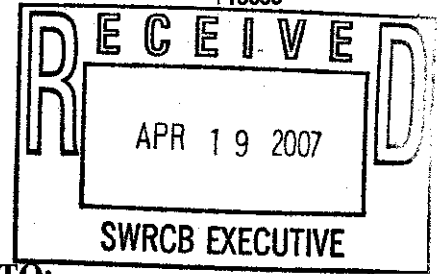




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**RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**

April 19, 2007



State Water Resources Control Board
Post Office Box 100
Sacramento, CA 95812-0100

EMAILED THIS DATE TO:
commentletters@waterboards.ca.gov

Attention: Song Her, Clerk to the Board
Executive Office

Wetland/Riparian Policy
Deadline: 4/19/07 12 noon

Ladies and Gentlemen:

Re: Comment Letter - Wetland and Riparian
Area Protection Policy

This letter is written in response to the March 22, 2007 public notice regarding public California Environmental Quality Act Scoping Meetings pertaining to the Proposed Wetland and Riparian Area Protection Policy. According to the notice, the State Water Resources Control Board (State Water Board) will prepare a staff report as the California Environmental Quality Act (CEQA) document for the adoption of the proposed policy referenced above.

The Riverside County Flood Control and Water Conservation District (District) is responsible for the construction, operation and maintenance of numerous flood control facilities throughout the widespread western and central portions of Riverside County. The District is submitting these comments from the viewpoint of a regulated agency with years of experience in dealing with issues associated with regulatory permits for the construction and subsequent maintenance of drainage facilities within jurisdictional waters. Thus, the District is very familiar with the Section 404 and Section 401 regulations, as well as the Section 404(b)(1) Guidelines that are referenced in the State Water Board's Informational Document dated March 2007. The District has the following comments regarding the scope and content of the environmental information to be included in the State Water Board's CEQA environmental analysis:

Potential Significant Environmental Effects

The proposed policy could expand regulatory requirements associated with ongoing maintenance activities for existing flood control facilities (e.g., channel, levee, basin, dam, inlet/outlet, etc.). Essential maintenance activities within existing flood control facilities previously constructed within riparian areas and wetlands could face unnecessary administrative burden and unduly compensatory mitigation requirements without any significant benefits to water quality under the new policy.

The new requirements as proposed in Alternatives 2, 3 and 4 would: 1) have significant adverse fiscal impacts on State and local governments and other regulated entities; 2) allow further permitting delays; 3) conflict with the State and Federal mandates/policies (e.g., Federal Emergency Management Agency, U.S. Army Corps of Engineers, State Department of Water Resources - Division of Safety of Dams, State Department of Water Resources-Division of Floodplain Management, etc.) for local agencies to maintain flood control facilities as designed; 4) conflict with local agencies adopted plans (e.g., Master Drainage Plans, Operation and Maintenance Manuals, Habitat Conservation Plans, etc.); and 5) impede the ability of already financially strained public agencies to conduct necessary maintenance activities to ensure public health and safety.

Alternatives

CEQA requires the consideration of alternatives that would meet most of the basic project objectives but would avoid or substantially lessen potential significant adverse impacts. The public notice briefly describes four alternatives to the proposed policy.

Alternative 1 is the No Action Alternative and would continue using existing State policies and authorities to protect wetlands and riparian areas. The analysis of Alternative 1 should also consider the fact that wetlands and riparian areas are regulated by the California Department of Fish and Game through Section 1602 of the State's Fish and Game Code. Thus, it may be feasible to achieve the State's wetland and riparian protection goals under existing regulations.

