



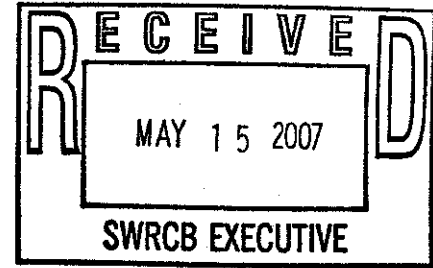
ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

100 NORTH CANYONS PARKWAY, LIVERMORE, CA 94551-9486

PHONE (925) 454-5000

May 15, 2007

Ms. Song Her, Clerk to the Board
State Water Resources Control Board
Executive Office
1001 I Street, 24th Floor
Sacramento, CA 95814



Subject: Comment Letter – Wetland and Riparian Area Protection Policy Scoping Document

Dear Ms. Her:

Zone 7 Water Agency (Zone 7) appreciates the opportunity to comment on the State Water Resources Control Board's (State Board's) Wetland and Riparian Area Protection Policy Scoping Document. Zone 7 provides drinking water to about 200,000 customers and untreated water to 74 agricultural customers for irrigating 3500 acres (primarily viticulture) within a service area of approximately 425 square miles in eastern Alameda County. In addition to providing water supply, Zone 7 provides flood protection services.

Zone 7 generally supports and encourages the development of a consistent statewide policy to provide water quality and beneficial use protection to wetland and riparian areas no longer regulated under the federal Clean Water Act (CWA) as a result of recent U.S. Supreme Court decisions, such as *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* 531 U.S. 159.

Our understanding is that the State Board is considering four alternative approaches to developing a wetland and riparian area protection policy. The four alternatives range from a no action alternative to the development of a new state policy to regulate a variety of discharges and activities beyond dredge and fill that impact wetlands and riparian areas. Regardless of which of the four alternatives the State Board pursues, the State Board should coordinate with ongoing regional efforts in developing similar policies (such as the North Coast and San Francisco Bay Regional Water Boards' (Regions 1 and 2) ongoing effort to develop a Stream and Wetland Systems Protection Policy) to avoid redundancy and ensure consistency. The State Board should also be aware of localized multi-agency efforts such as the ongoing development of a Bay-Delta Conservation Plan for portions of the San Francisco Bay. In addition, the State Board should coordinate the development of this policy with the U.S. Army Corps of Engineers, California Department of Fish and Game, and other regulatory/resource agencies to avoid jurisdictional conflicts and to ensure consistency with implementation of this policy with that of the USACE's 401 and 404 Programs and DFG's 1600 Streambed Alteration Program.

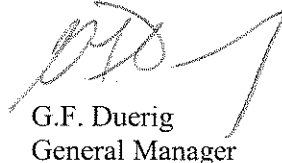
The State Board requested that comments be "limited to identifying the range of actions, alternatives, mitigation measures, and potential significant environmental effects to be analyzed in-depth in the development of the CEQA projects." Because of the lack of specificity in the Wetland and Riparian Area Protection Policy Scoping Document, it is difficult to provide meaningful comments on the appropriate scope of CEQA review and environmental impacts of the project. Some potential adverse environmental impacts might result from this proposed policy and should be evaluated by the State Board including, but are not limited to the following:

- Conversion of man-made channels to natural channels would be expensive, would cause earth displacement, may alter hydrological patterns, and would temporarily disrupt plant and animal life.
- Policy could result in geologic problems and hazards to existing structures resulting from landslides, subsidence, and soil expansion due to increased surface water inundation and storage.
- Protection of fish and wildlife habitat may result in alteration in land use.
- Policy may limit a flood protection agency's ability to provide appropriate maintenance, such as vegetation removal in channels that are impacted by riparian vegetation. If prohibitions are imposed on certain maintenance activities, channel capacity could be reduced; thereby impacting hydrology and beneficial uses.

