary high water mark (OHWM) for ponded and linear features. To the extent the State Board does not limit application of the Procedures to unregulated wetland waters as recommended, the Procedures should apply the same jurisdictional limits as the Corps for linear and ponded features, in order to maintain consistency with the Corps' program and provide a marker that is readily identifiable in the field. **Recommendation:** The Procedures should define the lateral limits for jurisdiction for linear features the same as the Corps (OHWM) and should include an appeal procedure for delineations that are conducted by Water Board staff. The appeal process could be modeled on the Corps' appeal procedures for jurisdictional determinations and should include mandatory time frames for action by Regional Board staff, such as 30 days, providing that an appeal will be upheld if staff do not act within the specified time frames.	Definitions and delineation procedures for non-wetland aquatic features, such as streams, have not been addressed in this version because it is outside of the scope of the project and would add significant delays for adoption of the Procedures. Delineation reports should be provided by the applicant and verified by Water Board staff. Water Board staff will rely on determinations made by the Corps when identifying waters of the U.S. and applicants should use the same wetland delineation procedures for identifying wetland waters of the state that are outside of federal jurisdiction. Regulatory time clocks are followed through the application process. If an applicant wishes to appeal a Water Board Order, they should follow the appeals process already in place.
8.1, 15.11	**8.1:** CVWD believes it is important for there to be consistency between state and federal regulations governing dredge and fill activities to avoid the uncertainty that is created when dual standards exist. Considering the proposed changes to federal Waters of the U.S. (WOTUS) regulations which are currently being litigated, CVWD believes the subject amendments are	The Procedures aim to align federal procedures with state procedures to the extent practicable. The proposed Clean Water Rule is expected to be rescinded or revised, and a final rule may not be adopted and implemented for many years. Therefore, it is important to move forward with the Procedures to provide clarity and consistency as to how waters of the state will be protected. Adjustments to state regulation could be made at a later

44. Waters of the State Definition/Delineation

Comment Number	Representative Comment	Response
	premature and should be postponed until there is certainty regarding WOTUS regulations.	time if/when a final rule regarding the extent of waters of the United States is later adopted by EPA.
12.3, 12.2, 15.10, 41.14	**12.3:** For ease of permitting, DWR usually prepares and submits a Preliminary Jurisdictional Determination (PJD) for verification with the Corps. The PJD identifies all aquatic resources within a review area and all delineated aquatic resources are assumed to be jurisdictional. The PJD process saves a considerable amount of review time with the Corps and usually results in much faster processing of a CWA 404 permit because the process does not require the Corps and EPA to make determinations of significant nexus for each feature, which would be required in an Approved Delineation. As the PJD is the more widely used process by the Corps (rather than an Approved Delineation), and is usually preferred by applicants, DWR suggests that the Board also accept PJD's which have been verified by the Corps.	Section IV.A.1.d. of the preliminary draft procedures already provides that the PJD may be accepted if it includes all waters of the state. Section IV.B.2 further states that the water boards will defer to the Corps within the boundary of waters of the US. It is reasonable to provide deference to the Corps on the location and characteristics of federal waters, but ultimately, it is the state and regional boards' responsibility, not the Corps' to ensure that all non-federal waters of the state are adequately identified and delineated.
12.4	Additionally, it appears that the SWRCB project evaluation area may differ from the Corps' review/study area boundary in that the SWRCB requires mapping of 'all aquatic resources that could be affected by the project,' whereas the Corps direction has generally been to only include the area where project activities will take place. This disparity in the area of evaluation may result in separate reports being prepared for each agency, even when the Corps' delineation includes all waters of the State within the project area. In this situation, will the SWRCB review the delineation area in its entirety or only the areas that fall outside of the Corps study area? Further, will this review happen concurrently with the Corps' review?	Due to the difference in jurisdiction, it is possible that the Corps may limit their focus to impacts that affect waters of the U.S. However, separate reports need not be prepared if the report is clear about distinguishing waters of the U.S. from waters of the state. Section IV.B.2 further states that the Water Boards will defer to the Corps within the boundary of waters of the U.S. It is reasonable to provide deference to the Corps on the location and characteristics of federal waters, but ultimately, it is the state and regional boards' responsibility, not the Corps', to ensure that all non-federal waters of the state are adequately identified and delineated. Given the nature and complexity of the natural environment, and the potential for isolated waters of the state to be interspersed with jurisdictional waters of the U.S., it is not reasonable to expect that the Water Board review would be limited to only those areas outside the Corps project area. With regards to timing, a map submitted for a Corps' preliminary jurisdictional determination may satisfy the state requirement. The Procedures do not require that the delineations be approved by the Corps prior to submission,

44. Waters of the State Definition/Delineation

Comment Number	Representative Comment	Response
		though the applicant may prefer to wait for such approval prior to submitting the state application. To the extent that the maps are submitted concurrently to the Corp and the Water Boards, they will also be reviewed concurrently and, where feasible, in consultation with the Corps.
15.21	The Board should just say that where the Corps has disclaimed Section 404 CWA jurisdiction over wetlands and waters, that those features, whether there is water in them or they are bone dry, are still surface waters under Porter Cologne.	The revised Procedures provide a clear jurisdictional framework for determining if a wetland is a water of the state. This framework includes a list of features that are not jurisdictional wetlands. Revising the Procedures to claim jurisdiction over all features "whether there is water in them or they are bone dry" would be inappropriate because it may lead to regulation of features that the Water Boards have not previously asserted jurisdiction.
21.11, 22.2	**21.11:** Page 6 lines 218-221. This requirement may create a substantial amount of additional work for water board staff in verifying wetland delineations. Further, changing the procedures (in removing one of the three wetland determination parameters) has the potential to create substantial conflicts in wetland mapping. This creates additional confusion and lack of clarity in moving through the regulatory process. We recommend that the federal delineation standards be accepted for waters of the State.	It is expected that applicants will provide one delineation report to both the Water Board and the Corps, with areas that differ, due to the modified state wetland definition, outlined. It is not expected that these delineations will diverge greatly than what is already being prepared for the Corps, and therefore this requirement is not expected to create a substantial amount of additional work for water board staff.
37.10, 46.11	**37.10:** Project application requires a delineation of wetlands but does not mention other waters. Does this mean that a delineation is not required of other features that could be determined to be 'waters of the state'?	Applicants must delineate all waters, including wetlands, that are within the Project Evaluation Area that may be subject to Water Board regulation. These delineations will be verified by Water Board staff during the application review.
41.16, 46.24, 46.2	**41.16:** This section of the proposed Procedures solely addresses the delineation of wetlands, and does not provide information for the delineation of other waters of the State. USACE recommends the State clarify how other waters of the State would be delineated/determined. USACE recommends the State adopt the methodology utilized by USACE for determinations of	Definitions and delineation procedures of features, such as streams, have not been addressed in this version because it is outside of the scope of the project and would add significant delays for adoption of the Procedures.

44. Waters of the State Definition/Delineation

Comment Number	Representative Comment	Response
	ordinary high water mark (OWHM) (33 C.F.R. § 328.3(c)(6)), mean high water (MHW) (33 C.F.R. § 329.12), and high tide line (HTL) (33 C.F.R. § 328.3(c)(7)). In addition, in August 2008, the USACE Engineer Research and Development Center/Cold Regions Research and Engineering Laboratory (ERDC/CRREL) published A Field Guide to the Identification of the Ordinary High Water Mark (OHWM) in the Arid West Region of the Western United States, and in August 2014, ERDC/CRREL published A Guide to Ordinary High Water Mark (OHWM) Delineation for Non-Perennial Streams in the Western Mountains, Valleys, and Coast Region of the United States, which USACE recommends be utilized for the determination of OHWM.	
41.17, 41.42	**41.42:** Section V: (1) Delineation: USACE recommends the State modify the definition to include all aquatic resources including wetlands, other special aquatic sites, and other waters, including, but not limited to, rivers, streams, and lakes.	The Procedures have been revised in response to this comment. As revised, Section V includes a definition for "Wetland Delineation," which clarifies that the definition is applicable to only wetland delineations, the process for which is set forth in Section III.
41.23	Section IV(A)(1)(b): USACE recommends a 'final' aquatic resources delineation report, with a preliminary or approved JD issued by USACE.	The application requirements in Section IV.A.1.b and c have been revised.
46.7	In what manner, if any, will California wetlands that are deemed 'waters of the State' be treated differently in the application process than other 'waters of the State?'	The application requirements outlined in the Procedures will apply to all waters of the state, including wetlands. The statewide wetland definition and delineation procedures for identifying wetlands and their boundaries are applicable to only wetlands.

