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September 14, 2017

Ms. Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24th Floor  
Sacramento, CA 95814

Dear Ms. Townsend:

The Orange County Transportation Authority (OCTA) appreciates the opportunity to again engage with the State Water Resources Control Board (SWRCB) on the proposed final draft of the State Wetland Definition and Procedures for Discharges of Dredged or Fill Materials to Waters of the State, commonly called the Wetlands Policy. Specifically, OCTA recognizes that SWRCB provided stakeholders with detailed feedback to specific concerns raised in the previous comment periods and is again accepting public comment on this issue. This process has allowed stakeholders like OCTA to refine their questions and concerns about the proposed definition of "wetlands" to ensure it is the best policy possible. OCTA provided a detailed comment letter dated August 16, 2016 that outlined concerns of the proposed changes. While OCTA appreciates the SWRCB affording stakeholders input early in the process, we believe SWRCB needs to carefully vet our earlier input and the implications to agencies like OCTA that have committed to providing voter-approved infrastructure projects and have pioneered an advanced mitigation program.

OCTA remains concerned about the redefinition of wetlands, specifically that the additional environmental compliance processes will impact the delivery of transportation projects via voter-approved funding mechanisms. SWRCB's response to OCTA's previous comments assume that the proposed procedures will not have a significant impact on the costs associated with compliance efforts. In Representative Comment 43.17, SWRCB indicates that the procedures "will only incrementally add to" the compliance costs. Similarly, Representative Comment 35.4 states that re-classifying one aquatic type to another "is not likely to have a significant impact on the cost of the advance mitigation planning effort." While OCTA appreciates the extensive professional experience of SWRCB, this response did not make an attempt to quantify or estimate the additional costs associated with the procedures.

Unfortunately, resources for transportation projects have left many transportation agencies stretched far too thin, and even with the state's passage of additional

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transportation funds in Senate Bill 1 (Chapter 5, Statutes of 2017), costs that may appear to be incremental or insignificant can have a serious impact on how OCTA will spend valuable time and resources on meeting the transportation needs of our communities. As mentioned in our original comment letter, Orange County voters approved Measure M2 (M2) in 2006, a sales tax measure to fund multi-modal transportation projects. Since then, our economy experienced a historic economic downturn, while also witnessing increased sales online and of non-taxable goods. Each of these factors has led to decreased funding projections for local sales tax measures. The fiscal constraints that OCTA and other transportation agencies face must be considered when finalizing the proposed procedures.

OCTA was disappointed that the response from SWRCB did not address the ideas of an exemption or a grandfather clause for voter-approved projects. OCTA would like to reiterate its request that voter-approved sales tax-funded projects with clear expiration dates should be exempt from any new wetlands definition, specifically if the projects take pre-emptive steps to protect the environment. M2 includes two innovative environmental programs, the Environmental Mitigation Program and the Environmental Cleanup Program, that each have anticipated revenues of approximately \$300 million over the life of the measure. This type of proactive work to protect the environment should not go unrewarded with additional compliance burdens.

If an exemption is unworkable, OCTA respectfully requests that SWRCB include a grandfather clause for voter-approved projects that have already been passed. The voters of Orange County overwhelmingly supported M2 under the assumption that OCTA could deliver projects based on a certain sales tax revenue. Requiring OCTA to commit a portion of revenues on compliance costs that did not exist at the time M2 was voted on contradicts the expectations of the voters by diminishing the amount of money available for transportation projects under M2. A grandfather clause has the unique advantage of allowing OCTA, SWRCB, and the voters to revisit the issue when M2 expires, allowing OCTA to work with local stakeholders and communities to determine if these procedures are something desired by the people of Orange County.

OCTA would like to thank SWRCB for the feedback on previous comments and for the opportunity to once again comment on how the proposed procedures can create a streamlined, comprehensive means of protecting state wetlands. On behalf of Orange County, OCTA appreciates your hard work and looks forward to working together on this issue.

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If you have any questions about the concerns addressed in this letter, please contact Kristin Essner, Manager of State and Federal Affairs, at (714) 560-5754 or at [kessner@octa.net](mailto:kessner@octa.net).

Sincerely,

A handwritten signature in blue ink, appearing to be 'DJ', with a long horizontal stroke extending to the right.

Darrell Johnson  
Chief Executive Officer

DJ:ds