These potential impacts among others have already been identified in BASMAA's comments made to the State Board in their April 19, 2007 on this proposed policy (see attached). Because the scope of this proposed policy appears similar to that of Region 1 and 2's Stream and Wetland Systems Protection Policy, CEQA scoping comments and concerns in the BASMAA's March 9, 2007 comment letter and the BASMAA Operational Permits Committee's memo to the SF Bay Regional Water Board are applicable. Please note that Zone 7 assisted with the development of the BASMAA Operational Permits Committee memo. BASMAA has already submitted both of these items in their April 19, 2007 comment letter on this proposed policy. We anticipate the next report will provide the necessary details and specificity for this proposed policy.

Again, we appreciate the opportunity to comment on the proposed Wetland and Riparian Area Protection Policy and look forward to working collaboratively with the State Board on this effort. Please contact me at 925-454-5000 or Mary Lim at 925-454-5036 if you have any questions regarding our comments.

Sincerely,



G.F. Duerig
General Manager

Attachment: BASMAA comments – CEQA Scoping Comments – Development of a Proposed Wetland and Riparian Area Protection Policy

cc: Bruce Wolfe, Executive Officer, San Francisco Bay Regional Water Board
Shin-Roei Lee, Chief, South Bay Watershed Management Division,
San Francisco Bay Regional Water Board
Ben Livsey, Staff – Stream and Wetlands System Protection Policy,
San Francisco Bay Regional Water Board
Vince Wong, Karla Nemeth, Joe Seto, Carol Mahoney, Mary Lim



B A S M A A

Alameda Countywide
Clean Water Program

Contra Costa
Clean Water Program

Fairfield-Suisun
Urban Runoff
Management Program

Marin County
Stormwater Pollution
Prevention Program

San Mateo Countywide
Stormwater Pollution
Prevention Program

Santa Clara Valley
Urban Runoff Pollution
Prevention Program

Vallejo
Sanitation and Flood
Control District

April 19, 2007

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

Subject: CEQA Scoping Comments - Development of a proposed Wetland and Riparian Area Protection Policy

Dear Ms. Her:

Thank you for this opportunity to provide comments on the development of a proposed statewide Wetland and Riparian Area Protection Policy. BASMAA is a consortium of eight municipal stormwater programs in the San Francisco Bay Area representing 90 NPDES permitted agencies, including 79 cities and 5 counties. BASMAA is focused on regional challenges and opportunities to improving the quality of urban runoff that flows to our local creeks, San Francisco Bay and Delta, and the Ocean.

BASMAA generally supports and encourages the development of consistent statewide policy to clarify potential gaps in water quality protection regulatory guidance that follows from recent U.S Supreme Court decisions and other regulatory decisions with respect to protection of waters and wetlands in California. *For this reason, BASMAA supports State Water Board Alternative 3 and could potentially be supportive of the more expansive approach suggested in Alternative 4 under certain circumstances* (as described below). However, regardless of which of these Alternatives is pursued, any such statewide policy must be carefully coordinated with Regional Water Board efforts and must take full account of environmental and economic impacts of such guidance.

BASMAA representatives have been tracking the development of a proposed amendment to the Regional Water Quality Control Plan of the San Francisco Bay Region to protect stream and wetland systems (i.e., the "Stream and Wetlands System Protection Policy"). BASMAA has been following this development of the proposed policy by the North Coast and San Francisco Bay Regional Water Boards (Regions 1 and 2) by participating in May 2006 Public Workshops and CEQA Scoping Meetings and submitting written comments on May 31, 2006; and participating in a February 6, 2007 Public Workshop and submitting written comments on March 9, 2007 (see attachments).

CEQA Scoping and Analysis

The policy's Scoping Document (March 2007) indicates that the State Water Board is considering four alternative approaches to the proposed Wetland and Riparian Area Protection Policy. Based on the Scoping Document (March 2007), it appears that the scope of Alternative 4: Develop a New State Policy to regulate

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BASMAA comments – CEQA Scoping Comments - Development of a proposed Wetland and Riparian Area Protection Policy

a Variety of Discharges and Activities That Impact Wetlands and Riparian Areas – could be similar in some ways to the scope of the Region 1 and 2 proposed Stream and Wetlands System Protection Policy. Thus, if the State Water Board decides to go beyond Alternative 3 and pursue the more expansive approach implied in Alternative 4, the latter is likely to be based in large part on the work of Regions 1 and 2.