46. Watershed Plan

Comment Number	Representative Comment	Response
3.49, 20.25	**20.25:** The Proposed Procedures also state that if an actual Watershed Plan exists where a project is proposed, then the amount of compensatory mitigation required will be less than the amount of compensatory mitigation required if a plan does not exist. This provision seems arbitrary and we question the rationale for its inclusion.	The rationale for watershed plans is provided in section IV.B.5 (c) of the Procedures. In general, the required amount of compensatory mitigation is based on a number of factors such as temporal loss, functional loss, restoration difficulty, distance from the impact site, and risk and uncertainty of success. As stated in the Procedures, if a compensatory mitigation plan complies with an approved watershed plan, then the level of certainty that the project will meet its performance measures increases. In light of the lowered risk and uncertainty, generally a lesser amount of compensatory mitigation is appropriate. This provision was included in the Procedures to incentivize applicants to consider watershed plans during the project planning stage. Watershed plans should help to provide useful information, such as an inventory of aquatic resources in the project evaluation area, and help identify watershed needs, including potential compensatory mitigation sites.
3.50, 6.38, 12.19, 12.5, 45.31, 6.43, 11.4	**12.19:** More information is needed regarding existing approved watershed plans. Will these be provided by the permitting agency? What is the appropriate area/size for the watershed analyzed in the watershed profile? This ties back to the uncertainty regarding the extent of the project evaluation area and waters that 'could be affected' by the project.	At least initially, it is not the intention of the Water Boards to provide watershed plans, but instead approve watershed plans pursuant to the Procedures for dredge and fill projects. The Water Boards may endeavor to create watershed plans in the future. There are existing plans such as HCPs, NCCPs, and SAMPs that may meet the definition of a watershed plan and may be submitted to the Water Boards for approval to use as a watershed plan. The Water Boards will not approve any watershed plans until the Procedures are adopted. It is expected that interested members of the public would have the opportunity to participate during the development of the watershed plan and/or have the opportunity to comment when the application or draft Order is publicly noticed. Ideally, the watershed area analyzed by the applicant would encompass both the project and mitigation sites. As stated in the Procedures (see section IV. B.5(d)), the applicant applies a watershed approach by developing a watershed profile to determine the aquatic resource type and location most suitable to sustain the watershed health given the aquatic resources impacted by the project. The applicant would demonstrate that the mitigation proposal would

46. Watershed Plan

Comment Number	Representative Comment	Response
		provide the necessary functional lift to replace the impacted aquatic resources. The definition of a watershed plans has been revised to more closely align with the Corps definition of a watershed plan and states that a watershed plan is "a document developed in consultation with relevant stakeholders, for the specific goal of aquatic resource restoration, establishment, enhancement, and preservation within a watershed. A watershed plan addresses aquatic resource conditions in the watershed, multiple stakeholder interests, and land uses. Watershed plans should include information about implementing the watershed plan. Watershed plans may also identify priority sites for aquatic resource restoration and protection. Examples of watershed plans include special area management plans, advance identification programs, and wetland management plans. In addition, the Water Boards may approve the use of HCPs and NCCPs as watershed plans." Watershed plans are developed for a number of different size watersheds and for different purposes; therefore, the Water Boards have not predefined a hydrologic unit that would be appropriate for use with the Procedures, but rather the information that would be needed in the watershed plan for it to be approved.
17.2, 17.3, 17.9	**17.9:** Section V provides a definition of a 'Watershed Plan' we request that this definition be revised as follows: *Watershed Plan means a document that provides assessment and management information for a geographically defined watershed, including the analyses, actions, participants, and resources related to development and implementation of the plan. For purposes of these Procedures, the term 'Watershed Plan' shall include, but not be limited to, any SAMP approved by the Corps prior to the Effective Date of the Procedures.*	Comment noted. Please see response to comment # 12.19 for the proposed revision to the definition of a watershed plan which states that a SAMP may qualify as a watershed plan. The Water Board will need to review plans individually to ensure that plan contains the appropriate information.
19.1	We are pleased to see that the Procedures require a Watershed Approach and that 'where a watershed plan is available the permitting authority will determine whether the plan meets the definition of a watershed plan in the Policy and therefor is	Comment noted.

46. Watershed Plan

Comment Number	Representative Comment	Response
	appropriate for use in the watershed approach for compensatory mitigation' (lines 981-985).	
19.2, 27.4	**27.4:** The application of the 'watershed approach' based on a 'watershed profile' for compensatory mitigation should allow sufficient flexibility to reflect landscape-scale conservation plans that provide a thoughtful and strategic approach to watershed protection, but do not include a requirement for all mitigation to occur within the same watershed that impacts occur, especially in areas already built out or where the functions and values of existing waters are otherwise impaired and restoration opportunities are limited. This watershed approach requirement remains unclear in the Draft Procedures. Language should be developed to clarify that comprehensive strategies addressing both aquatic resource impacts and mitigation and biological resources impacts and mitigation can fulfill the requirement for a watershed approach. The procedures should specifically allow the use of watershed approaches developed in HCP and NCCPs, in cooperation with the state and federal wildlife agencies that protect aquatic resources functions and values and beneficial uses of state waters.	Comment noted. The definition of a watershed plan has been revised to more broadly include plans that address "aquatic resource conditions in the watershed, multiple stakeholder interests, and land uses". Existing wildlife conservation plans, such as HCPs and NCCPs, may be approved by the Water Boards if they include all required elements pursuant to the Procedures (see comment response # 12.19). In addition, the revised Procedures include language to clarify that, in general, compensatory mitigation should be located within the same watershed; however, the Water Boards may approve compensatory mitigation in a different watershed.
33.14	Locating mitigation using a watershed approach may appear to be sound guidance but how this would protect wetlands, especially when combined with the proposed reduced mitigation acreage requirements, is uncertain at best. First of all, there are few watersheds that have watershed plans or the kind of plans that would ensure wetlands of the same type and location that would benefit the resources. Most watershed plans do not address wetland resources in the kind of detailed yet	There are existing plans such as HCPs, NCCPs, and SAMPs that may meet the definition of a watershed plan and may be submitted to the Water Boards for approval to use as a watershed plan, but the Water Boards will not approve any watershed plans until the Procedures are adopted. The Procedures create incentives to develop watershed plans that address all aquatic resources, including wetlands, where such plans do not already exist. It should be noted that applying a watershed approach pursuant to the Procedures is not contingent on the availability of such plans. According

46. Watershed Plan

Comment Number	Representative Comment	Response
	comprehensive way needed to choose mitigation sites. Sites or areas would have to be identified, and this usually generates opposition from property owners. Nor do watershed plans usually address the habitat needs of the species that depend on the watershed resources. They are often focused on development needs of communities, residents, and property and business owners.	to the Procedures, applying a watershed approach means "evaluating the environmental effects of a proposed project and making decisions that support the sustainability or improvement of aquatic resources in the watershed (see section V. Definitions)". Lacking a watershed plan, the applicant would need to obtain information from other sources for the project evaluation area on the "watershed profile", i.e., the abundance, diversity and condition of aquatic resources. The scope and detail of this information is expected to be commensurate with the "magnitude of impact associated with the proposed project (see section IV.A.2 (d)(i))."
33.16	Further, giving credit for locating mitigation in accord with a watershed plan would lead to losses of wetlands and functions. Reducing mitigation acreage benefits developers more than the watershed. There are other ways to encourage locating mitigation in the local watershed where the loss took place. So, while locating mitigation in the same local watershed as the site of loss is a desirable approach, reducing requirements for the mitigation if it is located in the same watershed as the site of loss, especially if the mitigation ratio is only 1:1, would be detrimental to the resources. It does not fulfill 'no net loss' goal and would lead to reduced wetland acreage and degrade the watershed.	The consideration of a lesser amount of compensatory mitigation when projects are planned in accordance with a watershed plan that is approved by the Water Board was included to incentivize applicants to consider watershed plans during the project planning stage. Watershed plans should help to provide useful information, such as an inventory of aquatic resources in the project evaluation area, and help identify watershed needs, such as potential compensatory mitigation sites. The Water Boards must require, at a minimum, a compensatory mitigation ratio of one-to-one (except as provided in Section IV.B.5.c); however, many factors go into determining the appropriate ratio for compensatory mitigation, including mitigation site location, net loss of aquatic resource surface area, type conversion, risk and uncertainty, and temporal loss (See Section 6 of the Staff Report for more information) which commonly results in an increased ratio than the baseline one-to-one.
43.15	The use of a watershed plan is being used as a substitute for shifting the emphasis on compensatory mitigation to permittee responsible mitigation on-site. The watershed plan requirement is an unfunded mandate under the Proposed Amendments and will require substantial resources, either by local agencies or the applicants to develop watershed plans that must be approved by the Regional Boards. The State Board is not committing any funds for development of watershed plans by local agencies and	The use of watershed plans is not a requirement in the Procedures but rather an incentive for applicants to apply the watershed approach through the use of watershed plans when planning projects that will impact waters of the state.

46. Watershed Plan

Comment Number	Representative Comment	Response
	does not explain how or on what timeframe watershed plans will realistically be developed across the State without such funding.	
46.17	Section IV.A(2)(d)(i): The information required here would be contained in an approved watershed plan, please include the option to reference an approved watershed plan instead of duplicating the information provided in those plans.	In order to ensure efficient and timely review of applications, applicants should extract or summarize information needed to fulfill the watershed profile requirement and reference the information source for verification.

