

John Cunningham

From: Leigh Chavez <leigh.chavez@pw.cccounty.us>
Sent: Monday, July 18, 2016 2:57 PM
To: Lara DeLaney
Cc: Steve Kowalewski; Mike Carlson; Jerry Fahy; John Cunningham
Subject: State Board's New Regs: Procedures for Discharges of Dredged or Fill Materials to Waters of the State

Hi Lara,

You may be aware that the State Water Resources Control Board is in the process of formalizing new regulatory procedures for Discharges of Dredged or Fill Materials to Waters of the State (formerly known as the "State Wetlands Policy"). While these are not new legislation, they are regulatory policy and they will affect how we apply for and obtain Water Quality Certification from the Regional Boards. According to staff at the State Board, the new procedures essentially make regulatory the currently non-regulatory process that the State and Regional Boards have been following for the last several years. Further, the State Board notes that their jurisdiction stems from the existing Porter Cologne Water Quality Control Act and Water Code and these new procedures do not have any relation to the question of their jurisdiction.

I have participated in public workshops, conference calls, and meetings with State Board staff as well as CEAC members and CSAC staff about these new regs. In my opinion, the procedures go a little farther than the State Board suggests, including instituting a formal Least Environmentally Damaging Practicable Alternatives analysis (or LEDPA analysis) requirement for many projects. However, I have verified with State Board staff that our infrastructure projects which are location-specific (i.e., targeted at specific safety hazard locations: bridge replacements, streambank repairs, road safety projects, etc.) will qualify for an exemption from this very onerous LEDPA analysis requirement.

Although there is some general industry angst about the regs, based on State Board staff's ability to speak to my initial questions and concerns, I don't have significant reservations/concerns about the regs. Nevertheless, I do want to provide at least some formal comments, as follows:

- It is critical that the LEDPA exemption apply to the majority of the types of projects we do (as I indicate above, I've already confirmed this at meetings with the State Board, but I'd like to actually put it in writing)
- The regs should allow for creative and non-comparable mitigation for impacts to Waters of the State
- Routine maintenance of existing facilities should be exempt from compensatory mitigation (this is a general statement that goes well beyond these procedures, but this seems like a good, formal opportunity to make that statement). Similarly, temporal impacts should not trigger compensatory mitigation
- The regs force an application process that will be much more back-and-forth between the applicant and their Regional Board. While this collaborative approach seems reasonable (or even good), we currently have a hard time getting attention on actual applications. I am concerned about the Regional Board's ability to participate in this very fluid and time-consuming way. Further, it could take what is an already lengthy application process and make it even longer
- This entire process should consider scale. In other words, low impact projects should take less time, detail and effort on both sides (both our application and their review)
- The regs suggest that many aspects of the application and approval process will be analyzed on a case-by-case or situation-by-situation basis. Although the State Board considers this beneficial to the applicant (and in some cases it may be), this creates a distinct lack of certainty for those who are regulated
- Current wetland delineation procedures allow dry season delineations. The new procedures suggest that the State and Regional Boards can require wet weather delineations if they believe there is a reason to do so. This could add considerable time to a project's schedule and I believe it is unwarranted. The science of delineating

wetlands relies on indicators and triggers that are present regardless of season. A quality wetland delineation provides accurate results even in late summer.

Formal written comments on the procedures are due by August 4. Please let me know if you have questions about my comments, are interested in reviewing my comment letter before I send it, or if you think it needs to be vetted through the Leg Committee or TWIC (if there is time to do so....).

Thank you!
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