We recognize that the State Water Board has requested that comments on the proposed statewide Wetland and Riparian Area Protection Policy “be limited to identifying the range of actions, alternatives, mitigation measures, and potential significant environmental effects to be analyzed in-depth in the development of these CEQA projects.” Consequently, having developed and submitted comments on the proposed regional Stream and Wetlands System Protection Policy that may be similar to our concerns with respect to the anticipated State Water Board policy, we request that the attached March 9, 2007 letter, including the BASMAA Operational Permits Committee memo be included in the record in this matter.

The lack of specificity of the project description in the policy’s brief Informational Document (Scoping Document – March 2007) makes it very difficult to provide meaningful comments on the appropriate scope of CEQA review and the environmental impacts of the project – obviously not enough to qualify as meeting the requirements for CEQA scoping analysis and comment. Therefore, we expect that the next report will provide the necessary details and specificity of the project. Examples of adverse environmental impacts that might result from the policy and that should be carefully examined in the staff process include:

- Restoring / expanding floodplains and wetlands will increase surface water storage and could exacerbate an existing public health hazard (i.e., West Nile Virus).
- Protection of fish & wildlife habitat may result in conversion of agricultural land – potential alteration in land use.
- Policy may result in reduced road maintenance (in order to reduce sediment discharge) and/or due to already limited funding for road maintenance projects, which may in turn result in changed traffic patterns and reduced public safety.
- Policy could conflict with general plan or zoning, and impact local ordinances and planning efforts. It could have significant land use consequences resulting in impacts to population and housing construction and availability.
- Conversion of man-made channels to natural channels would be expensive, would cause earth displacement, may alter hydrologic patterns, would temporarily disrupt plant and animal life, would create noise and could temporarily impact traffic circulation/patterns.
- Increased maintenance activities relating to pollution control devices (i.e., catch basin inserts, etc.) would cause increased maintenance vehicle traffic, noise and increased air emissions.
- Policy could result in the displacement of existing housing, especially affordable housing located in or adjacent to protected areas (e.g., flood plains, riparian areas, wetlands, etc...).

BASMAA comments – CEQA Scoping Comments - Development of a proposed Wetland and Riparian Area Protection Policy

- Policy could conflict with adopted policies and projects designed to support alternative transportation (e.g., regional pedestrian/bike trails through riparian areas and wetlands)
- Policy could result in geologic problems and hazards to existing structures resulting from landslides, subsidence and soil expansion due to increase surface water inundation and storage.

State and Regional Water Board Coordination

Water Boards have noted the following regarding the following proposed policies:

- **Stream and Wetlands System Protection Policy** – Regional Water Boards 1 and 2 (with the expressed purpose to serve as a model for other Regional Water Boards as well as the State Water Board; and to develop statewide definitions for function-based beneficial uses of waters of the state, including water quality enhancement, flood peak attenuation/flood water storage, and wetland habitat)
- **Wetland and Riparian Area Protection Policy** – State Water Board (with Alternative 4, if it is pursued in favor of Alternative 3 or one of the other Alternatives, likely to be based in large part on the work behind the proposed Regions 1 and 2 Stream and Wetlands System Protection Policy)

The concurrent development of the proposed policies raises a major decision for the State Water Board that was recognized in the first workshop on the proposed Wetland and Riparian Area Protection Policy on April 9, 2007 – how should these two potentially overlapping Water Board efforts be coordinated to avoid redundancy or working at cross purposes? We believe the following are quite instructive and have significant direct bearing on the answer:

Water Boards’ Strategic Plan update – The timing of the State Water Board’s decision on the scope of the subject policy coincides with the Water Boards’ Strategic Plan update, currently underway. At the State Water Board Strategic Planning Stakeholder Summit on March 12-13, there was general consensus with the following guiding principles on the question of statewide policy and regional variation adopted by the Water Board’s Water Quality Coordinating Committee in October 2006:

- On questions of law and overarching policy the State Board should provide guidance and build a basic policy framework from which the regions can appropriately tailor action.
- Water Boards are committed to developing procedures and policies to minimize inappropriate inconsistency.

