



September 15, 2017

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

**Re: State Wetland Definition and Procedures for Discharges of Dredged or Fill Materials into Waters of the State of California**

Dear Chair Marcus and Board Members:

The Environmental Defense Center (“EDC”) would like to thank you for the opportunity to submit comments regarding the State Water Resources Control Board (“SWB”) State Wetland Definition and Procedures for Discharges of Dredged or Fill Materials into Waters of the State of California (“draft Wetlands Policy”). EDC is a non-profit public interest law firm that protects and enhances the Central California Coast environment through education, advocacy, science, and legal action.

Wetlands are critical to the State of California and provide many social, economic, and environmental benefits including water supplies, water quality, habitat for fisheries and wildlife, recreation, aesthetics, flood protection, and carbon sequestration. Although the extent of wetlands has been reduced by 90% in our state, California wetlands nonetheless provide habitat for 55% of endangered animal species.

We support the State’s efforts to develop a Wetlands Policy. However, we are concerned that the draft Wetlands Policy does not contain a sufficient definition of a wetland. Many areas considered wetlands by local, state, and federal agencies would not be considered wetlands under the proposed definition and therefore would not be protected.

State agencies such as the California Coastal Commission (“CCC”) and California Department of Fish and Wildlife (“CDFW”) provide a one-parameter wetland definition.<sup>1</sup> This

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<sup>1</sup> Coastal Act Section 30121 defines wetlands as “lands within the coastal zone which may be covered periodically or permanently with shallow water and includes saltwater marshes,

definition requires the presence of only one of the three wetland parameters (i.e. hydrology, vegetation, or soils) for an area to qualify as a wetland. The proposed wetland definition, on the other hand, is a modified three-parameter definition often requiring the presence of wetland hydrology, vegetation, *and* soils for an area to qualify as a wetland. As such, the draft Wetlands Policy defeats one of the purposes of the policy, which is to create one consistent standard for the State.

The draft Wetlands Policy's wetland definition also falls short of its goal to protect all wetlands in the State. Based on an evaluation of wetland projects on the central California coast, by using a modified three-parameter definition, the policy and regulations will apply to only approximately half the acreage of wetlands that would be captured under the one-parameter definition. Moreover, the proposed modified three-parameter definition is inconsistent with and less protective of wetlands than the definitions used by CDFW, CCC, United States Fish and Wildlife Service ("USFWS") and Regional Water Quality Control Board Regions 2 and 4, and the Lahontan Regional Board.

Under the Porter Cologne Act, Waters of the State are defined broadly. To ensure consistency and reduce confusion amongst applicants and the public, it is imperative that the SWB provide a wetland policy that includes the broader wetland definition. Absent this, areas considered wetlands by USFWS, CDFW, CCC, counties such as Santa Barbara County, and some Regional Boards will not be protected by the SWB's draft Wetlands Policy and, as a result, California will continue to lose more wetlands to dredge and fill than it gains through mitigation and restoration.

As the SWB recognizes, wetlands provide tremendous uses and benefits to the State of California. In order to preserve these invaluable resources, the definition of a wetland must be stable, accurate, and consistent with other local, state, and USFWS wetland definitions. In

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freshwater marshes, open or closed brackish marshes, swamps, mudflats, and fens." See *Statewide Interpretive Guideline for Wetlands and Other Wet Environmentally Sensitive Habitat Area* (Adopted 2-4-81).] See also *Dunn v. County of Santa Barbara* (2006) 135 Cal.App.4<sup>th</sup> 1281, 1293, citing the *Interpretive Guideline*: "'For purposes of this classification, wetlands must have *one or more* of the following three attributes: (1) at least periodically, the land supports predominantly hydrophytes<sup>3</sup>; (2) the substrate<sup>4</sup> is predominantly undrained hydric soil; and (3) the substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year.' (Interpretive Guideline, p. 79, appen. D, italics added.)" While not codified in regulations, as a policy, CDFW relies on the USFWS and also uses a one-parameter wetland definition: "The USFWS definition utilizes hydric soils<sup>2</sup>, saturation or inundation, and vegetative criteria, and requires the presence of at least one of these criteria (rather than all three) in order to classify an area as a wetland. The USFWS definition has been employed in project review nationwide for over 8 years. It has been well tested and proven to be adequate. Further, because it requires the application of the same array of biological and physical parameters, it exhibits a degree of consistency and uniformity which is advantageous to biological and developmental planners alike."

<http://www.fgc.ca.gov/policy/p4misc.aspx#DEPARTMENT>

September 15, 2017

Jeanine Townsend re Wetland Area Protection Policy and Dredge Fill Regulations

Page 3

accordance with the goal of preserving the crucial role wetlands play in the State of California, we request that the SWB evaluate an alternative wetland policy which includes the broader one-parameter wetland definition – the definition used by the vast majority of other relevant agencies.

Thank you for your consideration of these comments.

Sincerely,



Linda Krop,  
Chief Counsel



Brian Trautwein,  
Environmental Analyst / Watershed Program Coordinator