



July 18, 2016

**VIA E-MAIL**

Ms. Felicia Marcus, Chair  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

Mr. Thomas Howard, Executive Director  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

**Re: Request for Additional Outreach and Extension of Public Comment Period  
for Proposed Procedures for Discharges of Dredged or Fill Materials to  
Waters of the State**

Dear Ms. Marcus and Mr. Howard,

Our organizations write to respectfully request that the State Water Resources Control Board (“State Board”) conduct additional outreach and extend the public comment period in connection with the *Proposed Amendments to the California Ocean Plan and Inland Surface Waters, Enclosed Bays, and Estuaries of California Plan to Include Procedures for Discharges of Dredged or Fill Materials to Waters of the State* (the “Proposed Amendments”). Our organizations and members have a substantial interest in this proposal but have not been afforded adequate time to evaluate the Proposed Amendments and prepare substantive comments for the State Board. We understand that many other stakeholders have the same concerns. For the reasons in this letter, we ask that the State Board extend the comment period by at least ninety days, through Friday, November 4, 2016.

The purpose of the Proposed Amendments is to impose statewide requirements regulating discharges of dredged or fill materials to all waters of the state. Although the State Board had been previously working on a related state wetland policy, this proposal – as recognized in the accompanying staff report – is a departure from that effort and would create a broader program.

We have not, therefore, had the opportunity to consider the broader scope of the program as now proposed until it was issued for comment in late June.

The Proposed Amendments would supersede all existing policies for the regulation of fill of waters of the state being used by the nine Regional Water Quality Control Boards (“Regional Boards”), adopt a definition of “wetlands” that departs from the long-standing federal definition and may extend to features beyond the scope of the state’s regulatory authority under the Porter Cologne Act, and impose new and potentially burdensome permitting requirements for many public and private projects across the state. It appears that in many instances these new requirements would be unnecessarily duplicative of, or largely overlap existing permitting requirements, including the federal Clean Water Act § 404 program and the California Fish and Wildlife Lake and Streambed Alteration program. The creation of an entirely new state-wide program of this magnitude would have broad consequences for a number of public and private sectors and, if not carefully considered, could affect economic growth, delay important public projects, introduce substantial uncertainty for stakeholders, increase the potential for litigation over proposed projects, and impose significant costs without a concomitant environmental benefit.

Despite the potentially widespread programmatic implications of the Proposed Amendments, there is only limited information in the documentation provided by the State Board about how the proposal may actually impact future projects in California. For example, the Staff Report accompanying the Proposed Amendments concludes that the “universe of future applicants and projects involving dredged or fill discharges is largely unknown” and, therefore, does not provide more than a qualitative assessment of potential costs or consequences associated with the proposal. We anticipate, however, that this proposal would impose new requirements on thousands of public and private permit applicants and projects annually with as yet unclear consequences. For example, the Regional Boards issue more than one thousand Clean Water Act § 401 certifications annually<sup>1</sup> and it is not unusual for Regional Board action on requested certifications to take in excess of eighteen months. Those § 401 certifications represent only a fraction of the projects that would be subject to the proposed new requirements which would also impose additional requirements on federal Nationwide Permit applicants and projects potentially impacting state waters not subject to federal jurisdiction (or otherwise subject to long-standing exclusions from the federal program). An overly broad, ambiguous, or poorly planned new program of this magnitude could stretch Regional Board resources beyond the breaking point and have both immediate and long-term consequences for all projects across the State.

In addition, we understand that State Board staff are working to prepare uniform draft waste discharge requirement application forms and a uniform alternative analysis form that all Regional Boards will be required to use. These forms, which have not been released yet, will provide stakeholders important insight into how the Regional Boards may implement any final program. The public must be afforded an opportunity to review these forms and provide feedback to the State Board. It would be premature, therefore, to close the comment period without providing adequate opportunity for stakeholders to review the forms.

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<sup>1</sup> See Environmental Law Institute, *State Wetland Protection: Status, Trends & Model Approaches* (March 2008) at 15.

We also believe there is a critical need for the State Board to conduct additional outreach to stakeholders across California about the Proposed Amendments during an extended comment period. There have only been two workshops to provide information about the Proposed Amendments to the public. The first workshop -- on June 28 in Los Angeles -- was scheduled six business days after the Proposed Amendments were first publicly announced. This did not provide sufficient time for stakeholders to learn of the workshop or participate. The second workshop, in Sacramento, was held during the week of the 4<sup>th</sup> of July when many stakeholders were likely unavailable due to the holiday and shortened work week. Neither of these workshops was well attended. Poor attendance does not reflect a lack of interest in the Proposed Amendments. Instead, the limited attendance confirms the need for more outreach. To provide appropriate outreach we recommend, at a minimum, that the State Board conduct at least one public meeting in each of the nine Regional Water Quality Control Board districts during an extended comment period.

In consideration of the breadth and potential impact of the Proposed Amendments, it is essential that stakeholders with first-hand experience and knowledge about permitting projects have an opportunity to thoroughly review the Proposed Amendments, discuss the scope of the proposed new program with State Board staff at local workshops, and prepare substantive comments. A forty-five day comment period is much too short to reasonably accomplish this goal. The problems with the overly short comment period have been further exacerbated here because the comment period was scheduled in the middle of summer when many stakeholders have been on vacation. We urge the State Board, therefore, to extend the comment period by ninety days to November 4, 2016.

We appreciate your consideration of this request and look forward to a response.

Sincerely,



Rebecca Franklin  
Association of California Water Agencies



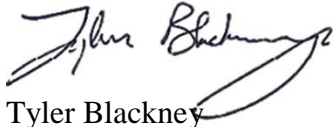
John Coleman  
Bay Planning Coalition



Shanda Beltran  
Building Industry Association of Southern California and  
Building Industry Legal Defense Foundation



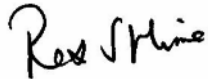
Jelisaveta Gavric  
California Association of REALTORS®



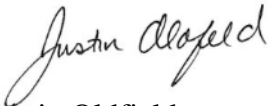
Tyler Blackney  
California Association of Winegrape Growers



Richard Lyon  
California Building Industry Association



Rex S. Hime  
California Business Properties Association



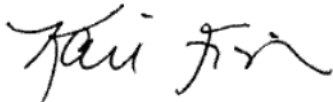
Justin Oldfield  
California Cattlemen's Association



Valerie Nera  
California Chamber of Commerce



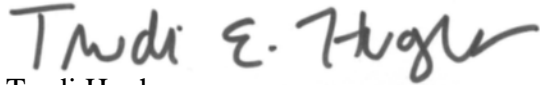
Gary Hambly  
California Construction and Industrial Materials Association



Kari Fisher  
California Farm Bureau Federation



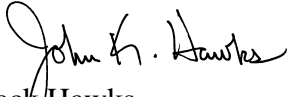
David Bischel  
California Forestry Association



Trudi Hughes  
California League of Food Processors



Karen Keene  
California State Association of Counties



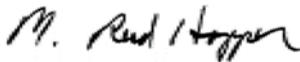
Jack Hawks  
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Pacifica Legal Foundation



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cc: Frances Spivy-Weber, Vice Chair  
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Dorene D'Adamo