San Francisco Bay Regional Water Board’s effort – This Regional Water Board’s effort to develop a stream and wetland protection policy started in July 1999 – almost 8 years ago – with work on just the stream protection portion of a policy. We believe the Regional Board’s initial focus on stream protection was well advised and that the length of time this effort has

BASMAA comments – CEQA Scoping Comments - Development of a proposed Wetland and Riparian Area Protection Policy

taken is as much a function of its very large and expanded scope and, hence, increasingly complex and controversial nature, as it is any other factor.

BASMAA recommendation

Given the above, and recognizing that the funding for continuing the Regions 1 and 2 effort is limited, BASMAA recommends:

- *In considering which alternative approach to follow, the State Water Board should carefully consider BASMAA's comments in the attached March 9, 2007 letter regarding Policy Need, Scope, and Function (pages 1-2)*
- *If the State Water Board decides to follow the approach in Alternative 3 or, especially if it decides to pursue, Alternative 4, that the State Water Board:*
 - *Assume development of the statewide policy as soon as possible from Regions 1 and 2, or in the alternative, provide that the two sets of policies move forward in a carefully coordinated manner so that the State Water Board Policy provides minimum standards and guidance and the regional policies provide implementation/administration of the policies.*
 - *Use the work and institutional knowledge of Regions 1 and 2 as source material for the continued consideration and development of a proposed statewide policy.*

We look forward to the full participation by BASMAA and its member agencies in this ongoing effort directed to this anticipated policy. When the next report is issued and the specifics of the anticipated policy are provided, we will be able to comment more meaningfully on the environmental effects and the substance of the anticipated project. We will continue to work with you on these issues. Please contact me at (925) 313-2373 or Geoff Brosseau (510) 622-2326 if you have any questions regarding our comments.

Sincerely,



Donald P. Freitas, Chair

attachments: BASMAA comments – Development of a Stream and Wetlands System Protection Policy (March 9, 2007)
BASMAA Operational Permits Committee memo (March 9, 2007)

cc: Tam Doduc, Chair, State Water Board
Dorothy Rice, Executive Director, State Water Board
Val Connor, State Water Board
Glenda Marsh, State Water Board
Bruce Wolfe, Executive Officer, San Francisco Bay Regional Water Board

BASMAA comments – CEQA Scoping Comments - Development of a proposed Wetland and Riparian Area Protection Policy

Dyan Whyte, Acting Assistant Executive Officer; Section Leader – TMDL Section, Regional Water Board

Sandia Potter, Acting Assistant Executive Officer; Communications Coordinator, Regional Water Board

Tom Mumley, Chief – TMDL and Planning Division, Regional Water Board

Shin-Roei Lee, Chief – South Bay Watershed Management Division, Regional Water Board

Ben Livsey, Staff – Stream and Wetlands System Protection Policy, Regional Water Board

Ann Riley, Watershed and River Restoration Advisor, Regional Water Board

Wil Bruhns, Chief – North Bay Watershed Management Division, Regional Water Board

BASMAA Executive Board



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Clean Water Program

Fairfield-Suisun
Urban Runoff
Management Program

Marin County
Stormwater Pollution
Prevention Program

San Mateo Countywide
Stormwater Pollution
Prevention Program

Santa Clara Valley
Urban Runoff Pollution
Prevention Program

Vallejo
Sanitation and Flood
Control District

March 9, 2007

Bruce Wolfe, Executive Officer
Attn: Ben Livsey
San Francisco Bay Regional Water Quality Control Board
1515 Clay St., Ste. 1400
Oakland, CA 94612

**Subject: Development of a Stream and Wetlands System Protection Policy
Comments in Follow-up to February 6, 2007 Public Workshop**

Dear Mr. Wolfe:

Thank you for this opportunity to provide comments on the development of a proposed amendment to the Regional Water Quality Control Plan of the San Francisco Bay Region to protect stream and wetland systems (i.e., the “Stream and Wetlands System Protection Policy”). BASMAA representatives have been tracking the development of this anticipated amendment, including participating in the May 2006 Public Workshops and CEQA Scoping Meetings, submitting written comments on May 31, 2006, and participating in the February 6, 2007 Public Workshop. We request that this letter be included in the record in this matter.

