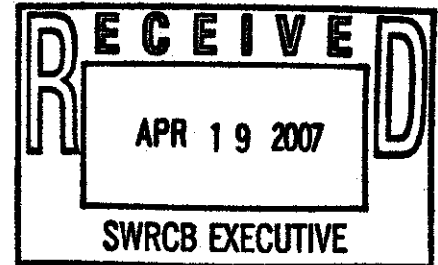


**Bay Planning Coalition
California Association of REALTORS®
California Building Industry Association
California Business Properties Association
California Chamber of Commerce
California Construction and Industrial Materials Association
California Farm Bureau Federation
California Forestry Association
California State Association of Counties
Consulting Engineers and Land Surveyors of California
Northern California Water Association
Regional Council of Rural Counties
Resource Landowners Coalition
Wine Institute**

April 19, 2007

State Water Resources Control Board
ATTN: Song Her
Executive Office
P.O. Box 100
Sacramento, CA 95812-0100



RE: Preliminary Comments on Proposed Wetland and Riparian Area
Protection Plan

Dear Boardmembers:

The above-listed organizations appreciate the opportunity to comment on the Wetland and Riparian Area Protection Policy Scoping Document. Our organizations recognize the need to protect the state's wetlands while at the same time respecting the rights of landowners.

After reviewing the proposed Wetland and Riparian Area Protection Plan, we are concerned that the majority of the alternatives discussed in the scoping document would expand the State Water Resources Control Board regulatory authority into areas never regulated by the U.S. Army Corps of Engineers. We do not challenge the Board's efforts to address any possible "gaps" in wetlands protections resulting from the 2001 U.S. Supreme Court decision in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* (SWANCC) and subsequent decisions, and recognize that the Board has authority under California's Water Code to regulate the very small amount of wetlands and riparian acreage that has fallen out of federal jurisdiction.

The alternatives presented in "Public Scoping Meeting for Proposed Wetlands and Riparian Area Protection Policy" fail to mention the 2004 Board policy decision on this issue. Additionally, Alternative 3 and Alternative 4 appear to be advancing a policy that includes measures that are beyond the statutory authority of the Board.

If the ongoing scoping process is to result in a sound, reasonable and implementable policy, the alternatives identified in the scoping document must be altered. Some of the issues in question include:

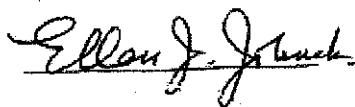
- All alternatives fail to reflect the policy guidance provided by General WDR (2004-0004-DWQ) for wetlands adopted in 2004 and the Board's subsequent guidance to the RWQCBs on this issue. While the General WDR was to apply only to small wetlands areas, the Board voted to regulate only those watersheds that had fallen out of federal jurisdiction. A broader regulatory scope recommended by staff was not adopted. The issue of regulating broadly defined "riparian areas" was specifically removed from the order. Normal farming practices were also specially exempted. After this order was adopted, the Board issued guidance to the RWQCBs to issue WDRs for all wetlands that had fallen out of federal jurisdiction, within the regulatory parameters of the General WDR. This included very strict mitigation measures for all impacts. In order to provide the public with a comprehensive understanding of the current regulatory process protecting California's wetland resources, we believe the scoping document in general, and Alternative 1 "No Action" specifically, needs to include a detailed description of the WDR and the guidance provided by the SWRCB to the RWQCBs.
- All alternatives fail to recognize the 2004 Workplan: Filling the Gaps in Wetlands Protections recommendation for federal definition of "wetlands." The definition of "wetlands" is central to the discussion of all the alternatives in the scoping document. The scoping document identifies specific sections of the Workplan used to justify the need to focus on such issues as changes in beneficial uses. Unfortunately, the scoping document fails to identify the fact that the Workplan also recommended that California should adopt the federal definition of "wetlands" (see page 4 of the Workplan).
- Various alternatives exceed the scope of federal jurisdiction lost due to 2001 U.S. Supreme Court decision in Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers (SWANCC). This overreaching is present in almost all the proposed alternatives even though the scoping document states that these areas are already being protected by the State and Regional Water Boards via basin plans, and other plans and policies.

- Various alternatives exceed the Board's regulatory authority. Two of the alternatives – Alternatives Three and Four - erroneously assume that the Board has authority to, for example, propose beneficial uses of flood attenuation and water quality enhancement that involve uses of land rather than uses of the water itself. Furthermore, two of the alternatives contemplate regulation of activities that do not involve direct impacts of waters of the state and, thus fall outside the enforcement authority of the Board.
- The scoping document fails to acknowledge the regulatory authority of the Department of Fish and Game over riparian areas. The scoping document discusses alternatives that would require the SWRCB to regulate upland riparian areas, never regulated by the US Army Corp. While the scoping document discusses various wetlands and riparian definitions used by the Resources Agency and Department of Fish and Game (DFG), it omits the fact that DFG regulates these areas through the 1600 streambed alteration program. Moreover, the issue of regulating upland riparian areas was specifically rejected by the Board in 2004, which is not mentioned in the scoping document. We believe it is essential that such information be included in the scoping document to provide a complete and accurate picture. As it relates to this specific regulatory policy, our organizations believe that SWRCB regulation over upland riparian areas would be duplicative and should once again be rejected.

We strongly suggest that you reject Alternative 3 and Alternative 4 since they include provisions that appear to be outside of the SWRCB regulatory authority. Instead, we believe the scope of the policy should be limited to Alternative 1 or Alternative 2 – the “no action” alternative or the alternative that reflects the post-SWANCC federal regulatory scheme – that would acknowledge the policies and regulatory mechanisms already identified in the *2004 Workplan* and the General WDR order for wetlands.

We appreciate the opportunity to provide the Board with our comments and concerns regarding the various alternatives included in the Wetland and Riparian Area Protection Policy Scoping Document.

Sincerely,



Ellen Johnck
Bay Planning Coalition

Elizabeth Gavric

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California Association of REALTORS®

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Rex S. Hime

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Valerie Nera

Valerie Nera
California Chamber of Commerce

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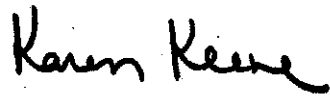
Stephen L. Bledsoe
California Construction and Industrial Materials Association

Chris Scheuring

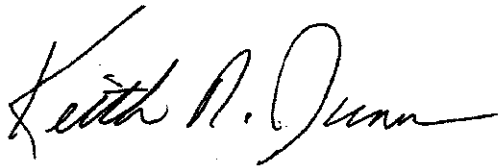
Chris Scheuring
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California Forestry Association



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California State Association of Counties



Keith Dunn
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Kathy Mannion
Regional Council of Rural Counties



Jennifer West
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