



® April 1, 2019

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Honorable Board Members  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

Re: Testimony regarding State Wetland Definition and Procedures for Dischargers of Dredge or Fill Material to Waters of the State

Dear Members of the State Water Resources Control Board:

The California State Association of Counties (CSAC) and our partners at the County Engineers Association of California (CEAC) have been actively engaged in the State Water Resources Control Board (Board) effort to develop new Waters of the State (WOTS) regulations. We sincerely appreciate the efforts of the Board and staff to balance the needs of a variety of different stakeholder interests while achieving the goal of protecting water quality in California. We appreciate and support recent amendments to the draft dredge and fill procedures released on March 22nd (Proposed Draft); however, we encourage the Board to consider several additional issues that will improve counties' ability to protect public health and safety.

As stewards of flood control systems across California, counties are willing partners in the goals of both public safety and environmental protection. The key for local governments to be able to achieve these equally important goals is the timely issuance of permits and appropriate exclusions for certain activities. CSAC supports negotiated compromise language (line 477) of the Proposed Draft to allow for the exclusion for public agencies to be able to conduct routine maintenance and emergency operations with certain limitations. Counties support this language because it allows for public agencies to maintain adequate flow conditions in flood control channels through routine maintenance. This is critical for flood control facilities to operate at full capacity and accomplish their mission of protecting public health safety.

While this is a necessary exclusion for existing facilities, the Proposed Draft lacks needed streamlining for construction of new public safety flood facilities. The Proposed Draft includes requirements for an alternatives analysis review to determine whether an action or location of a project is the Least Environmentally Damaging Practicable Alternative (LEDPA). This provision makes the development of new flood control facilities very difficult. New flood control facilities are often developed in reaction to a specific flood control problem or to protect a newly developed community. In short, they are often location specific and water body adjacent. For example, it is not uncommon to need to raise the height of a levee due to subsidence or new weather patterns, potentially triggered by climate change. In these circumstances local agencies are often required to widen the base of the levee to accommodate the new height. When doing so, there are potential impacts to existing artificial waters at the toe of the levee. Of course, we mitigate for any impact and are not seeking any special treatment. However, the Tier 2 provisions are a sensible way to approach the permitting, as a complex analysis for locating the levee elsewhere is simply not a viable solution and a waste of resources. It could also potentially increase risk to people and property during any elongated permitting process. For these reasons, we support the addition of new language to the Tier 2 provisions of the Proposed Draft on page 7 of the regulations that would expressly acknowledge that these types of future water-dependent flood control facilities are facilities that "inherently cannot be located in an alternative location."

Finally, we support provisions to expressly allow less than 1:1 mitigation on an area and linear foot basis when a particular type of water-dependent facility will be designed to have multiple benefits. Multi-benefit projects may include flood protection and habitat benefits that provide a functional “lift” to aquatic resources within a watershed. Express provisions allowing consideration of the habitat benefits that a future facility is designed to provide is not only consistent with current federal Clean Water Act regulations, but also ensures that agencies are afforded appropriate credit for incorporating habitat and other aquatic resource benefits into their designs.

Counties are responsible for a wide range of flood protection and transportation related projects and activities that are needed to ensure public safety, economic vitality and quality of life which will be directly impacted by these new regulations. CSAC is supportive of the negotiated compromise language on the exclusion for routine maintenance and emergency operations; however we also strongly encourage the Board to support additional changes to the Proposed Draft mentioned above. Should you have any questions regarding our positions, please feel free to contact me at 916-327-7500, ext. 504, or [cmartinson@counties.org](mailto:cmartinson@counties.org)

Sincerely,

A handwritten signature in blue ink, appearing to read 'Cara Martinson', with a stylized flourish at the end.

Cara Martinson  
Senior Legislative Representative