For your convenience, our comments and recommendations are presented according to the basic attributes of the anticipated Policy as described in the Fact Sheet (May 2006), Summary of Project Scope (November 2006) and Workshop PowerPoint presentation (February 2007). In addition, we provide comments on the process necessary to develop a Basin Plan Amendment.

Draft Policy

Policy Need, Scope, and Function

The development, adoption, and the ongoing implementation of a new policy that would follow are significant undertakings, as evidenced by the almost 8 year and counting development time for this anticipated policy. Such efforts require significant and ongoing resources. Having a well-defined and doable scope focused on a clear need are critical to success of this complex proposed policy. To-date, the goals of the anticipated policy and what it will accomplish have been only briefly listed in the working documents referenced above. Further, neither the goals nor the needs, scope, nor function for such a policy have been clearly and comprehensively analyzed and articulated, nor – more importantly – scoped to be something that can be successfully implemented and sustained. We expect that the upcoming Staff Report will fill these significant gaps, including the appropriate regulatory and programmatic analysis and supporting documentation. In particular, as was raised by a number of commenters at the February 2007

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workshop, the Staff Report should present and answer questions as they relate to the anticipated policy, such as the following:

- What specific regulatory gaps exist amongst the programs administered by the Federal government, California Resources Agency agencies, and Cal-EPA Agencies? How would the proposed policy fill those gaps?
What are the related existing provisions of the Regional Water Board’s Basin Plan and how does the anticipated policy relate to those existing provisions?
- The scope of the anticipated amendment is very broad: Are all aspects of the proposed policy within the statutory authority of the Water Boards? What is the basis for the conclusion? What portions of the proposed policy are (also) within the statutory authority of other Federal and State agencies?
- What agency should be the lead agency? If the Regional Water Board is proposed as the lead, is the Regional Water Board fully qualified in terms of staffing and is sufficient funding available to fully implement the anticipated policy? What other Federal and State agencies should be involved and what are their specific roles and funding commitments?
- How does the anticipated policy relate to the dredge and fill policy being developed by the State Water Board? What are the gaps and overlaps with that policy? How are scopes of the two policies being coordinated? How will implementation of the two policies be coordinated?

Recommendation: Ensure the Staff Report raises and addresses these types of questions through a comprehensive analysis, including an explicit analysis of gaps and overlays with Water Boards’ and other agencies’ statutory and regulatory authorities, and policies.

Proposed New Water Quality Objectives

The Workshop PowerPoint presentation (February 2007) listed 6 proposed new water quality objectives but the Summary of Project Scope (November 2006) also provided at the February 2007 workshop only listed 5 water quality objectives. The additional water quality objective presented only in the PowerPoint was “Wetlands”.

Recommendation: If “Wetlands” is to be proposed as a new water quality objective, provide a narrative definition that complies with the requirements of the California Water Code (see below.)

Narrative water quality objectives typically present general descriptions of water quality¹ that must be attained through pollutant control measures and watershed management. However, the descriptions of the six possible new water quality objectives as set forth, including wetlands, do not describe limits or levels of water quality constituents or water quality characteristics. The

¹ “Water quality objectives” means the limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area. (Porter-Cologne Water Quality Control Act, California Water Code, Section 7, §13050(h) Definitions)

proposed water quality objectives go beyond the description of water quality that must be attained and instead describe management practices.

Recommendation: For any potential new water quality objectives, provide narrative definitions that comply with Water Code requirements. Consider using the narrative currently listed for each potential new water quality objective instead in the implementation plan section.

Implementation Plan

In the implementation plan, the described waste discharge prohibitions, performance criteria, permit conditions, and management measures, including alternative regulatory approaches must be carefully coordinated with the hydromodification management plan (HMP) requirements in the Phase I stormwater permits that have been adopted by the Board and those that are currently being amended. Furthermore, it is essential that all such prohibitions, performance criteria, permit conditions, management measures and alternatives be coordinated with the ongoing Municipal Regional Permit (MRP) process. It appears from the Summary of Project Scope that the need for that coordination is not being adequately recognized and addressed.