Alternatives 2-4 would adopt the Federal guidelines as the State's policy or develop a new State policy to increase the regulatory requirements placed upon activities located in wetlands and riparian areas. The increased regulation could substantially impede the District's ability to conduct necessary flood control maintenance activities and result in significant adverse flooding impacts. The CEQA document should provide a detailed comparison of how all four Alternatives would impact flood control maintenance activities through increased regulation and the increased flood risks that may result. It is also important to consider that Section 404 of the Clean Water Act and the associated Federal regulations provide exemptions and procedures for expedited permitting for flood control maintenance activities. The U.S. Army Corps of Engineers have also established regional general permits that greatly expedite the permitting of emergency repairs. Unless the State's new policy includes similar programs, flood control maintenance activities could be substantially hindered and delayed. With this in mind, it appears that Alternatives 3-4 would result in the highest level of significant adverse impacts, and those feasible alternatives with less significant impacts should be considered.

The District agrees that it is imperative for the State Water Board to establish a State-wide consistency in the definition of wetlands, riparian areas and its associated beneficial uses. However, it is not necessary to create duplicative or inconsistent regulatory efforts at a tremendous cost to public and private entities without fully considering, among other things, the limitations of available revenues or commensurate environmental benefits. Activities within wetlands/riparian areas are currently regulated through one or more of the existing State regulatory programs: Water Quality Certification via Section 401 of the Clean Water Act; Waste Discharge Requirements via the Porter-Cologne Water Quality Control Act; MS4 permit and associated Basin Plan via Section 402(p) of the Clean Water Act; and Streambed Alteration Agreement via Section 1600 et seq. of the State's Fish and Game Code. The CEQA document should evaluate at least one more alternative that would consider improving administration of existing regulatory programs, meeting the stated goals of the Wetlands Conservation Policy to reduce procedural complexity, integrate wetlands policy and planning with other environmental and land use processes, and achievement of wetland conservation, restoration and enhancement with emphasis on maintaining economic uses of restored and enhanced lands without using a permit-by-permit approach. For instance, under many circumstances, considerations addressing habitat beneficial uses would be functionally covered under Fish and Game Streambed Alteration Agreements.

Mitigation Measures

As previously described, the proposed State Water Board Policy could result in significant adverse flooding impacts due to increased regulation of flood control facility maintenance. CEQA requires the description of feasible measures that could avoid potential significant adverse impacts. The CEQA analysis of Alternatives 2-4 should include proposed mitigation

measures that would reduce potential adverse impacts to flood control facilities. Such mitigation measures may need to include specific exemptions that exclude the maintenance of existing flood control facilities from the new policy if it is implemented. Measures that exclude flood control maintenance activities from compensatory mitigation requirements will also be needed to reduce potential significant adverse impacts.

CEQA Document

Based on the information provided in the public notice, it is unclear whether the State Water Board will circulate a CEQA document prior to considering the proposed policy. In light of the policy's potential significant adverse impacts to flood control facilities and flood hazards, all agencies responsible for flood control maintenance activities should be notified when the CEQA document is available for review and comment. The notice should also be sent to the State Division of Dam Safety, State Department of Water Resources, State Office of Emergency Services, the U.S. Army Corps of Engineers, and the Federal Emergency Management Agency, as these agencies are directly or indirectly involved in flood control maintenance activities and flood disaster response.

Thank you for providing a CEQA public scoping process for the State Water Board's proposed Wetland and Riparian Area Protection Policy. Until such time that the State Water Board can fund, develop and staff a complete regulatory program and provide regulatory procedures for flood control maintenance activities, similar to those provided under Federal regulatory programs, Alternative 2, 3 or 4 should not be selected as the preferred alternative.

Very truly yours,



STEPHEN E. STUMP
Chief of Regulatory Division

- c: U.S. Army of Engineers
Attn: Brian Moore
- Federal Emergency Management Agency
Attn: Alessandro Amaglio
- State Office of Emergency Services
Attn: Charles Rabamad
Dennis Castrillo
- California Department of Fish and Game
Attn: Paul Stein
- State Division of Dam Safety
Attn: Frederick Sage
- State Division of Flood Management
Attn: Rodney Mayer

RS:TT:SES:bjp