47. Watershed Profile

Comment Number	Representative Comment	Response
6.37 **6.68, 6.41**	**6.37:** In place of the preference hierarchy, the Procedures impose a new deliverable that applicants must prepare prior to obtaining compensatory mitigation approvals: the watershed profile. The Procedures then rely exclusively on the watershed profile to ensure that a watershed approach underlies a determination of the type and location of mitigation, as described in Procedures § IV.B.5(d). The problem with this approach is that the Procedures require applicants to prepare and submit a new deliverable, not required by CDFW, the Corps or any other agency, prior to obtaining Water Board approval of compensatory mitigation. Neither the Procedures nor the Staff Report reference resources that will be available either to applicants or Water Boards to prepare or approve these watershed profiles, but the Procedures mandate that the profiles must include significant amount of scientific information and assessment, including information and assessment of the 'abundance, types, and condition of aquatic resources in a project evaluation area,' that is 'sufficient to provide information to evaluate direct, secondary and cumulative project impacts and compensatory mitigation alternatives, and to help define watershed goals,' and that allows Water Boards 'to track the cumulative effectiveness of permitting decisions.' Procedures § V. This creates a new regulatory and practical burden on individual project applicants seeking approval of compensatory mitigation for impacts to aquatic resources.	The compensatory mitigation soft preference hierarchy has not been replaced. As stated in section 230.93(b) of the State Supplemental Guidelines, the permitting authority shall approve compensatory mitigation strategies based on what is environmentally preferable with a soft preference to mitigation banks, in-lieu fee programs, and finally, permittee responsible compensatory mitigation. Second, the watershed approach is consistent with the Corps regulatory program. The federal compensatory mitigation rule (33 C.F.R. part 332) requires the Corps to apply a watershed approach for compensatory mitigation decisions. In undertaking the watershed approach, and in the absence of an applicable watershed plan, the Corps relies on information provided by the applicant or other sources. Thus, information and assessment of the abundance, types and conditions of aquatic resources in the project evaluation area is currently key to the Corps' application of the watershed approach and would also satisfy information needs under the Procedures. The State Supplemental Dredge or Fill Guidelines and staff report state that this information may be available from watershed plans and other sources such as wetland maps; soil surveys; U.S. Geological Survey topographic and hydrologic maps; aerial photographs; information on rare, endangered and threatened species and critical habitat; local ecological reports or studies; and other information sources that could be used to identify locations for suitable compensatory mitigation projects in the watershed. In addition, the Procedures reference watershed plans as a good source for the information.
6.67	Under the Procedures, the watershed profile must: 1) Identify all WOTS within a project evaluation area, defined as an area that is bigger than, but 'includes the project impacts sites and or the compensatory mitigation site,' and is an 'ecologically meaningful unit of the watershed. 'However, the Procedures do not provide any definition of what any individual Water Board might determine, on a case by case basis, constitutes (or does not	As to the first point, the applicant, in proposing a compensatory mitigation project, must demonstrate that it will "contribute to the sustainability of watershed functions and the overall health of the watershed area's aquatic resources" (section IV.B.5(c)). To do this, an applicant would need to define a project evaluation area large enough to show that the aquatic resources impacted by the project would be replaced through the successful implementation of the mitigation project. Thus, the size of the project

47. Watershed Profile

Comment Number	Representative Comment	Response
	constitute) WOTS or the project evaluation area. Further, all the delineation issues discussed in Part III of these comments will apply equally at the landscape level, make delineation of WOTS within a larger, watershed based project evaluation area extremely difficult and time consuming, if not infeasible to implement over such a broad area for individual project applicants. 2) Characterize the condition of all WOTS within the project evaluation area. However, as acknowledged by staff, there is no generally accepted methodology that can be used to determine the condition of all WOTS at a landscape level within a watershed-based unit identified as a project evaluation area. Even if there were a methodology available to develop such a condition assessment, individual project applicants are unlikely to have access to all properties within a project evaluation area as required to assess the condition of waters. 3) Identify cumulative effects of permitting decisions on WOTS within the watershed encompassing the project evaluation area. However, requiring applicants to mitigate for cumulative impacts to aquatic resources caused by historical activities and permitting decisions is not constitutional or appropriate. Applicants are responsible for providing compensatory mitigation that is roughly proportion to their proposed impacts to aquatic resources and has a general nexus to the degree and type of impact proposed.	evaluation area will be based on factors such as the size and types of impacts and the aquatic resource restoration type and location. The area included in the project evaluation area should be the same, if not similar, to the area of study used to conduct project review under CEQA. An inventory of aquatic resources developed to comply with CEQA analysis may be sufficient to satisfy this requirement. Identifying wetland waters of the state is also clarified in the Procedures. The revised Procedures provide a jurisdictional framework for determining if a feature that meets the wetland definition is a water of the state. Identification of non-wetland waters of the state are not addressed in the Procedures and should continue to be done in accordance with current practice. Applicants should provide an inventory of aquatic resource features within the project evaluation area that may constitute waters of the state. As to the second point, the applicant characterizes the abundance, diversity and condition of aquatic resources, termed a “watershed profile”, in the project evaluation area to assess project impacts and potential compensatory mitigation sites. However, the Procedures allow that “the scope and detail of the watershed profile shall be commensurate with the magnitude of impacts associated with the project” (see Section V. Definitions). Thus, the level specificity for condition assessments is determined by the nature of the impacts. In general, this ranges from field sampling using a rapid assessment method, such as the California Rapid Assessment Method in the case of impacts with significant effects, to using best professional judgement combined with available resource information for impacts with minimal effects. As further stated in definition of watershed profile noted above, sources of information for a watershed profile include “online searches, maps, watershed plans, and possibly some fieldwork if necessary.” In addition, the definition of a watershed profile has been revised to mirror information needs of the Corps to allow for a consistent application of the watershed approach.

47. Watershed Profile

Comment Number	Representative Comment	Response
		As to the third point, the definition of watershed profile has been revised to indicate that cumulative impacts of past development activities is one piece of information that may be included in a watershed profile. Such information might be informative in any given case to assess the likelihood of success of a compensatory mitigation project and may affect the applicant's choice and location of proposed mitigation. This information would not be used to require applicants to mitigate for impacts caused by historical activities and permitting decisions.
24.52	The draft states: 'The scope and detail of the watershed profile shall be commensurate with the magnitude of impact associated with the proposed project ... ' In accordance with our previous comment on Section IV.A.2., we recommend that the criteria, factors and process for deciding when this information will be required should be provided in the Amendments. For example, this should not be required for small projects with impacts below a specific impact area threshold, such as utility pole replacements, repair of existing facilities (e.g., pipelines, access roads, culvert replacements, etc.).	The applicant characterizes the abundance, diversity and condition of aquatic resources, termed a "watershed profile", in the project evaluation area to assess project impacts and potential compensatory mitigation sites. However, the Procedures allow that "the scope and detail of the watershed profile shall be commensurate with the magnitude of impacts associated with the project" (see V. Definitions). Thus, the level specificity for condition assessments is determined by the nature of the impacts. In general, this ranges from field sampling using a rapid assessment method, such as the California Rapid Assessment Method in the case of impacts with significant effects, to using best professional judgement combined with available resource information for impacts with minimal effects. As further stated in definition of watershed profile noted above, sources of information for a watershed profile include "online searches, maps, watershed plans, and possibly some fieldwork if necessary." In addition, the definition of a watershed profile has been revised to mirror information needs of the Corps to allow for a consistent application of the watershed approach
35.3, 37.6	**35.3:** In addition, on Page 4 (2d,i.), agencies could also be required to develop and provide watershed profiles for project areas that account for the overall abundance, diversity, and condition of aquatic resources in their evaluation area. Similar to the proposed climate change assessment, minimal guidance is provided to assist agencies in performing these profiles. The delivery schedule and the available fiscal resources of projects	The definition of a watershed profile has been revised to mirror informational needs already required by the Corps in order to apply the watershed approach for compensatory mitigation decisions.

47. Watershed Profile

Comment Number	Representative Comment	Response
	under development could be at risk if these assessments were required.	
40.10	Recommendation: The Procedures should define watershed profile- what parameters need to be addressed, what the size/scale of the watershed analyzed should be, etc. and provide guidance as to how the information contained therein should be evaluated. The Procedures or guidelines should clarify that Regional Boards will accept a draft application during pre-consultation and allow the Watershed Profile to be included in overall Wetland Mitigation Plan as it works through all agencies, ACOE, in particular.	As to the parameters that need to be addressed in a watershed profile, please see the response to comment 6.67. Water Board staff will be able to provide feedback on watershed profiles during a pre-application consultation. Pre-application consultation may include the review of any draft materials that the applicant would like to provide. There will not, however, be a formal process for accepting and reviewing draft applications because creating a separate process for drafts would be overly burdensome on the Water Boards and the regulated community. A draft compensatory mitigation plan shall include a watershed profile which will be approved prior to making determinations on projects. This will allow applicants to consult with all agencies during the application review and approval process.
40.5	Watershed Profiles Comment: The Procedures currently require a Watershed Profile be conducted by Regional Board staff but does not give clear guidance as to what should be in a Watershed Profile or how the information contained therein would be evaluated. Without guidance, the content and scope of a Watershed Profile would be left to the discretion of each Regional Board and staff thereby resulting in an inconsistent application of this element of the Procedures.	The Procedures do provide the information that should be included in a watershed profile, and the purpose and use of this information. The definition of a watershed profile has been revised to mirror informational needs already required by the Corps in order to apply the watershed approach for compensatory mitigation decisions. Please see the response to comment 24.53 above for more details.
43.23	The Preliminary Draft relies heavily on conducting a watershed profile as part of the compensatory mitigation approval [Preliminary Draft at 4]. It is presumed that such an analysis would be required regardless of whether mitigation bank or in-lieu fee credits are purchased or permittee responsible mitigation is undertaken. Some guidance is provided on what is required within a watershed profile; but since it is an entirely new type of document not previously required, I have had to make a best case	The definition of a watershed profile has been revised to mirror informational needs already required by the Corps in order to apply the watershed approach for compensatory mitigation decisions. Since this same information is currently being provided to the Water Boards for 401 permitting of federal projects that require compensatory mitigation, this information would not be unfamiliar to Water Board staff or require new training to interpret. The information provided in a watershed profile will determine whether the proposed mitigation is the most ecologically preferable to offset unavoidable

47. Watershed Profile

Comment Number	Representative Comment	Response
	determination of its cost. Regional Board staff will also need to be trained in how to evaluate and review watershed profiles and respond to public comments on these documents.	permanent impacts.