Recommendation: If prohibitions, performance criteria, permit conditions, management measures and alternative regulatory approaches are used, they should be consistent and carefully coordinated with MRP & HMP criteria and process.

Basin Plan Amendment development

CEQA Scoping and Analysis

Staff has indicated that they consider the required CEQA scoping and analysis to be complete based on the May 2006 workshops. In its May 31, 2006 comments, BASMAA raised significant concerns regarding the lack of specificity of the project description making it very difficult to provide meaningful comments on the appropriate scope of CEQA review and the environmental impacts of the project. The 3-page November 2006 Project Scope Summary provided slightly more details but obviously not enough to qualify as meeting the requirements for CEQA scoping analysis and comment. Therefore, we expect that the upcoming Staff Report will provide the necessary details and specificity of the project. Absent that document being prepared and the required details provided, it continues to be difficult to provide meaningful comments. However, as we noted in our May 31, 2006 letter, examples of adverse environmental impacts that might result from the policy and that should be carefully examined in the staff process include:

- Protection of fish & wildlife habitat may result in conversion of agricultural land – potential alteration in land use.
- Policy may result in reduced road maintenance (in order to reduce sediment discharge), which may in turn result in changed traffic patterns and reduced public safety.
- Policy could have impact on local ordinances and planning efforts. It could have significant land use consequences resulting in impacts to population and housing construction and availability.

- Conversion of man-made channels to natural channels would be expensive, would cause earth displacement, may alter hydrologic patterns, would temporarily disrupt plant and animal life, would create noise and could temporarily impact traffic circulation/patterns.
- Increased maintenance activities relating to pollution control devices (i.e., catch basin inserts, etc.) would cause increased maintenance vehicle traffic, noise and increased air emissions.

At the February 2007 Workshop, several participants (testimony of Cece Sellgren, Jamison Crosby, the representative of the City of Richmond, Laura Hoffmeister, etc.) provided comments demonstrating potential impacts as described. This is also set forth in the attached memo from BASMAA's Operational Permits Committee.

Recommendation: Provide the necessary project description in the upcoming Staff Report so as to enable participants to make meaningful comments on the scope of CEQA review and the environmental impacts of the proposed policy.

Financial Impacts

The Regional Water Board must take into account economic considerations in consideration of the proposed policy and adoption of water quality objectives.² At the February 2007 Workshop, staff's response to questions about the financial impacts of the anticipated policy to municipalities were vague and unrealistic.

As you may know, BASMAA member agencies that will be required to implement the proposed policy are under severe budget restrictions, which have in many cases caused these agencies to cut back on important municipal services. In addition, the court ruling in the Proposition 218 related case of *Howard Jarvis Taxpayers Association v. City of Salinas* and subsequent court cases have added further restrictions on the ability of local government to generate additional revenues for urban stormwater programs. Our member agencies are now close to stormwater related assessment caps and will be using remaining funds to comply with ongoing stormwater permit requirements and the proposed more stringent MRP provisions. Thus, it is particularly important for the Regional Water Board to recognize financial constraints on local agencies and to provide flexibility to ensure that water quality objectives and implementation measures are economically attainable and technically feasible.

Some have suggested that Proposition 84 and 1E funding will provide the financial measures to implement provisions of the proposed policy. While municipalities are increasingly pursuing these and other grant funds to finance certain stormwater related projects, the grants are limited and not available to all municipalities, they do not apply to operation and maintenance costs, and are not sustainable for long term implementation of the proposed policy.

Recommendation: Acknowledge and consider financial constraints on local agencies in the Staff Report and provide flexibility and alternatives in policy provisions to ensure that water quality objectives and implementation measures are economically attainable and technically feasible.

² See Water Code section 13240, 13241

BASMAA comments – Development of a Stream and Wetlands System Protection Policy

We look forward to the full participation by BASMAA and its member agencies in this ongoing effort directed to this anticipated policy and Basin Plan amendment. When the Staff Report is issued and the specifics of the anticipated Basin Plan amendment are provided, we will be able to comment more meaningfully on the environmental effects and the substance of the anticipated project. We will continue to work with you on these issues. Please contact me at (925) 313-2373 or Geoff Brosseau (510) 622-2326 if you have any questions regarding our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald P. Freitas". The signature is fluid and cursive, with a large loop at the end.

