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August 18, 2016

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Dear Ms. Townsend,

Enclosed are comments from Ducks Unlimited, Inc. (DU) in response to the State Water Resource Control Board's (SWRCB's) solicitation for comments for the Draft Procedures for Discharges of Dredged or Fill Materials to Waters of the State (Procedures).

Wetland conservation is facing important challenges as these habitats are continually being degraded and destroyed across the continent. Ducks Unlimited is working to reverse this trend as the world's leader in wetlands and waterfowl conservation with over 13.6 million acres conserved in North America since its inception in 1937. In California, DU specializes in developing and implementing voluntary beneficial wetland restoration and enhancement projects with a variety of partners including public agencies, private individuals, scientific communities and other entities. Consistent with these partnerships, DU's mission is to conserve, restore, and manage wetlands and associated habitats for North America's waterfowl. These habitats also benefit other wildlife and people. Ducks Unlimited supports the continued protection of California's wetland habitats as well as the streamlining of permitting processes for beneficial wetland conservation projects.

Ducks Unlimited has serious concerns that multiple regulatory processes proposed in the draft Procedures will result in adding increased time and financial cost to developing and implementing voluntary beneficial wetland conservation projects while providing no additional wetland or other ecological benefits. Our comments below reflect nearly 30 years of experience restoring wetlands in California. These comments are offered to improve the environmental compliance process for voluntary beneficial wetland conservation projects by helping to provide certainty during their planning, budgeting, and implementation. Doing so will ensure that the very limited grant funds available for projects of this nature are maximized to produce the most ecologically beneficial project possible in the most cost and time efficient manner possible.

Primary Comments:

Most important is defining Ecological Restoration and Enhancement Projects (EREPs) broadly enough to incorporate the majority of voluntary beneficial wetland conservation projects that occur in California. These projects are vital to the SWRCB's goal of achieving a no-net loss of

wetlands and waters of the State. Ducks Unlimited has recommendations below that we believe will improve the regulatory process, by limiting duplicative or unnecessary procedures for beneficial wetland conservation projects, reduce the time and financial burdens for these types of projects, and relieve work load for SWRCB staff.

There are a wide range of priority beneficial wetland conservation projects that would not currently fit under the draft EREP definition. One example, the South Bay Salt Ponds Restoration Project, which is the largest tidal wetland restoration effort on the Pacific Coast, would not be exempted from many draft Procedures. Restoring former salt ponds (currently considered wetlands) to tidal marshes requires their conversion back to their historic functions and values, as well as sometimes extensively modifying public infrastructure including powerlines, levees, highways, etc.) to complete the project. The draft EREP definition does not accommodate these circumstances. This example project, and many others with similar circumstances, is a voluntary wetland conservation effort using a variety of public and private conservation funding sources, and should be covered in the EREP definition. The following recommended changes to the definition would do so.

- Page 12 lines 437-457 defines Ecological Restoration and Enhancement Projects. This definition should be expanded and revised as follows in **bold** and ~~strikethrough~~:

Ecological Restoration and Enhancement Project means projects undertaken for the ~~sole~~ **primary** purpose of assisting or controlling the recovery of an aquatic ecosystem that has been degraded, damaged or destroyed to restore some measure of its natural condition and to enhance the beneficial uses or potential beneficial uses of water. Such projects are undertaken voluntarily in accordance with the terms and conditions of a binding stream or wetland enhancement or restoration agreement, or a wetland establishment agreement, between the landowner and the U.S. Fish and Wildlife Service, Natural Resources Conservation Service, Farm Service Agency, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Forest Service, U.S. Bureau of Land Management, California Department of Fish and Wildlife, California Wildlife Conservation Board, **California State Coastal Conservancy, California Delta Conservancy**, or other federal or state resource agency or non-governmental conservation organization. These projects do not include the conversion of a stream or natural wetland to another **non-historic** aquatic habitat type or uplands; stream channelization; or relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments. It is recognized that ecological restoration and enhancement projects may require some filling or similar rehabilitative activities **in waters of the State** ~~gullied stream channels and similar rehabilitative activities to re-establish stream and meadow hydrology~~ to re-establish hydrology or other ecological functions. Changes in wetland plant communities that occur when wetland hydrology is more fully restored during rehabilitation activities are not considered a conversion to another aquatic habitat type. These projects also do not include actions required under a Water Board order (e.g., WDRs, waivers of WDRs, or water quality certification) for mitigation, actions to service required mitigation, or actions undertaken for the primary purpose of land development,

agricultural production, property protection, or flood management **unless it contributes to a project with the primary purpose of wetland conservation.**

Additional Comments:

The following comments are for consideration primarily if the above proposed changes to the EREP definition are not incorporated into the draft Procedures. If the definition is changed, then the following comments may not apply. “Beneficial wetland conservation projects” are those projects that currently do not fit into the draft EREP definition, but would fit with our above proposed definition. Many beneficial wetland conservation projects have elements that are critical to their success, but may not allow them to fit under the current EREP definition .