48. Wetland Definition (Jurisdictional)

Comment Number	Representative Comment	Response
4.2	All Wetlands Should Qualify as Waters of the State We recommend taking the precautionary approach, in which the default is that all wetlands are considered Waters of the State. Project applicants could then argue on a case by case basis to have a particular wetland not be considered a Water of the State but the onus would be on them and not the Water Boards. For those wetlands that may include features not protected as Waters of the State, the SWRCB should develop criteria for the Water Boards to use in making such determinations. The criteria would provide a sense of uniformity across the state in its application, reduce uncertainty and subjectivity in interpretations, and smooth out any unevenness in implementation. This would ensure consistency of wetland protection throughout the state. Further, the current Draft Policy does not establish criteria for defining Waters of the State that could be used to evaluate wetland features, instead placing the burden of making these determinations on individual Water Boards. As the Policy notes, 'the Water Boards have not developed a complete list or categorical descriptions of all other features that qualify as Waters of the State. Therefore the Water Boards must determine whether a particular feature is a Water of the State on a case by case basis. This approach will likely result in problems with statewide consistency, as criteria will vary on a regional, if not case by case basis, resulting in an excessive demand of Water Board staff resources, and confusion among applicants. In the absence of a 'complete list or categorical description of all other features that qualify as waters of the state', making such determinations on a case by case basis by the Water Boards is onerous and is likely to lead to inconsistencies, which could result in net losses of wetland types, functions, and distribution. We recommend therefore that all wetlands be	The revised Procedures provide a clear jurisdictional framework for determining if a wetland is a water of the state. This framework provides a list of features that are not jurisdictional wetlands and criteria for determining whether features that meet the wetland definition are a water of the state. In contrast, definitions and delineation procedures for other features, such as streams, have not been addressed in this version of the procedures because it is outside of the scope of the project and would add significant delays for adoption. The State Water Board may decide to instruct staff to propose definitions and delineation procedures for other waters of the state (not wetlands) at a later time.

48. Wetland Definition (Jurisdictional)

Comment Number	Representative Comment	Response
	classified as Waters of the State; alternately, we recommend that the SWRCB develop a complete list of all features that qualify as Waters of the State within one year and that Regional Boards use this list to decide which wetlands qualify as Waters of the State.	
5.10, 5.16, 15.17, 15.9, 15.6, 22.4, 31.5, 33.3, 1.13, 45.9, 45.2, 45.13, 41.13	**45.13:** In contrast, the draft policy's approach is unacceptable. At best, a policy suggesting that not all wetlands are waters of the state will merely maintain the status quo, and thus, will fail to meet the fundamental purposes of the draft policy. At worst, it could place an increased burden on staff if they have to defend their every decision and could also result in continued or even increased losses of wetlands. The proposed wetlands definition simply formalizes the status quo and fails to comport with California's no-net-loss mandate because it would permit the continued destruction of wetlands. Further, an important purpose of the SWRCB wetlands policy is to promote consistency across the Regional Boards; continuing to identify regulated wetlands on a case-by-case basis fails to achieve this purpose. See Draft Staff Report/SED at 1. Under this approach, an identical feature could be a regulated wetland in San Francisco but not in Sacramento. The lack of uniformity results in the under protection of wetlands and significant uncertainty for potential permittees.	The revised Procedures provide a clear jurisdictional framework for determining when a wetland is a water of the state. This framework provides a list of features that are not jurisdictional wetlands and criteria for determining whether features that meet the wetland definition are a water of the state. Having a jurisdictional framework for determining when a wetland is a water of the state will increase Water Board consistency by eliminating case-by-case determinations.
5.9, 24.16, 24.6	**24.16:** Although the Draft Procedures attempts to make clear that they are not intended to expand or modify the SWRCB's jurisdiction over waters of the state, we believe it may in fact expand the definition of wetlands as used by the US Army Corps of Engineers (USACE) and the US Environmental Protection Agency (EPA). While one of the goals was to make the Draft Procedures consistent with the USACE delineation, the proposed definition is not consistent with this goal. As a matter of fact, the	The Procedures are not intended to expand jurisdiction over wetland waters of the state, but rather bring consistency across the boards by adopting a wetland definition that represents all the various forms or kinds of landscape areas in California that are likely to provide wetland functions, beneficial uses, or ecological services. The determination of whether a feature meets the wetland definition is separate from the determination as to whether that wetland is a water of the state. In an attempt to avoid the regulation of features that may meet the wetland definition, but have not been regulated

48. Wetland Definition (Jurisdictional)

Comment Number	Representative Comment	Response
	expanded definition may subject water features such as puddles and ditches to regulation.	in the past by the Water Boards, a jurisdictional framework has been provided for determining when a wetland is a water of the state in the revised Procedures.
11.1	The 'Wetland' definition, as currently proposed, is very broad and may include areas beyond what is generally considered a 'water of the State' or 'water of the US.' Based on the proposed definition, newly constructed projects to enhance water quality and augment water supply may result in aquatic features that could potentially meet the definition of wetlands and qualify as a water of the State.	The revised Procedures provide a clear jurisdictional framework for determining when a wetland is a water of the state. This framework provides a list of features that are not jurisdictional wetlands and criteria for determining whether features that meet the wetland definition are a water of the state. Having a jurisdictional framework for determining when a wetland is a water of the state will increase Water Board consistency by eliminating case-by-case determinations.
14.5, 24.33, 24.34, 24.35, 31.8, 35.7, 42.7, 43.1, 45.11, 46.5	**14.5:** Draft Policy Wetlands Definition: The Draft Policy provides a definition on State wetlands which mimics the definition contained in federal law but does not require the vegetation component of the federal definition. The Draft Policy provides that the wetlands definition is 'not intended to be jurisdictional - not all features that qualify as wetlands are waters of the state.' (Draft Policy Section I, lines 26-7.) The establishment of a new State definition of wetlands that differs from the Corps' definition creates potential conflict and uncertainty. The existing federal and State regulatory programs already govern 'waters' of which 'wetlands' are a current subset. Further, while the Draft Policy recognizes that some 'wetlands' defined in the proposal would not be 'waters of the State,' it leaves discretion to each Board to determine on a 'case-by-case' basis whether a wetland feature would be regulated under State law. This is far too uncertain and thereby creates a real potential for permitting delays. Moreover, given that the Authority's Program Sections are located in multiple Regional Water Board jurisdictions, the potential for inconsistent jurisdictional determinations among Program Sections is of significant concern to the Authority. The Authority recommends that, if a wetland definition is adopted, it be clear,	The proposed wetland definition represents various forms or kinds of landscape areas in California that are likely to provide wetland functions, beneficial uses, or ecological services. The revised Procedures provide a clear jurisdictional framework for determining when a wetland is a water of the state. This framework provides a list of features that are not jurisdictional wetlands and criteria for determining whether features that meet the wetland definition are a water of the state. Having a jurisdictional framework for determining when a wetland is a water of the state will increase Water Board consistency by eliminating case-by-case determinations.

48. Wetland Definition (Jurisdictional)

Comment Number	Representative Comment	Response
	certain, and jurisdictional across the State. This would remove case-by-case determinations between Board Regions and provide more certainty in those determinations.	
15.19	Develop a permitting program for the few wetlands for which the Corps disclaims Section 404 CWA jurisdiction.	One purpose of the Procedures is to promote consistency across the Water Boards for requirements for discharges of dredge or fill material into waters of the state. Establishing procedures that are applicable to both federal and non-federal waters of the state will help ensure that Water Board actions are consistent regardless of whether the orders are 401 certifications, waste discharge requirements, or a combination thereof and will help ensure consistency across regions.
15.5	If 'waters of the state' is defined in the CA Water Code, shouldn't defining wetlands as 'waters of the state' also be in the CA Water Code?	The Water Code does not include a complete list of categorical descriptions for all features that qualify as a water of the state. The Procedures are proposed for inclusion in the Water Quality Control Plan for Inland Surface Waters and Enclosed Bays and Estuaries and Ocean Waters of California. Water quality control plans have the same force and effect as a regulation. Accordingly, revision to the Water Code is not necessary.
20.6, 24.37, 45.12	**45.12:** We appreciate that establishing a SWRCB wetlands definition that is inclusive of all of California's wetlands but is not so broad that it exceeds the Boards' jurisdiction over waters of the state is difficult. As explained below, however, it is an essential undertaking and necessary to comply with the state's no-net-loss policy. If the SWRCB concludes that a simple definition is unworkable, there are other feasible approaches. In particular, we suggest that the policy establish a rebuttable presumption of jurisdiction. Under this approach, the policy would create a strong presumption that, if a feature meets the modified three-parameter wetland definition proposed in the draft policy, then it is a jurisdictional wetland. To overcome the presumption, the permit applicant would have to provide clear and convincing evidence that the wetland is not a water of the state. The permit applicant would make this showing by relying	The revised Procedures provide a clear jurisdictional framework for determining when a wetland is a water of the state. This framework provides a list of features that are not jurisdictional wetlands and criteria for determining whether features that meet the wetland definition are a water of the state. Having a jurisdictional framework for determining when a wetland is a water of the state will increase Water Board consistency by eliminating case-by-case determinations. The revised Procedures also state that the applicant bears the burden of demonstrating that a feature that meets the proposed wetland definition is outside of the jurisdictional framework provided.