Donald P. Freitas, Chair

attachment: BASMAA Operational Permits Committee memo

cc: Dyan Whyte, Acting Assistant Executive Officer; Section Leader – TMDL Section, Regional Water Board
Sandia Potter, Acting Assistant Executive Officer; Communications Coordinator, Regional Water Board
Tom Mumley, Chief – TMDL and Planning Division, Regional Water Board
Shin-Roei Lee, Chief – South Bay Watershed Management Division, Regional Water Board
Ben Livsey, Staff – Stream and Wetlands System Protection Policy, Regional Water Board
Ann Riley, Watershed and River Restoration Advisor, Regional Water Board
Wil Bruhns, Chief – North Bay Watershed Management Division, Regional Water Board
BASMAA Executive Board

Date: March 9, 2007

To: BASMAA Executive Board

From: BASMAA Operational Permits Committee

Subject: Proposed Stream and Wetlands System Protection Policy

The BASMAA Operational Permits Committee (OPC) was formed during the late 1990's to identify collaborative solutions for streamlining the permitting process for flood control maintenance and capital projects. Recently the OPC committee has dedicated staffing and funding to the development of a Regional General Permit for routine maintenance activities that pose a minimal threat to water quality. The general permit would be consistent with the conditions of current California Department of Fish and Game Streambed Alteration Agreements and Memorandums of Understanding issued for these activities. The permit would require the implementation of appropriate Best Management Practices (BMPs) and implementation of a monitoring and reporting program designed to evaluate BMP effectiveness. The OPC agencies have diligently worked to produce a Best Management Practices (BMP) manual and to train maintenance staff on the implementation of these practices. The manual can be viewed at the Marin County stormwater web site (<http://www.mcstoppp.org/FloodControlBMPs.htm>).

The BASMAA OPC committee appreciates the opportunity to comment on the Regional Board's proposed stream and wetland protection policy and looks forward to working collaboratively with staff to improve permitting efficiency while insuring protection of wetland and riparian resources. As Cece Sellgren, Contra Costa County Public Works, stated during the public meeting on February 6, 2007, the flood control and public works crews are truly stewards of these resources with extensive experience managing creeks and wetlands for multiple benefits. .

Definitions

The proposed policy must define essential terms such as streams, engineered channels, wetlands, riparian vegetation, riparian buffer, functioning riparian corridor, etc. in order to provide context and to clarify how the proposed policy will address and protect streams and wetlands. These definitions should be consistent with existing terminology used by other State regulatory agencies such as the Department of Fish and Game (DFG). The Policy needs to clearly define stream systems elements (e.g. stream channel, intermittent stream, ephemeral stream, riparian vegetation, top of bank, riparian zone, etc.) to ensure consistency in implementation.

Baseline Conditions

The Regional Water Board needs to define how baseline conditions will be quantified or described for purposes of implementing these new policies. The proposed methodology should be feasible to implement in terms of both time and labor effort, and provide meaningful information that can be used in the assessment of potential impacts.

Performance Criteria

The proposed policy implementation plan may include performance criteria to be integrated into the Regional Water Board's existing 401 permitting program. As drafted, the Regional Board proposal states that the policy will insure the flexibility "to account for a wide range of watershed conditions (e.g. degree of urbanization, size of watershed, surrounding land uses, etc.)." The policy needs describe how staff will provide guidance to permit applicants and Regional Water Board staff on how to protect the water quality functions of stream and wetland systems, including the methodology to identify and assess the condition of wetlands, riparian areas, and stream channels. It is not clear whether the proposed policy will include the development of watershed assessments and plans for the regulated watersheds or exactly what type of technical assistance will be provided to assist local municipalities. How will the Regional Board plan to define successful implementation of the proposed policy? It would be helpful if staff could outline the deficiencies within the existing 401 permitting policy and how the proposed policy would address these regulatory gaps.

The Regional Water Board should coordinate the development of this proposed policy with local land use entities, in addition to flood control agencies staff and watershed managers, to determine whether the proposed policy is consistent and sustainable with existing plans and ordinances. These local entities would provide the Regional Water Board additional information on the distinctions between watersheds and provide guidance on implementing specific regional requirements.

