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The Honorable Joaquin Esquivel  
Chair, State Water Resources Control Board  
State Water Resources Control Board  
1001 I Street, 24th Floor  
Sacramento, CA 95814

**RE: State Wetland Definition and Procedures for Dischargers of Dredge or Fill Material to Waters of the State**

Dear Chair Esquivel:

The California State Association of Counties (CSAC) would like to provide comments on the Proposed Amendments to the Procedures for Discharges of Dredged or Fill Material to Waters of the State (Proposed Amendments). The Proposed Amendments would create a new regulatory program to govern discharges of dredged or fill material into waters and wetlands. The proposal would adopt a new definition of "wetlands" differing from the definition long used by the State Board and regional water quality control boards and the U.S. Army Corps of Engineers under the federal Clean Water Act. It would also establish a new, more complex permitting process, and adopt new standards for deciding whether to permit projects and, if so, what mitigation to require for impacts to wetlands.

Counties have fundamental concerns about the Proposed Amendments as it has the potential to result in costly inconsistencies between the way federal and state agencies regulate activities in wetlands. We do sincerely appreciate the work of water board staff over the last several months to address a number of concerns from a variety of stakeholder groups, including public agencies. However, we would like to offer some additional comments and a real-life example for your background about the potential for unintended consequences and impacts on vital flood control and transportation projects should resolution not come on several outstanding policy issues.

As you know, the proposed amendments have the potential to impact a wide range of county flood protection and transportation related projects and activities that are needed to ensure public safety, economic vitality and quality of life. We share the following example to highlight the potential impact the proposed amendments could have on critical health and safety projects, such as flood control facilities. In 1948, the U.S. Army Corps of Engineers built the Pajaro River Federal Flood Control Project and subsequently transferred the Project over to several local agencies with specific requirements for operation and maintenance. For several decades, the Project's riverbed and levees were cleared of sandbars and vegetation on a regular basis with heavy machinery. However, around 1972 the California Department of Fish and Game required a halt to the mechanical clearing of the channel in order to protect the newly created riparian habitat. Conflicts between state environmental and federal public safety flood control objectives lasted for several decades, resulting in years of delayed or denied permits and infrequent maintenance of the river channel.

In March of 1995, the Parajo River overtopped its levees, causing two deaths and \$95 million in damages. It was determined that inadequate maintenance limited the amount of water that the channel could safely hold during a flood event. In subsequent litigation, the court determined that inability to secure permits, or delays in securing permits, for maintenance activities did not excuse a flood control agency or district from performing maintenance in a timely fashion. This ruling still holds and has created millions of dollars in liability for the local agencies, despite an inability to perform timely maintenance without state permits.

As stewards of flood control systems across California, counties are willing partners in the goals of both public safety and habitat protection. The key for local governments to be able to achieve these equally important goals is the timely issuance of permits to allow for routine maintenance. The Board's Proposed Amendments would have a significant impact on the day to day operations of county flood control systems throughout California. County engineers work with the state and federal government on a regular basis in order to acquire permits for basic system operations, including routine maintenance. We strongly support a clear regulatory process enabling local jurisdictions to effectively and safely manage their facilities in a timely fashion. To create a clear and certain process, counties support specific timeframes and deadlines for permits. There are currently statutory deadlines for some state permits, including the 1602 Streambed Alteration Agreement with the California Department of Fish and Wildlife, which has a 60-day deadline for permit issuance. We believe this is an effective way to ensure for timely review while providing critical certainty for local agencies.

In addition, the Proposed Amendments include new requirements for an alternatives analysis and climate change review. These requirements appear to be duplicative of those already in place under the California Environmental Quality Act (CEQA), Caltrans for NEPA, and Coastal Commission processes. This could result in applicants being required to assess alternatives two different ways and report differently to federal and state agencies. This would result in inefficiencies, added time and expense with the same potential outcome. The Proposed Amendments also reference a watershed approach and how a baseline might be established specific to the pre-development condition of the land. We believe this would have an impact on mitigations required if the biological baseline was set at the pre-development condition rather than today's developed baseline condition.

Furthermore, the proposed amendments could have significant impacts on local transportation projects. Cities and the Counties maintain 80 percent of the transportation network by mileage. Local governments just fought a hard won battle at the ballot box to defeat Proposition 6 and maintain our transportation funding under SB 1. Counties are being urged to spend their SB 1 dollars on much-needed local projects in a timely fashion. We are concerned about the potential time and cost impacts the Proposed Amendments would add to our projects that are already well considered under CEQA and NEPA.

We respectfully request your consideration of the comments outlined above, as well as those submitted by individual counties and public agencies. We reiterate our appreciation to your staff for working towards a compromise solution on a number of issues highlighted above. Thank you again for providing us with the opportunity to share with you the county perspective on this proposed regulatory program.

Please contact Cara Martinson, Senior CSAC Legislative Representative and Federal Affairs Manager at 916-327-7500, ext. 504, or [cmartinson@counties.org](mailto:cmartinson@counties.org) if you have any questions.

Sincerely,



Cara B. Martinson  
Senior Legislative Representative

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