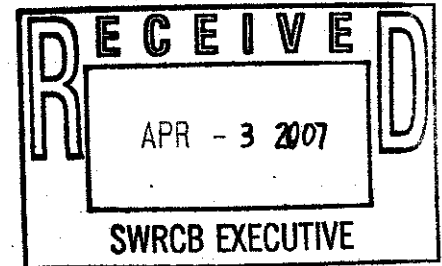




Glenda Marsh
Environmental Scientist
State Water Resources Control Board
Division of Water Quality
1001 I Street
Sacramento, CA 95819

April 3, 2007

Re: SWRCB Proposed Wetland and Riparian Protection Policy



Dear Ms. Marsh,

I have read with interest the *Informational Document* on the proposed policy changes, and would like to provide initial comments regarding this subject on behalf of California Waterfowl Association and its members. California Waterfowl Association (CWA) is a not-for-profit public benefit corporation dedicated to protecting and enhancing the state's waterfowl and wetlands and supports your efforts to provide protection to wetlands and riparian areas in California. CWA does not own and manage wetland or riparian properties, but we work widely with public and private landowners in restoring and enhancing wetlands, and provide funds and technical assistance for projects on an annual basis. We have extensive experience in permitting projects, including CEQA/NEPA, DFG 1600, C.W.A. 404 and 401, endangered species and cultural resources compliance and want to assist in making the proposed policy effective and streamlined for our projects.

Currently, most restoration and enhancement projects and annual management and maintenance activities conducted in managed wetlands within the state do not require any kind of water quality waiver or 401 certification. Wetland earthmoving work is always conducted "in the dry" during the summer periods and is exempted from 404 permitting under *Nationwide Permit 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities*. CWA is only one of many agencies conducting this type of work in California, and our efforts alone include over 50 to 60 projects totaling 20,000 acres or more each year. Costs of these improvements are on the order of \$4,000,000 expended each year. Other agencies such as Ducks Unlimited, River Partners, and the Nature Conservancy can claim similar levels of activities.



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Because of California's highly degraded natural hydrology, managed wetlands require active annual vegetation management, including summer irrigations, mowing, disking, burning, and spraying. Minor annual repairs to levees, water control structures, and water conveyance ditches are conducted on these properties to maintain adequate water control during the fall and winter season when most wetlands are flooded. These activities are conducted on approximately 350,000 acres per year and are essential to maintaining the productivity of these lands for wetland-dependent species.

In reviewing Alternative #4 in the informational document, it appears that the proposed policy would develop minimum statewide requirements for all the types of activities described above (*land and vegetation clearing activities*), and would require... *either a waste discharge requirement, waste discharge waiver, or water quality certification for any dredge or fill activity in a wetland or riparian areas*

Considering the net benefit of the wetland restoration, enhancement, and management activities conducted within the State, CWA would like to see language in the policy recognize these activities as exempt from any kind of new permitting requirement so long as they follow existing standards and best management practices. Construction standards developed by the Natural Resources Conservation Service (USDA) that protect water quality are already approved for use by other federal agencies such as the US Fish and Wildlife Service and state agencies such as the Department of Fish and Game and the Wildlife Conservation Board. These standards are used by the vast majority of wetland habitat managers and wetland and riparian project construction managers within the state.

Language similar to that used for Nationwide Permit # 27, but adapted to California could be included in the policy guidelines. A copy of the text from this NWP is attached. This type of exemption for the activities listed would reduce further barriers to good wetland and riparian management and will encourage additional wetland and riparian restoration projects. CWA would like to work with you to develop language in the policy that would both protect wetlands now left unprotected from impacts and promote the restoration of new areas and the enhancement of existing wetlands through active management.

Please contact Jake Messerli, Director of Waterfowl and Wetlands, at (916) 648-1406 to further explore how we can work together to provide an adequate policy that accommodates appropriate projects without an increase in permitting requirements.

Sincerely,



Dr. Robert McLandress
President
California Waterfowl Association

/nb/JM

Cc:

Dean Kwasny, Department of Fish and Game
Jessica Groves, Natural Resources Conservation Service
Craig Isola, US Fish and Wildlife Service
Robert Shaffer, Central Valley Joint Venture
Bill Gaines, California Outdoor Heritage Alliance

Nationwide Permit #27

Aquatic Habitat Restoration, Establishment, and Enhancement Activities. Activities in waters of the United States associated with the restoration of former waters, the enhancement of degraded tidal and non-tidal wetlands and riparian areas, the establishment of tidal and non-tidal wetlands and riparian areas, the restoration of non-tidal streams, and the restoration and enhancement of non-tidal open waters, provided those activities result in net increases in aquatic resource functions and services.

