



August 18, 2015

San Francisco Regional Water Quality Control Board
1515 Clay Street
Oakland, CA 94612
Attn: Richard Looker
Via Email: rlooker@waterboards.ca.gov

Re: 2015 Basin Plan Triennial Review

Dear Mr. Looker:

The signatory organizations appreciate the opportunity to submit comments regarding the San Francisco Regional Water Quality Control Board (Regional Board)'s 2015 San Francisco Bay Basin Plan Triennial Review. The Basin Plan is the master policy document that contains descriptions of the legal, technical, and programmatic bases of water quality regulation in the San Francisco Bay Region, including water quality standards. According to the Notice of Public Solicitation, the purpose of the Triennial Review is to examine and update the focus of Regional Board planning efforts. The Notice also indicates that Regional Board staff has prepared an initial list of candidate issues for inclusion in the Regional Board's Triennial Review work plan, and encourages interested parties to provide input regarding the priority of potential projects "as the Water Board is limited in terms of the staff resources that are available to complete the projects."

The Basin Plan is at the core of many regulatory programs that significantly impact our organizational and members' interests in the San Francisco Bay Area, and it profoundly impacts the region's economic and environmental health and quality of life. With that in mind, we respectfully submit the following comments:

I. Further work on the Regional Board's Stream and Wetland Policy should be deferred until the State Water Resources Control Board (State Board) completes its comprehensive Wetlands and Riparian Area Protection Policy.

Regional Board staff published a Brief Issue Descriptions document in connection with the 2015 Triennial Review.¹ Issue 2.4 is titled “Complete the Stream and Wetland System Protection Policy.” According to the issue summary:

This project is to complete the Stream and Wetland Policy currently under development. The resulting Basin Plan amendment would protect stream and wetland systems, which include stream channels, wetlands, floodplains, and riparian areas.... The proposed stream [and wetland] protection amendment would designate two new beneficial uses of streams and wetlands.... The proposed amendment would also include additions to the implementation plan chapter to explain how the Water Board will regulate controllable water quality factors in a variety of permitting contexts in order to protect the new beneficial uses.

The Regional Board began development of a stream and wetland policy—including initiation of the CEQA Scoping Process on March 30, 2006—before the State Board adopted Resolution 2008-0026 in 2008 that began the comprehensive statewide policy development covering the same subject matters.² At that time, the Regional Board indicated an intent that “the Policy will serve as a model for other Regional Water Boards and for the state in the protection of water quality.”³

We believe that the 2015 Triennial Review should formally acknowledge the State Board’s development of a stream and wetland regulatory policy that is intended to provide statewide policy consistency and regulatory certainty, and defer further action in this policy area at the Regional Board level until the State Board completes its work. While in 2006 the Regional Water Quality Control Board may have deemed it appropriate to consider a wetland and stream policy for one region, the State Board’s subsequent policymaking makes such action inappropriate and very possibly inconsistent with one of the State Board’s express goals, *i.e.*, statewide consistency. We also believe the Regional Board should revisit the need for, and scope of, its own stream and wetland protection policy in light of the State Board’s policymaking. These recommendations are based on the fact that one of the primary purposes of the State Board’s policy development is to establish a consistent regulatory approach between the State Board and the Regional Water Quality Control Boards with respect to wetland and stream definitions and regulation, as discussed below.

With the adoption of Resolution No. 2008-0026, the State Board committed “to take action to ensure the protection of the vital beneficial services provided by wetlands and riparian areas through the development of a statewide policy to protect wetlands and riparian areas that is watershed-based.” The State Board directed its staff to develop the policy “using a collaborative process that involves the Regional Water Boards....” The State Board also expressed its intent that upon completion, the statewide policy “will inform and shape proposed Regional Basin Plan amendments.”⁴

Throughout the policy development process, the State Board has stressed this crucial theme that its action will establish much-needed statewide consistency and certainty as follows:

The State Water Resources Control Board is considering a new policy on wetlands. The new policy is designed to protect and enhance California’s wetlands, bring consistency to

¹http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/planningtmdls/basinplan/web/docs/Triennial_Review/Brief%20Issue%20Description%202015%20Triennial%20Review%207-3-15.pdf

² http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/stream_wetland/swspp_web_notice.pdf; http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/stream_wetland/r2_swspp_factsheet.pdf.

