CALCIMA

California Construction and
Industrial Materials Association

August 18, 2016

Public Comment
Statewide Dredged or Fill Procedures
Deadline:8/18/16 12:00 noon

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-2000

Re: Statewide Dredged or Fill Procedures - Opposed
Sent Via E-Mail to: commentletters@waterboards.ca.gov

Dear Ms. Townsend:

CalCIMA is a statewide trade association representing construction and industrial material producers in California. Our members supply the minerals that build our state's infrastructure, including public roads, rail, and water projects; help build our homes, schools and hospitals; assist in growing crops and feeding livestock; and play a key role in manufacturing wallboard, roofing shingles, paint, low energy light bulbs, and battery technology for electric cars and windmills.

As a trade association we have participated with the Board on these activities for nearly 13 years as the state has worked to develop a policy which identifies and fills the SWANCC gap in California. We are appreciative of the efforts your board staff has made over the years and particularly in the iteration of this draft to come to understand the challenges this policy represents for our industry. However the draft policy remains deficient. We have joined in Coalition comments that detail multiple issues with the proposed permit system and encourage the boards careful review of those comments.

One of the clear differences in this newest approach is that staff has followed a Waters of the State(WOTS) approach. This is a new approach as previously a "wetland" or "riparian" approach seemed to be the focus and SWRCB staff probably appropriately realized an executive order is not authority for a regulatory policy. However as a result of this change in focus we absolutely encourage the board when it releases any modifications to the policy to allow comments on the document in broad form as a whole policy and for us to not be limited to only changes made. Those changes will exist in a broad and complex program.

Should the Board continue with this approach to a program certain specific items are very important for our industry;

Exemptions from jurisdiction:

- Artificial pools, ponds, and ornamental waters, and water-filled depressions incidental to mining or construction activity, including excavation pits

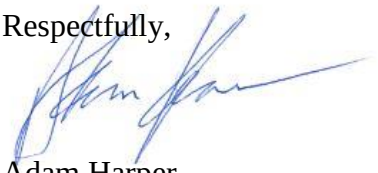
- Erosional features that are not tributaries
- Puddles and stormwater control features built on dry land, plus wastewater recycling features (e.g., retention basins, percolation ponds)

Under the federal system these and more are specifically noted as out of coverage of the program. It is very important for our industry that for the purposes of any procedural system covering waters of the state these are also excluded. Mineral facilities exist on the land over extended periods of time and absolute clarity that pits, erosional features etc… are not jurisdictional is important. Because waters of the state are arguably broader than waters of the US significant thought should be placed by the board on activities and waters they would not want to apply this policy to should the Board determine they have the authority to apply it.

Complete Application Requirements – Proof of Consultation

While the coalition comments contain many comments on procedural challenges created in the proposed program which we agree with. We want to specifically point out that the "consultation" requirements specified for airport land use commissions and Mosquito Vector control districts and other agencies are inappropriate. The language implies that a project must have achieved consultation with a third party instead of having notified the third party prior to any submittal. We would strongly encourage uses of the word consult to be carefully considered as they grant third parties inordinate authority over the program and a projects future. The SWRCB after all lacks the authority to require such third parties to participate, as do project proponents. Notification of such entities, so they may participate in activities, and proof of notification is a much more appropriate standard that project proponents can demonstrate they have met. Our projects should not be delayed if third parties fail to participate or engage. Nor should third parties that may have no concerns be forced to expend resources to participate in consultation.

Respectfully,



Adam Harper
Director of Policy Analysis