48. Wetland Definition (Jurisdictional)

Comment Number	Representative Comment	Response
	on site-specific information and Regional Board precedents regarding the scope of their jurisdiction. To guide implementation at the Regional Boards, the policy could include a non-exhaustive list of features that meet the wetland definition and are always waters of the state (e.g., vernal pools and playa), and a non-exhaustive list of features that meet the wetland definition and are never waters of the state (e.g., ornamental ponds constructed in uplands). We believe this approach is protective of California's diverse wetlands, provides clarity to permit applicants regarding their obligations, promotes consistency across the Regional Boards, and ensures that the policy does not exceed the Boards' jurisdictional authority.	
24.86	Further, since SWRCB's Resolution No. 2008 0026 ('Development of a Policy to Protect Wetlands and Riparian Areas in Order to Restore and Maintain the Water Quality and Beneficial Uses of the Waters of the State') was adopted to address the 'gap' of protection between federal and state programs that was created by the SWANCC and Rapanos Supreme Court decisions, the Procedures should clarify whether the proposed definition goes beyond protecting just those features no longer protected by the CWA due to the SWANCC and Rapanos decisions.	The State Water Board developed the Procedures for a number of purposes, only one of which is to ensure protection for wetlands that are no longer protected under the Clean Water Act due to Supreme Court decisions. The wetland definition aims to identify all wetlands in California, not just those wetlands that are no longer protected under the Clean Water Act following Supreme Court decisions.
43.4	Further, it is likely that the proposed definition, once put in practice, will create a broad and complex regulatory program that would result in the substantial expansion of state jurisdiction, as compared to current implementation, for several reasons: 2. As stated above, the proposed definition would also identify non-vegetated features as wetlands. This is different than the long-standing practice of the EPA and the Corps and is likely to be confusing to the regulated community, the general public, and the Regional Board staff. It will likely result in the classification of features as wetlands that the public would not recognize as a	The proposed wetland definition represents various forms or kinds of landscape areas in California that are likely to provide wetland functions, beneficial uses, or ecological services. Also proposed is the adoption of the Corps methodology for wetland identification and delineation. The Technical Advisory Team, in recommending the adoption of the Corps methodology, concluded that there will be no or minor significant differences when applying that methodology to the Water Board's proposed wetland definition. The Procedures have been revised to provide a clear jurisdictional framework for determining when a wetland is a water of the state. This framework provides a list of features that are not jurisdictional wetlands and

48. Wetland Definition (Jurisdictional)

Comment Number	Representative Comment	Response
	wetland and that the government has not previously defined as a wetland. (Commenter cites EPA & Corps Definitions) Each of these definitions, and the public's common understanding of what is a wetland, includes marshes, swamps, vernal pools, and other vegetated features. The State Board's definition will certainly be confusing to the public, will lead to unnecessary misconceptions by the public, and could lead to enforcement actions against individuals or government agencies who do not understand what a non-vegetated wetland might be. Furthermore, by eliminating the 'vegetation' criterion for what is a wetland, the definition as literally drafted must include features like lakes, ponds, rivers, streams, and beaches as 'wetlands.' The State Board staff may have a different intent, but that intent is not reflected in the Preliminary Draft or the Staff Report. Under the proposal, there would be no practical limit to the scope of what is a wetland as features like ponds, streams and beaches can have sufficient hydrology and anaerobic substrates to meet the proposed wetland definition. At the workshop that I attended, the State Board staff indicated that, of course, 'puddles' would be excluded. However, under its proposed definition, a puddle could meet the wetland definition and such features are not explicitly excluded from regulation. The feature pictured here has ponding for a sufficient period of time (14 days according to TAT Memorandum #4) and likely has anaerobic substrates (though not a hydric soil). The same is true of many lakes, rivers, and streams. The State Board staff did not provide any explanation as to why a puddle would be excluded given the proposed definition, or when a 'puddle' would be large enough to be a 'pond' or other similar feature that would be subject to classification as a wetland. The proposed definition provides Regional Board staff with substantial discretion to define features	criteria for determining whether features that meet the wetland definition are a water of the state. Having a jurisdictional framework for determining when a wetland is a water of the state will increase Water Board consistency by eliminating case-by-case determinations.

48. Wetland Definition (Jurisdictional)

Comment Number	Representative Comment	Response
	as a wetland and leave the public unaware of whether these examples of non-vegetative features are 'wetlands.' This confusion can be avoided by using the long-standing, peer-reviewed federal wetland definition.	
45.15	Even more troubling, the proposed wetland definition may not merely maintain the status quo - it could result in increased destruction of California Wetlands. It is our understanding that this policy will amend the Basin Plans, replacing the Regional Boards' protective statements with language indicating that 'not all features that qualify as wetlands are waters of the state.' Draft Policy at I. This change would cast doubt on the Boards' practice of assuming all wetlands are waters of the state, increasing the likelihood that permit applicants will challenge jurisdictional determinations and creating an opening for litigants striving to limit the state's authority to regulate wetlands. Under this draft policy, there is a very real possibility that the Regional Boards would assert jurisdiction over fewer wetlands, and that the rate of wetland loss would increase.	In response to broad objection to case-by-case determinations, the revised Procedures provide a clear jurisdictional framework for determining when a wetland is a water of the state. This framework provides a list of features that are not jurisdictional wetlands and criteria for determining whether features that meet the wetland definition are a water of the state. Having a jurisdictional framework for determining when a wetland is a water of the state will increase Water Board consistency by eliminating case-by-case determinations. This framework attempts to prevent the Water Boards from being overly inclusive when making determinations on jurisdiction while protecting features that provide wetland functions, beneficial uses, or ecological services.
45.18	If the SWRCB adopts the modified three-parameter definition, the existence of multiple wetland definitions in California could create a significant possibility of confusion within the regulated community. Because the CCC' s wetland definition is more protective, areas in the coastal zone may not qualify as wetlands under the SWRCB's proposed definition, but nonetheless be considered wetlands under the CCC's definition. Though beyond the reach of the Regional Boards, such wetlands would be subject to the CCC's regulatory authority. In light of the likelihood of confusion caused by inconsistent definitions, the CCC submitted comments on the Initial Study for this policy in 2011. The CCC recommended to the SWRCB 'that you increase the clarity of your efforts by using the more precisely descriptive term 'State Water	The Procedures clearly state that, “The Water Boards define an area as wetland as follows…” In addition, the Staff Report indicates that, “The proposed Procedures establish a standard wetland definition for use by the Water Boards.” These statements should clearly communicate that the proposed wetland definition should be used only when applying for Orders issued under the Water Boards regulatory authority. The wetland definition would not affect the ability of other agencies, including the California Coastal Commission, to adopt and implement their own wetland definition.

48. Wetland Definition (Jurisdictional)

Comment Number	Representative Comment	Response
	Board wetlands' rather than the generic and variously defined 'wetlands,'' and suggested that the SWRCB 'should acknowledge the Coastal Commission's jurisdiction and regulatory approach to protecting wetlands.' Letter from Peter M. Douglas, CCC Executive Director to SWRCB (May 19, 2011). In spite of these comments, the draft policy and Draft Staff Report/SED do not adequately address the limited nature of the SWRCB's proposed wetland definition. (Footnote 6) The SWRCB should remedy this problem by clearly explaining that the proposed policy's wetland definition applies only to permitting processes overseen by the SWRCB and Regional Boards, and explicitly discussing the CCC's permitting authority and its more inclusive wetlands definition.	

49. Wetland Definition (Technical)

Comment Number	Representative Comment	Response
3.14, 3.13, 5.11, 6.26, 15.4, 15.3, 24.87, 25.4, 41.12	**3.13:** There is no need for a new, different wetland definition. The USACE and EPA have long defined 'wetlands' by regulation under the Clean Water Act and have long delineated wetlands using the USACE 1987 Wetland Delineation Manual. In recent years, the USACE has refined its delineation method by developing regional supplements tailored to the environmental conditions of various ecological regions, two of which pertain to California. The USACE's well understood, peer reviewed wetland definition and delineation method serves California well. There is no need to replace it with a new definition that would conflict with the existing USACE and EPA definition.	A Technical Advisory Team (TAT) composed of distinguished wetland scientists, in consultation with Water Board staff, developed the proposed Water Board wetland definition and provided the scientific rationale. Upon comparison of existing wetland definitions, the TAT found that "a new wetland definition is needed because none of the existing, candidate definitions fully represents all the various forms or kinds of landscape areas in California that are very likely to provide wetland functions, beneficial uses, or ecological services." The proposed wetland definition, by relying on observations of substrates that may not be addressed by NRCS Hydric Soil standards, and by allowing for naturally unvegetated wetlands, provides more consistent and scientifically supportable wetland determinations for California. Refinements of the Corps delineation methods have indeed been helpful, but the delineation method still must work within the constraints created by the CWA wetland definition. The TAT has also concluded that there are no, or minor, effects on methodology when applying the Corps delineation procedures with the proposed Water Board wetland definition. Please see TAT Memo No. 2: Wetland Definition 25 June 2009 (revised September 1, 2012) & TAT Memo No. 4: Wetland Identification and Delineation Version 14, March 1, 2011. The Cal EPA peer review of the proposed definition agreed with this conclusion.
4.1, 45.17	**45.17:** The Staff Report/SED must seriously analyze an alternative that includes a more protective wetlands definition and, if a modified three parameter definition is selected, the policy must clarify that the SWRCB's wetlands definition is only applicable to proceedings under the SWRCB's authority. (Letter contains background info, including reference to a previously submitted comment letter) Report/SED should at least seriously analyze an alternative that includes adoption of a one parameter test. (5) The Draft Staff Report/SED's analysis of alternatives in cursory and fails to meaningfully assess the beneficial impacts of adopting a one-parameter wetlands definition. (pages 175-176)	The wetland definition would apply to only programs administered by the Water Boards. The Water Boards' wetlands definition would not be binding on other agencies administering programs that also regulate wetlands. As the commenter correctly noted, other agencies use different definitions of wetlands. In regards to alternatives to the definition, the staff report analyzes one and two parameter wetland definitions in Section 10.2 of the staff report. The objective of analyzing alternative definitions is to identify the most appropriate definition for California wetlands that also meets the Water Board's regulatory mandates under the Porter-Cologne Act. The staff report concludes that neither a one nor a two parameter option are viable alternatives. First, there is the potential for declaring non-wetland upland