Activities authorized by this NWP include, but are not limited to:

1. the removal of accumulated sediments;
2. the installation, removal, and maintenance of small water control structures, dikes, and berms;
3. the installation of current deflectors;
4. the enhancement, restoration, or establishment of riffle and pool stream structure;
5. the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or establish stream meanders;
6. the backfilling of artificial channels and drainage ditches;
7. the removal of existing drainage structures;
8. the construction of small nesting islands;
9. the construction of open water areas;
10. the construction of oyster habitat over unvegetated bottom in tidal waters;
11. shellfish seeding;
12. activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species;
13. mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation;
14. And other related activities.

Only native plant species should be planted at the site.

This NWP does not authorize the conversion of a stream or natural wetlands to another aquatic use, such as the establishment of an impoundment for waterfowl habitat. This NWP does not authorize stream channelization. However, this NWP authorizes the relocation of non-tidal waters, including non-tidal wetlands, on the project site provided there are net gains in aquatic resource functions and services. For example, this NWP may authorize the establishment of an open water impoundment in a non-tidal emergent wetland, provided the non-tidal emergent wetland is replaced by establishing that wetland type on the project site. This NWP does not authorize the 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.

Reversion: For enhancement, restoration, and establishment activities conducted: (1) in accordance with the terms and conditions of a binding wetland enhancement, restoration, or establishment agreement between the landowner and the U.S. Fish and Wildlife Service (FWS), the Natural Resources Conservation Service (NRCS), the Farm Service Agency (FSA), the National Marine Fisheries Service (NMFS), the National Ocean Service (NOS), or their designated state cooperating agencies; (2) as voluntary wetland restoration, enhancement, and establishment actions documented by the NRCS pursuant to NRCS regulations; or (3) on reclaimed surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the OSM or the applicable state agency, this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or establishment activities). The reversion must occur within five years after expiration of a limited term wetland restoration or establishment agreement or permit, and is authorized in these circumstances even if the discharge occurs after this NWP expires. The five-year reversion limit does not apply to agreements without time limits reached between the landowner and the FWS, NRCS, FSA, NMFS, NOS, or an appropriate state cooperating agency. This NWP also authorizes discharges of dredged or fill material in waters of the United States for the reversion of wetlands that were restored, enhanced, or established on prior-converted cropland that has not been abandoned or on uplands, in accordance with a binding agreement between the landowner and NRCS, FSA, FWS, or their designated state cooperating agencies (even though the restoration, enhancement, or establishment activity did not require a section 404 permit). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate state agency executing the agreement or permit. Before conducting any reversion activity the permittee or the appropriate Federal or state agency must notify the district engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps Regulatory requirements will be at that future date. The requirement that the activity result in a net increase in aquatic resource functions and services does not apply to reversion activities meeting the above conditions. Except for the activities described above, this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion.

Reporting: For those activities that do not require pre-construction notification, the permittee must submit to the district engineer a copy of: (1) the binding wetland enhancement, restoration, or establishment agreement; (2) the NRCS documentation for the voluntary wetland restoration, enhancement, or establishment action; or (3) the SMCRA permit issued by OSM or the applicable state agency. These documents must be submitted to the district engineer at least 30 days prior to commencing activities in waters of the United States authorized by this NWP.

Notification: Except as provided below, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.)

Except for reversion activities, pre-construction notification is not required for:

(1) Activities conducted on non-Federal public lands and private lands, in accordance with the terms and conditions of a binding wetland enhancement, restoration, or establishment agreement between the landowner and the U.S. FWS, NRCS, FSA, NMFS, NOS, or their designated state cooperating agencies;

(2) Voluntary wetland restoration, enhancement, and establishment actions documented by the NRCS pursuant to NRCS regulations; or

(3) The reclamation of surface coal mine lands, in accordance with a SMCRA permit issued by the OSM or the applicable state agency.

Note: This NWP can be used to authorize compensatory mitigation projects, including mitigation banks and in-lieu fee programs. However, this NWP does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition, since compensatory mitigation is generally intended to be permanent.