Proposed Prohibitions

The Regional Water Board proposes to develop a "framework to avoid, minimize, and mitigate water quality impacts from activities that discharge to the stream and wetlands systems." The prohibitions seem to be leaning heavily toward avoidance, particularly for the maintenance of channels abutting roadways. This could be challenging for municipal public works as roadway safety issues such as shoulder and channel maintenance could conflict with the proposed prohibitions. It is recommended that mitigation not be required for activities in which the agencies are implementing best management practices such as those identified in the BASMAA OPC Stream Maintenance Manual to insure flood or roadway safety within designated areas. OPC staff would appreciate the opportunity to provide Board staff with specific examples and to coordinate additional field trips to illustrate these issues.

Permit Streamlining and Inter-agency Coordination

Flood control agencies face multiple challenges to maintaining operational facilities. Permitting can be problematic due to inconsistent standards and policies between the regulatory agencies and the lack of a parallel permitting process. The proposed policy appears to overlap with regulatory programs currently regulated by either DFG or the U.S. Army Corps of Engineers (USACE). Many USACE constructed channels now operated by local flood control agencies are subject to operation and maintenance standards that are inconsistent with the proposed Regional Water Board Policy. The OPC member agencies strive to implement practices that minimize impacts to water quality and riparian vegetation but there are instances where the channel maintenance requirements mandated by the USACE will be incompatible with the proposed policy. The proposed policy should acknowledge these channel types in order to avoid conflict with USACE mandated requirements. The OPC agencies can provide a list of such designated channels within the Bay area.

The proposed policy seems to overlap with the Department of Fish and Game's jurisdiction and protection of riparian zones. Given the staffing shortages at both the Federal and State levels, there is a need to encourage permit streamlining and to avoid redundancy. OPC recommends that the Regional Water Board coordinate the development of this proposed policy with DFG, USACE, U.S. Fish and Wildlife Service and NOAA fisheries to ensure the proposed policy, Basin Plan amendment, and implementation plan are consistent with the policies of these other regulatory agencies and do not result in a redundancy in effort. The BASMAA OPC recommends the re-establishment of a parallel permitting process to ensure consistent review with other permitting agencies as opposed to sequential review.

Funding Implications

Municipalities and flood protection agencies have limited resources to perform ongoing maintenance and even less for capital flood protection projects. Capital flood protection and maintenance projects are funded differently. Capital flood projects are generally funded by development fees, whereas, flood maintenance projects are generally property taxed based and thus an increase in property taxes would be subject to Prop 218. Given the statutory conditions of Prop 218 it is unlikely municipalities will be able to increase fees.

OPC strongly encourages the Regional Water Board to analyze the cost implications of this proposed policy and its implementation. Although it is not required for CEQA analysis, a thorough examination of the financial impacts, especially to municipalities and special districts, will provide critical information regarding the viability of the proposed policy. The policy should also identify what resources (i.e. financial, technical) will be available for local jurisdictions to help implement these new requirements.

Development of Watershed Plans

The Regional Water Board stated that they would like to see the development of local watershed plans consistent with this proposed policy. These watershed plans would be used to facilitate the permit process for projects listed within the plan. Projects within the plan or scope of the plan would be issued waste discharge waivers or general WDRs. Those not within the scope of the plan would be subject to individual WDRs. The proposed policy needs to identify what incentives the Regional Water Board will provide to support local watershed plan development. Furthermore the proposed policy should articulate how the permitting process will proceed for projects in watersheds that do not have a watershed plan.

Additional Field Visits

Regional Water Board staff conducted a field visit in October 2006 to two sites in Contra Costa County. Staff should consider additional visits to other creek and wetland sites in order to observe the variability of channel types and wetlands maintained by Bay Area flood control agencies. These additional site visits would help to illustrate how the proposed policy may impact operations and maintenance activities. Please contact Liz Lewis, Marin County Flood Control and Water Conservation District, at (415) 499-7226 or lizlewis@co.marin.ca.us for a proposed list of sites and to set up additional field visits.