49. Wetland Definition (Technical)

Comment Number	Representative Comment	Response
		features as wetlands due to relic hydric soil indicators and/or false-positive indicators of hydrophytic vegetation. Second, delineation procedures have not been developed for one or two parameter definitions. As such, there is a lack of field identification criteria, indicators and guidance on regional variation. This is significant for an agency with regulatory responsibility for wetland protection. Finally, adopting a one or two parameter definition would create major regulatory inconsistencies with the USEPA and Corps' wetland definition.
6.27, 43.3	**6.27:** The Procedures contain a definition and method for delineating wetlands that differ from existing documentation and accepted methodologies developed by the Corps in support of its section 404 program. The 1987 Corps of Engineers Wetlands Delineation Manual and Regional Supplements, and other technical guidance and memoranda, have previously been used by the state but are not used in the Procedures for assessing wetland WOTS. This approach is inconsistent with the State Board's direction to staff in 2008 to 'develop and bring forward for State Water Board consideration: (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,' among other mandates. State Board, Reso. No. 2008-0026, § 6. The Procedures and Staff Report do not explain the departure from this direction or why it is not feasible to use the federal wetland definition, and the use of the Procedures will not 'reliably define' California wetlands subject to regulation, for the reasons explained below. (2) The proposed state wetland definition is unclear and will be problematic to implement. In comparison, the wetland definition proposed in the Procedures includes the following: '[T]he area must have continuous/recurrent saturation of the upper substrate caused by groundwater, shallow surface water, or both;	A Technical Advisory Team (TAT) composed of distinguished wetland scientists, in consultation with Water Board staff, developed the proposed Water Board wetland definition and provided the scientific rationale. Upon comparison of existing wetland definitions, the TAT found that "a new wetland definition is needed because none of the existing, candidate definitions fully represents all the various forms or kinds of landscape areas in California that are very likely to provide wetland functions, beneficial uses, or ecological services." The definition has been found to be scientifically sound by external peer reviewers selected independently through an established process by CalEPA; the review is posted here: http://www.waterboards.ca.gov/water_issues/programs/peer_review/docs/wetl_def_del/def_pr_att2.pdf Certain recommendations were made, which were considered by the TAT in drafting the final version of the definition. The Corps' delineation procedures will be used to implement the definition in the field, which will minimize inconsistencies with the Corps wetland delineation determinations. The methods shall be modified only to allow for the fact that the lack of vegetation does not preclude the determination that an area meets the definition of wetland. The delineation manual should be applied to determine the presence of anaerobic conditions in the upper substrate. The continuous presence of anaerobic conditions in the upper substrate is not a criteria of the proposed definition. The proposed definition

49. Wetland Definition (Technical)

Comment Number	Representative Comment	Response
	duration of saturation is sufficient to cause anaerobic conditions in the upper substrate; the area is dominated by hydrophytic vegetation or lacks vegetation.' Procedures p. 2, lines 46-49. State Board staff have asserted that the state's proposed definition was developed to provide consistent identification standards. However, the inclusion of the words 'anaerobic conditions' in reference to conditions found in the upper substrate may eliminate other classifications of hydric soil types that are associated with wetlands. For example, the 1987 Corps Manual indicates that repeated periods of saturation promote specific biogeochemical processes that are identifiable. Although saturated soils are often associated with anaerobic conditions, more importantly, saturated soils have visual, distinguishing characteristics. For example, reducing conditions affect iron in soil, and result in reddish-gray patches along root channels and pores that are visible to the eye. Additionally, the Arid West Supplement provides information on how to prepare dry/aerobic soils for the Munsell colors, a soil color system that is used to determine if the soil is hydric. Aerobic soils may have indicators, such as color, that denote previous anaerobic conditions. Therefore, the use of the term 'anaerobic conditions' does not encompass wetlands that may undergo periods of drying and an absence of anaerobic soil conditions. Soils can go anaerobic quickly when wetted to oversaturation, however, they may not otherwise exhibit characteristics of wetlands. The Corps defines hydric soils as follows: 'A hydric soil may be either drained or undrained, and a drained hydric soil may not continue to support hydrophytic vegetation. Therefore, not all areas having hydric soils will qualify as wetlands. Only when a hydric soil supports hydrophytic vegetation and the area has indicators of wetland hydrology may the soil be referred to as a wetland soil.' This	requires that the inundation or saturation be continuous or recurrent. The definition does not require that indicators of anaerobiosis be persistent during periods of drying. The term "Upper Substrate" is defined in TAT Memo 2: "Upper substrate is the portion of substrate extending downward from the substrate surface to a depth of 50 centimeters (20 inches). In non-vegetated as well as vegetated wetlands, this is the portion of substrate within which relevant anaerobic chemical conditions develop." "Relevant anaerobic chemical conditions" would not be expected to occur in leaf litter and similar depositional material on the surface of the substrate, and thus would not be recognized as being part of the wetland substrate. The staff report has been updated to provide for a more detailed description of upper substrate. Use of the proposed definition for wetland identification and delineation requires careful consideration of hydrology, substrate and vegetation in every case. In cases where the hydrology and substrate criteria are present, but vegetation is absent, an analysis must be conducted to determine if that absence is a natural consequence of the hydrologic and substrate conditions and, if it is not, if the expected vegetation would be predominantly hydrophytic or not. Mere absence of vegetation does not lead to an automatic conclusion that an area is not wetland.

49. Wetland Definition (Technical)

Comment Number	Representative Comment	Response
	definition supports the use of the three characteristics (vegetation, soil, and hydrology) for classifying wetlands and accounts for both anaerobic and seasonal aerobic soils that are able to support wetland vegetation and demonstrate wetland hydrology. Another inconsistency between the Corps' wetland definition and the State Board's proposed definition is the use of the words 'soil' (Corps' definition) and 'substrate' (state's proposed definition). According to the Soil Science Society of America, the definition for soil is: '(i) That which is laid or spread under an underlying layer, such as the subsoil. (ii) The substance, base, or nutrient on which an organism grows. (iii) Compounds or substances that are acted upon by enzymes or catalysts and changed to other compounds in the chemical reaction.' The definition for substrate is vague and open to interpretation so that additional types of materials like mulch, vegetation cover, or leaf litter could be considered substrate. The broadly defined 'substrate' in the state's definition could include materials that are not suitable for providing habitat for vegetation in saturated soil conditions and should not be considered as soil. Therefore, with the above word choices, the state's proposed wetland definition weakens and potentially broadens the definition of wetlands substantially. The use of hydric soils as a wetland indicator is a technical tool that can be employed in the field along with the other characteristics of a wetland, even though the Procedures state that 'the proposed procedures wetland definition incorporates these three characteristics of hydrology, wetland soils, and wetland vegetation.' An apparent discrepancy between the State Board's proposed wetland definition and the Corps' wetland definition is that the state's proposed definition allows an area to be classified as a wetland if only two of the three wetland characteristics used by the Corps (vegetation, soils,	

49. Wetland Definition (Technical)

Comment Number	Representative Comment	Response
	hydrology) are met. For example, if a wetland lacks vegetation, per the proposed California definition, the area will still be classified as a wetland. However, with the use of the Arid West Supplement, areas lacking wetland vegetation may be equivalently classified as wetlands per the Corps definition. In this sense, the proposed wetland definition does not appreciably differ from the Corps general definition for a wetland as amended by the Arid West Supplement to reflect regional conditions.	
15.23	Will the California Coastal Commission (CCC) be obligated to use the State Board's new definition of wetlands? Does the new wetland definition include the aquatic support areas show in case study #1? Will wetland practitioners be required to delineate 'aquatic support' areas? i. Does the state's definition now include aquatic support areas as wetlands? This will vastly increase the geographic area of wetlands. ii. All that Figure 2 really shows is a USACE comprehensive delineation method is almost identical to the CCC one parameter wetland survey and that mapping wetlands only from aerial photographs without a field survey misses wetlands.	The wetland definition would apply to only programs administered by the Water Boards. The Water Boards' wetlands definition would not be binding on other agencies administering programs that also regulate wetlands. Another agency would only use the Water Board definition of a wetland if that agency is submitting an application for the discharge or dredge or fill material under the Procedures. The proposed wetland definition does not include aquatic support areas as discussed in the TAT Memos, and wetland delineations will not be required to map those areas under the Procedures. The Procedures do require that applicants map all water-related features of a site, including riparian areas.
3.15, 3.16, 15.7, 43.2, 43.5	**3.16:** Why the State Board would want to categorize some un-vegetated waters as wetlands rather than waters is not apparent or explained. To the extent that the State Board is motivated to redefine 'wetlands' to assure that application of the section 404(b)(1) Guidelines extends to certain un-vegetated waters, it bears noting that the Guidelines themselves already do that. First, they generally apply to all waters of the United States. Second, even particular provisions that apply to 'special aquatic sites' govern not only 'wetlands,' but also certain un-vegetated waters, i.e., 'mudflats.'	The State Water Board's purpose in developing a wetland definition is to provide a more scientifically based system for identifying and delineating California wetlands pursuant to its jurisdictional authorities under the Porter-Cologne Act (see response to representative comment 3.13). As the commenter notes, mudflats, like wetlands, are classified as "special aquatic sites" under the CWA 404(b)(1) guidelines and therefore will be subject to the same regulatory considerations as wetlands by the Corps. Similarly, mudflats would be considered unvegetated wetlands under the Water Board's wetland definition.
15.8, 20.7, 28.13, 37.2,	**15.8:** Use the Corps definition of wetlands. It is the standard. It has a community of regulatory agencies and users behind it. The	Comment noted. The Procedures provide for the Corps methodology for delineating wetlands, including the existing methodology for identifying