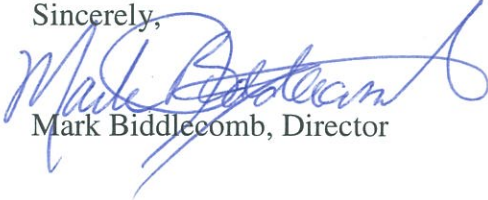
- Page 3 lines 92-203 describe an unclear process that may be interpreted differently by different water board staff across the state, and thereby create uncertainty in understanding what is required as part of the proposed regulatory process. Some of the items that may be asked for after the initial application submittal could take significant timeframes to develop, and thus substantially delay EREP and/or beneficial wetland conservation projects. In addition, some of the items that may be asked for could have seasonal restrictions that could significantly delay even the collection of the requested data required to be able to resubmit application materials. This could detrimentally affect the ability to implement these projects as they usually have very short grant periods of performance. Applicants for beneficial wetland conservation projects need to know exactly what is required to include in a permit application to be able to plan and budget project funding proposals appropriately. We recommend clearly defining the application requirements process and developing “triggers” or a mechanism to determine which, if any, additional requirements may be necessary to evaluate a given project.
- Page 4 lines 129-131 state that the SWRCB may require supplemental delineation data to be completed during the wet season. In requesting additional wet season data SWRCB staff could substantially delay beneficial wetland conservation projects for years (especially if drought conditions are present). Current delineation standards at the federal level do not require field data collection to be completed during a specific time of the year as long as the delineator can make judgements and document conditions based on existing data to define wetland boundaries. We recommend that the federal delineation standards be accepted.
- Page 4 lines 132-134 state that an assessment of climate change and potential impacts, and any measures to avoid or minimize those impacts, may be requested. Clarity on what specific aspects of climate change need to be included in the assessment should be provided.
- Page 4 lines 141-142 state that compensatory mitigation plans are not required for Ecological Restoration and Enhancement Projects. We would propose to expand the statement that compensatory mitigation plans are not required for beneficial wetland conservation projects.

- Page 5 lines 184-192 discuss the requirement of restoration plans for restoring areas of temporary disturbance. Beneficial wetland conservation projects as well as EREPs should be exempt from this requirement. This requirement has the potential to increase costs on beneficial wetland conservation projects, and may already be covered under normal Storm Water Pollution Prevention Permit obligations.
- Page 5-6 lines 195-203 discuss specific monitoring requirements for EREPs. These project already are required to provide monitoring as a condition of project funding. Requiring additional performance standards for beneficial wetland conservation projects creates additional costs and ultimately additional liability for conservation minded landowners to move forward with voluntary beneficial projects. We suggest that EREP and/or beneficial wetland conservation projects be exempt from the proposed additional monitoring requirements.
- Page 6 lines 209-210 state the need to demonstrate that a sequence of actions has been taken first to avoid, then to minimize, and lastly to compensate for adverse impacts to waters of the state. Guidance on the specific requirements to document the actions taken to first avoid then minimize, and lastly compensate for impacts to wetlands of the state would help clarify what is specifically needed. We strongly suggest exempting all beneficial wetland conservation projects even if they do not fit entirely under the definition of an EREP from this requirement.
- Page 6 lines 218-221. This requirement may create a substantial amount of additional work for water board staff in verifying wetland delineations. Further, changing the procedures (in removing one of the three wetland determination parameters) has the potential to create substantial conflicts in wetland mapping. This creates additional confusion and lack of clarity in moving through the regulatory process. We recommend that the federal delineation standards be accepted for waters of the State.
- Page 7 lines 246-267 discuss certain exemptions from the Alternatives Analysis requirement. Since the SWRCB only certified 13 of the 50 current nationwide permits we strongly urge that water board staff certify more nationwide permits after their release in 2017, with special attention specifically to NWP 27 for Restoration and Enhancement Projects. An alternatives analysis should not be required for beneficial wetland conservation projects or for projects where the impacts have been minimized (similar to the U.S. Army Corps of Engineers nationwide permit process). We suggest that exemptions be applied to projects that fit under any of the U.S. Army Corps of Engineers' General Permits.
- Page 16 lines 542-546 discuss that these guidelines will not likely apply in their entirety to any one activity. If this is truly the intent, then the draft Procedures should be clearly stated so they are able to be interpreted that way without the consistent use of allowing the permitting authority to make a case by case decision. This will streamline the process and reduce the workload of SWRCB staff.

- Page 16 lines 550-553 discuss the level of documentation should reflect the significance and complexity of the discharge activity. The permitting authority should make it clear what information is specifically needed to make a decision, and define the procedures so that it is clear to both applicants and agencies. The described sliding scale based upon individual staff interpretation provides for inconsistency and confusion.

Ducks Unlimited appreciates the opportunity to comment on the SWRCB Procedures. We invite continued conversation between DU and Board staff to improve these important procedures, and answer any questions you may have about these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mark Biddlecomb", with a large, sweeping flourish extending to the right.

Mark Biddlecomb, Director