³ http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/streamandwetlands.shtml.

⁴ http://www.swrcb.ca.gov/board_decisions/adopted_orders/resolutions/2008/rs2008_0026.pdf

regulatory efforts by the State Water Board and nine Regional Water Quality Control Boards (Water Boards collectively), and to provide a common framework for monitoring and reporting water quality....

Why is a new policy needed? [T]he Water Boards do not have a single accepted definition of wetlands that would capture the rich diversity of wetlands types throughout the state. That's led to a lack of consistency in wetland regulation and management....

What will the proposed new policy do? The policy is expected to add consistency and transparency to the determination of wetland areas, and help resolve potential conflicts in areas of overlapping regulatory jurisdiction.... It would add certainty for permit applicants on defining wetlands and requirements for obtaining permits. The policy would also allow consistent monitoring and tracking of trends in state waters, including wetlands, making it easier to protect and manage them.

How does it go about doing that? By the State Water Board establishing a statewide definition of a wetland, the policy would bring a uniform regulatory approach between the State Water Board and the nine Regional Water Quality Control Boards and quicken coordination with other agencies involved in protecting wetlands. It would also establish procedures and criteria for the application, review, and approval of permits to discharge dredged or fill material to state waters, and it would provide a common framework for wetland and riparian area monitoring and assessment. This will aid in making regulatory determinations and ensure consistency with statewide environmental reporting programs.⁵

The Need for a New Policy →To promote efficiency, effectiveness and consistency among Water Board programs.

Concerns raised by respondents about the proposed Statewide Policy:

→ Concern: Overlapping jurisdictions/duplication of effort with other agencies.

Water Board staff will seek permit streamlining;
Our focus is water quality.

→ Concern: Separate Regional and State efforts

Joint development team to ensure consistency.⁶

Recent information from the State Board further supports the Regional Board taking occasion of the 2015 Triennial Review to make a formal deferral and reconsideration of moving forward with a region-specific stream and wetland policy. The July 2015 Report of the State Board's Executive Director announced that "State Water Board staff is currently preparing the draft staff report for internal review.

⁵ http://www.swrcb.ca.gov/water_issues/programs/cwa401/docs/wrapp/wetlands_faq2012.pdf

⁶ http://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/wrapp2008/wetlandpolicy_presentation.pdf. Significantly, in its 2012 Triennial Review, the Regional Board also recognized the importance of allowing the State Board to complete its policy "to ensure coordination and consistency."
http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/planningtmdls/basinplan/web/docs/Triennial_Review/2012%20Triennial%20Review%20and%20Priority%20Projects%20-%202011-12%20signed.pdf.

This includes the draft policy language and the accompanying draft Substitute Environmental Document (SED). Staff expects to release the proposed policy and SED for public comments by fourth quarter of 2015.” The Report also gives a target date for State Board action on a proposed policy of May 2016.⁷

In light of the State Board’s impending action, the importance of developing a uniform and consistent statewide approach to stream and wetland protection, and finite staff and financial resources at the Regional Board, we again urge the Regional Board to defer further work on its Stream and Wetland Policy and revisit the need for, and scope of, this particular work program after the State Board completes its work.

Regards,



Rebecca Franklin
Association of California Water Agencies



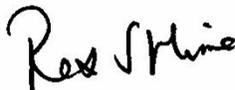
John Coleman
Bay Planning Coalition



Paul Campos
BIA Bay Area



Richard Lyon
California Building Industry Association



Rex S. Hime
California Business Properties Association



Steven Brink
California Forestry Association



Mike Rogge
California Manufacturers and Technology Association

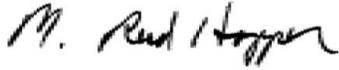
⁷ http://www.swrcb.ca.gov/board_info/exec_dir_rpts/2015/edrpt072115.pdf



Karen Keene
California State Association of Counties



Mark Grey
Construction Industry Coalition on Water Quality



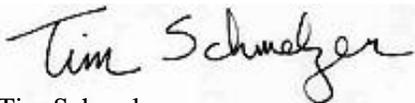
Reed Hopper
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Kathy Mannion
Rural County Representatives of California



Kevin Buchan
Western States Petroleum Association



Tim Schmelzer
Wine Institute

cc: Felicia Marcus, Chair, State Water Resources Control Board
Tom Howard, Executive Director, State Water Resources Control Board