49. Wetland Definition (Technical)

Comment Number	Representative Comment	Response
43.30	Corps maintains the Nationwide Wetland Plant List to ensure long-term consistency of wetland identification.	hydrophytes. Because the proposed definition and delineation manuals, including such technical requirements as the National Wetland Plant List, require only minor deviations from current Corps practice, preparation of delineations under both the federal and the proposed Procedures would be identical in most cases, and have only slight variances in most of the remaining cases.
24.38	Definition of Wetland: The proposed definition of a wetland is not consistent with the definition used by the Corps in that the proposed definition also includes features that lack vegetation. The draft Procedures should be clear as to what additional features the proposed definition is trying to capture.	The proposed definition is clear in that it specifies the criteria under which unvegetated areas would be classed as wetlands. A list of wetland types that might be covered need not be included in the definition, and would be misleading because of the variety of wetlands that might meet the unvegetated wetland criteria. Some common wetland classes that would be identified under the proposed definition include non-vegetated playas, tidal flats, and non-vegetated snowmelt pools. However, this is not an exhaustive list. Indeed, the list of representative examples of wetland types that are intended to be protected, as listed in the CWA definition (swamps, marshes, bogs, and similar areas), has been a source of confusion rather than clarification. Instead, reliance on specific wetland identification criteria and indicators should be the guiding principle.
33.2	We support changing the wetlands definition to allow for use of two parameters instead of three as required by the 404 (B)(1) Guidelines.	Comment noted. However, as explained in Section 10.2 of the staff report, the Water Board proposed wetland definition is considered a modified 3-parameter definition. Section 10.2 also sets forth why the two parameter definition is not a viable alternative.
43.6	Adopting a state definition of wetland that is different than the federal definition will lead to misinterpretation by the public and Regional Board staff and will require additional staff time to explain, justify, and implement the differences. It will also lead to additional cost and time delays for applicants and others. In my experience as an expert on wetlands, I have found that the courts will also reach independent conclusions on which wetlands are regulated under the definition, particularly if the regulation is unclear and leaves significant room for discretionary decisions to	Use of the proposed definition would not present a significant departure from the practice of wetland identification or delineation in California. Adoption of the Corps methodology for wetland identification and delineation provides a well-established basis for delineation practice as would occur under the proposed definition. The TAT, in recommending the adoption of the Corps methodology, concluded that there will be no, or minor, differences when applying that methodology to the Water Board's proposed wetland definition. In addition, the revised Procedures provide a clear jurisdictional framework for determining when a wetland is a water of

49. Wetland Definition (Technical)

Comment Number	Representative Comment	Response
	be made. Similarly, many property transactions or other independent regulatory evaluations may require identifying or disclosing features subject to state regulation. This means that independent of the State Board staff's current intent, the proposed definition will require Regional Board staff involvement outside of the permitting realm to assist property purchasers to understand what may be regulated under their definition. Based on the definition as proposed, there is no certainty that statements made by State Board staff at a workshop that puddles or other similar features will not be identified as wetlands will, in fact, preclude future classification of these features as wetlands. Furthermore, the ambiguity created by vesting Regional Board staff with discretion to make these determinations will introduce uncertainty and risk for property owners that will be unable to ascertain with reasonable certainty how features on their property would be classified and/or regulated under State law.	the state. This framework provides a list of features that are not jurisdictional wetlands and criteria for determining whether features that meet the wetland definition are a water of the state. Having a jurisdictional framework for determining when a wetland is a water of the state will promote Water Board consistency by eliminating case-by-case determinations. This strategy is proposed in an attempt to prevent the Water Boards from being overly inclusive when making determinations on jurisdiction while protecting features that provide wetland functions, beneficial uses, or ecological services.
45.49	(2) As explained below, the modified three-parameter definition is not sufficiently inclusive, and a one-parameter definition is more appropriate to protect California's diverse wetlands. In comments on previous versions of this policy, some of our organizations explained that a modified three-parameter wetlands definition might be acceptable, but that was only because it was understood that 'wetlands' were presumed to be waters of the state.	A one parameter definition is not a viable alternative because (1) many areas that do not necessarily function as wetlands would be classed as wetlands and (2) there is a lack of checks on individual indicators when any one indicator may be used alone to classify an area as a wetland (Tat Memo 2, Appendix B). When considering candidate definitions the TAT concluded that a "new definition was needed because none of the existing definitions fully represents all the various forms or kinds of landscape areas in California that are likely to provide wetland functions, beneficial uses, or ecological services" (TAT Memo No.2). For further comparison and analysis on the determination of proposing the modified three parameter wetland definition, including explanation as to why a one parameter approach would not be adequate for the Water Boards, please refer to Section 10.2 of the staff report. In addition, the revised Procedures provide a clear jurisdictional framework

49. Wetland Definition (Technical)

Comment Number	Representative Comment	Response
		for determining when a wetland is a water of the state. This framework provides a list of features that are not jurisdictional wetlands and criteria for determining whether features that meet the wetland definition are a water of the state. Having a jurisdictional framework for determining when a wetland is a water of the state will promote Water Board consistency by eliminating case-by-case determinations. This strategy is proposed in an attempt to prevent the Water Boards from being overly inclusive when making determinations on jurisdiction while protecting features that provide wetland functions, beneficial uses, or ecological services.
46.6	With respect to the wetland definition set forth in the proposed Procedures; please define the term "recurrent" by either quantifying the term in a temporal sense, or tying it to another objective measure.	The term "recurrent" should be ascribed with its commonly understood meaning as set forth in dictionaries, e.g., returning or happening time after time.[2] In much of California the recurrence interval is not necessarily regular or annual. When determining if an "area has continuous or recurrent saturation of the upper substrate caused by groundwater, or shallow surface water, or both," one should refer to the appropriate delineation manual for proper guidance.

[2] Merriam-Webster.com (https://www.merriam-webster.com/dictionary/recurrent)

50. Wetland Delineation Procedures

Comment Number	Representative Comment	Response
2.5	Consistent Wetland Delineation Procedures. Council staff supports the proposal to establish consistent State Water Board wetland definitions, and delineation methods based on USACE guidelines, for all Water Boards. This would make it easier to identify protected wetlands, while also accelerating permit application and approval processes. The Delta and Suisun Marsh are regulated by two different Regional Water Quality Control Boards, and consistent methods between the two regions would help with Delta Plan implementation.	Comment noted.
3.18	Notwithstanding the absence of any explanation or guidance by the State Board in this regard, the proposed Program would require applicants somehow to determine whether particular wetlands are waters of the state in order to complete an application. It would require that '[i]f wetlands that are waters of the state are present, a delineation of those wetlands' must be provided as part of a complete application. (Proposed Program 3.) How an applicant is to make that determination is unknown.	This issue has been addressed in the revised Procedures, which now provide a clear jurisdictional framework for determining whether a wetland is a water of the state. Because all federal waters, including wetlands, are waters of the state, any questions applicants may have regarding state wetland jurisdiction would focus on wetlands deemed non-federal waters. As set forth in Section III, the Procedures require the use of the Corps delineation methods through application of the Corps manuals and regional supplements when determining if an aquatic feature meets the proposed wetland definition. Any questions regarding what features are waters of the state may be resolved through a pre-application meeting or when the application is submitted and Water Board staff review the required delineation map of all state waters.
6.28	To maintain consistency in defining and delineating wetlands, the state should use the existing Corps guidelines. We further recommend the state work closely with the Corps, in a process that involves public input and comment, to update the Regional Supplements applicable to California to update the existing wetland framework as necessary due to California's unique and varied environments.	As set forth in Section III, the Procedures require use of the Corps delineation methods through application of the Corps manuals and regional supplements when determining if an aquatic feature meets the proposed wetland definition. If the Corps updates the Regional Delineation Supplements applicable to California, the Water Boards would evaluate whether the Procedures would need to be amended to include the updated versions. Because the Water Boards routinely consults with the Corps on regulatory matters related to water quality, the Water Boards would likely comment on a Corps' action to revise wetland delineation procedures

50. Wetland Delineation Procedures

Comment Number	Representative Comment	Response
		applicable to California.
10.3, 41.24	**41.24:** Section IV(A)(1)(d): Please note that aquatic resource delineations submitted to USACE likely do not include areas outside of the project boundaries. In addition, USACE recommends the SWRCB modify the second sentence (lines 116-118) to identify that an approved or preliminary JD issued by USACE satisfies this requirement for a determination of the location and extent of waters of the United States subject to section 404 of the CWA.	Section IV.A.1 of the Procedures has been revised to clarify that an approved or preliminary jurisdictional determination issued by the Corps may be used to delineate the waters of the United States.
17.4	a. Section IV.A.I.b. Suggested language change: If wetlands that are waters of the state are present, a delineation of those wetlands as described in Section III, or, if the project is subject to the terms of a Special Area Management Plan **or Master Streambed Alteration Agreement approved prior to the Effective Date of these Proposed Procedures, a project delineation consistent with the overall approved SAMP or MSAA delineation.** In addition, if waters of the U.S. are present, any preliminary or final wetlands delineation that was submitted to the Corps, **or, if the project is subject to the terms of a Special Area Management Plan, a project delineation consistent with the overall approved SAMP delineation.**	Wetlands features delineated as part of SAMP or MSAA resource planning maps would be considered survey level information unless based on the Corps' field delineation procedures. In any case, applicants for proposed projects subject to the terms of a Special Area Management Plan (SAMP) or Master Streambed Alteration Agreement (MSAA) would be subject to the wetland delineation methods outlined in the Procedures in Section III for wetlands within the proposed project area. Applications submitted prior to the effective date of the Procedures would not be subject to the requirements of the Procedures.
17.6	For Section IV.B.2. Proposed language change: The permitting authority shall rely on any Corps-approved wetland area delineation, within the boundaries of waters of the U.S. For all other wetland area delineations, the permitting authority shall review and approve delineations that are performed using the methods described in Section III. **If there is a wetland area delineation conducted in support of a SAMP or MSAA approved prior to the Effective Date of these Proposed Procedures, the permitting authority shall rely on this delineation.**	See response to comment # 17.4 (above).

50. Wetland Delineation Procedures

Comment Number	Representative Comment	Response
41.15, 46.10	**41.15:** The State intends to have applicants use the USACE's 1987 wetland delineation manual and two regional supplements, but utilizing different methodology for the vegetation criterion, for identifying and delineating wetlands per the State's proposed definition. The USACE recommends the State prepare a supplemental study or analysis to ensure that the USACE methodology, as modified by the State, can be used to make valid determinations about wetland boundaries under the State's proposed wetland definition. However, as noted above, USACE recommends that the State adopt the Federal definition of wetland.	The proposed delineation methods do not require a different methodology for the vegetation criterion, except in cases where vegetation is absent. In this case, Section III of the Procedures clarifies that "[t]he methods shall be modified only to allow for the fact that the lack of vegetation does not preclude the determination of such an area that meets the definition of wetland."
48.3	Applicant must perform a wetland delineation regardless of whether it is waters of the U.S. or state. This would generally require the applicant to hire a biological consultant to perform the wetland delineation, which imposes undue expenses on the applicant. Proposed Procedures reference: - Pg 3, line 105-107	A wetland area delineation that is conducted to satisfy federal application materials may submitted to satisfy state application requirements. If the wetland area is outside of federal jurisdiction, then a delineation would be required using standard Corps delineation procedures. These delineation requirements reflect current practice.

51. Response to Comments Submitted on Previous Drafts of the Proposed Procedures

The following comments are from a letter that was submitted on previous versions of the Procedures for Discharges of Dredged or Fill Material to Waters of the State. These comments were references in a letter which was submitted on August 17, 2016. Responses to comments are drafted to reflect language included in the revised Procedures.

Comment Number	Representative Comment	Response
49.1	Statement of Problem: The exclusion of certified Prior Converted Croplands (PCCs) from regulation under the Wetland Area Protection and Dredge and Fill Permitting Policy (WRAPP), puts at risk untold thousands of acres of wetlands in California that satisfy the wetland definition and criteria elaborated within the WRAPP. The exclusion of PCCs in the WRAPP creates an internal contradiction and inconsistency over the proposed state definition of wetlands because the PCC definition used by NRCS relies on a narrower definition of wetlands than used in the WRAPP. PCCs are defined for the purposes of the NRCS certification as requiring actual "ponding" or surface inundation. The WRAPP definition, instead, recognizes that wetlands are also defined by having soils "saturated within the upper substrate" without requiring surface inundation or "ponding". This latter approach is consistent with the Army Corps delineation manual as the State Board required of the WRAPP definition. If two different definitions of wetlands are used, one for PCCs that are exempted and one for all other wetlands, it would create a definitional inconsistency that undermines the WRAPP's attempt to codify a clear definition of wetlands. Potential Resolutions: **1)** Do not exempt PCC wetlands from the definition of wetlands - The State Water Resources Control Board (SWRCB) could adopt a policy similar to that of Washington State. The St ate of Washington Department	Prior converted croplands are not excluded from the wetland definition or from the jurisdictional framework for determining wetland waters of the state; however, in alignment with federal procedures, PCCs are excluded from the application submittal and review procedures. As explained in Section IV.D, PCCs are excluded from the application procedures, but this exclusion does not affect the Water Board's authority to issue or waive waste discharge requirements or take other actions to the extent authorized under the Water Code. Language provided in the Procedures mirrors federal language for the definition of agricultural use and provisions that allow for the recapture of prior converted croplands if they are abandoned or converted to non-agricultural use. While it is understood that there is concern over the regulation of prior converted croplands, revising the Procedures to differ from Corps and NRCS practices is outside of the scope of the current project.

51. Response to Comments Submitted on Previous Drafts of the Proposed Procedures

The following comments are from a letter that was submitted on previous versions of the Procedures for Discharges of Dredged or Fill Material to Waters of the State. These comments were references in a letter which was submitted on August 17, 2016. Responses to comments are drafted to reflect language included in the revised Procedures.

Comment Number	Representative Comment	Response
	of Ecology (DOE) has never recognized Prior Converted Croplands as a regulatory definition: The state Water Pollution Control Act (90.48 RCW) does not distinguish prior converted croplands from other wetlands. Rather, all "waters of the state" are covered by the law, and PCCs that are still wetlands are considered waters of the state.' The State does recognize that, " ... many PCC wetlands have been significantly degraded and will regulate them according to the functions they provide."	
49.2	2) Exempt PCC wetlands from regulation so long as the lands are kept in agricultural production: If the SWRCB includes PCC wetlands within the definition of wetlands the SWRCB might retain the exemption for PCCs so long as the lands are kept in agricultural production. [PLEASE NOTE- this approach has the potential of allowing degradation of wetlands functions and values.] If this course is taken, the following "recapture" language should be added to the policy language Certified PCCs wetlands are not subject to procedures as long as historic agricultural operations are continued and do not result in reductions or impairments in the reach, flow, and circulation of waters of the State.	The Procedures state that for the PCC exclusion will no longer apply if the PCC changes to non-agricultural use or is abandoned. See response to comment # 49.1.
49.3	The potential loophole afforded by non-regulation of PCC	As explained in Section IV.D, PCCs are excluded from the application

51. Response to Comments Submitted on Previous Drafts of the Proposed Procedures

The following comments are from a letter that was submitted on previous versions of the Procedures for Discharges of Dredged or Fill Material to Waters of the State. These comments were references in a letter which was submitted on August 17, 2016. Responses to comments are drafted to reflect language included in the revised Procedures.

Comment Number	Representative Comment	Response
	wetlands must be avoided in the WRAPP. We are aware of situations where landowners/developers have attempted to utilize PCC determinations to preclude Clean Water Act regulation of wetlands	procedures, but this exclusion does not affect the Water Board's authority to issue or waive waste discharge requirements or take other actions to the extent authorized under the Water Code.
49.4	The issue of PCCs, is that according to the current language of the WRAPP, these lands are not even considered jurisdictional, which is another matter entirely.	The Procedures have been revised since this comment letter was submitted. Prior converted croplands are not excluded from the wetland definition or from the jurisdictional framework for determining wetland waters of the state. A NRCS wetland determination is not binding for determining Water Board jurisdiction or Clean Water Act jurisdiction.
49.5	The WRAPP must not exempt conversion of PCC wetlands to non-agricultural uses and as stated above, must not exempt activities that would reduce or impair the reach, flow of circulation of waters of the State. The intent is not to regulate historic and ongoing farming operations, but to regulate any change in use that will result in the conversion of wetland areas to uplands. Changes in use could encompass proposals to remove the agricultural wetlands from farming for the purposes of development, but could also include changes in farming to crops that require drier soils. The latter is especially of concern, as we are aware of several instances in the San Francisco Bay Area where landowners brought in fill or deep ripped soils (e.g. Borden Ranch) under the guise of "normal farming operations" on lands where we were aware of future development proposals. The WRAPP should not include loopholes that would allow the unregulated conversion of wetlands to	The Procedures state that for the PCC exclusion will no longer apply if the PCC changes to non-agricultural use or is abandoned.

51. Response to Comments Submitted on Previous Drafts of the Proposed Procedures

The following comments are from a letter that was submitted on previous versions of the Procedures for Discharges of Dredged or Fill Material to Waters of the State. These comments were references in a letter which was submitted on August 17, 2016. Responses to comments are drafted to reflect language included in the revised Procedures.

Comment Number	Representative Comment	Response
	uplands.	
49.6	The SWRCB must not merely adopt NRCS's definition of PCC wetlands, as that definition is vulnerable to changes in definition or conditions with each Farm Bill reauthorization.	Comment noted. The Procedures include a wetland definition proposed for use in all programs administered by the Water Boards. Any subsequent change to the definition of PCC wetland would affect only which areas would be excluded from application procedures.
49.7	SWRCB must ensure its policies are well defined and protective of waters of the state. SRWCB must ensure its policies will not inadvertently be altered by changes adopted by an outside agency- especially one that does not have protection of waters of the state as its primary charge. To do anything less would be abrogating the SWRCB's responsibilities under the Porter Cologne Act.	The Procedures have been revised since this comment letter was submitted. See response to comment 49.6.
49.8	No inventory of PCC determinations is available, thus it is impossible to determine how many thousands of acres of wetlands may be at risk. Crumpton et al observed: Lack of public information on cropped wetlands: Because USDA does not make the data public, very little information about cropped wetlands is available. USDA, the Corps, EPA and the Interior Department coordinated wetland protection under a 1994 interagency agreement. USDA confidentiality, however, was one reason that agreement terminated. It is essential that these data be made public in order to assess the policy implications of various alternatives for dealing with cropped wetlands.	Although PCCs are exempt from application requirements under the Procedures, PCCs may be regulated under other Water Board authorities.

51. Response to Comments Submitted on Previous Drafts of the Proposed Procedures

The following comments are from a letter that was submitted on previous versions of the Procedures for Discharges of Dredged or Fill Material to Waters of the State. These comments were references in a letter which was submitted on August 17, 2016. Responses to comments are drafted to reflect language included in the revised Procedures.

Comment Number	Representative Comment	Response
	Without such information, it is impossible for the SWRCB to determine the environmental impacts of exempting PCC wetlands from regulation.	
49.9	Failure to recognize prior converted croplands as wetlands would be an abrogation of the SWRCB's responsibilities to "preserve, enhance, and restore the quality of California's aquatic resources, including wetlands, for present and future generations."	The Procedures have been revised since this comment letter was submitted. See response to comment 49.6.