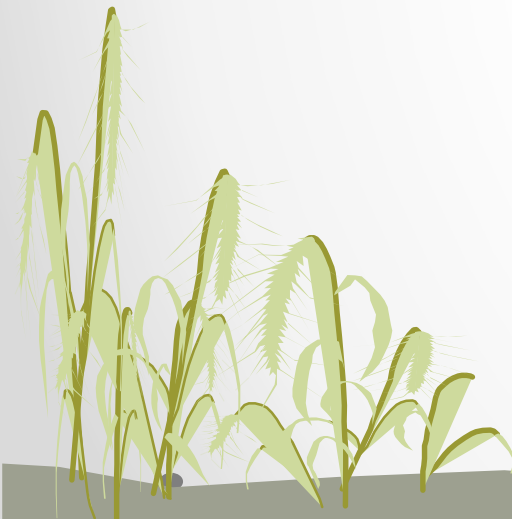


Procedures for Discharges of Dredged or Fill Material to Waters of the State

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Today's Presentation

- Description
- History
- Procedures
- Overview
 - Wetland Definition
 - Avoidance & Minimization
 - Compensatory Mitigation
 - Ecological Restoration and Enhancement Projects
- Next Steps

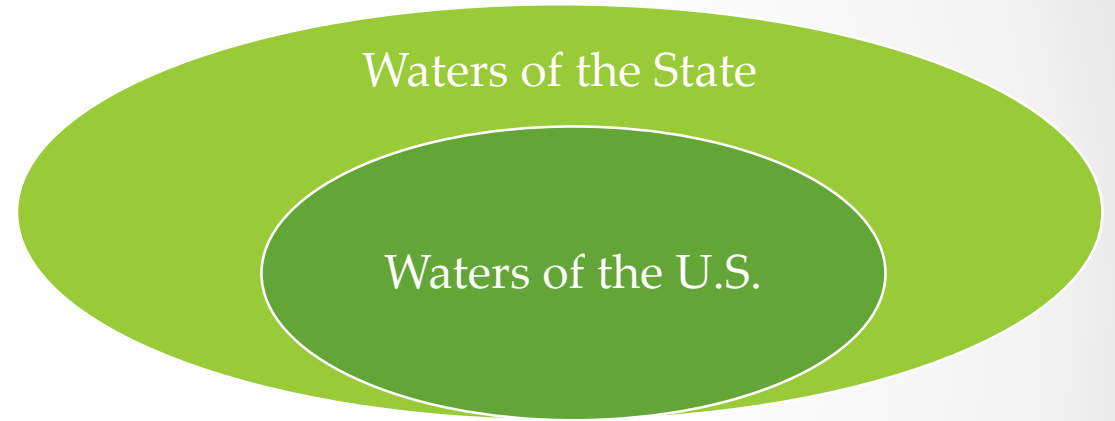


Description

- Main elements:
 - Wetland definition
 - Wetland delineation procedures
 - Wetland jurisdictional framework
 - Procedures: application submittal and review requirements for all waters, not just wetlands

Description

- CWA requirement to certify federal permits (401/404)
- SWANCC & Rapanos
- Uncertainty surrounding the 2015 Clean Water Rule and a changing federal landscape
- Waters of the State > Waters of the U.S.
- Applies to all waters, including those outside of federal jurisdiction



Description

- Address state goals for wetland protection
- Long-term net gain in quantity, quality, and performance of wetland acreage and values
- Align with federal program, to the extent feasible
- Improve consistency across the Water Boards
- Strengthen regulatory effectiveness
- Streamline the application process

History

- Resolution No. 2008-0026 (April 15, 2008)
 - Wetland definition that would reliably define the diverse array of California wetlands
 - Wetland regulatory mechanism
 - Assessment method to monitor wetland protection and program development
- Technical Advisory Team (formed in 2009)
 - Wetland managers and scientists
 - Found that existing definitions did not fully reflect the variety of wetlands found in California
- CEQA Compliance – scoping & supplemental environmental documentation (2011- 2016)
- Public review & comment periods (June 2016 & July 2017)

Wetland Definition

“An area is a wetland if, under normal circumstances,

1. The area has continuous or recurrent saturation of the upper substrate caused by groundwater, or shallow surface water, or both;
2. The duration of such saturation is sufficient to cause anaerobic conditions in the upper substrate; and
3. The area is either dominated by hydrophytic vegetation or lacks vegetation.”



Wetland Definition

- Army Corps' wetland delineation manuals
- Peer reviewed
- Three parameter definition requiring presence of wetland soils, wetland plants (if vegetated) and hydrology
- Non-vegetated areas are recognized as wetlands if the other two parameters are present (i.e., mudflats, playas, seasonal wetlands)
- "Non-vegetated" means less than five percent areal coverage of plants at the peak of the growing season; otherwise must be dominated by hydrophytic vegetation



Wetland Jurisdictional Framework

- Wetlands that are waters of the state:
 - All natural wetlands
 - Wetlands created by a modification of a water of the state
 - Wetland waters of the U.S. (current or historic)
 - Some artificial wetlands (greater than 1 acre)
 - Some exceptions – artificial wetlands created for a specific purpose

Avoidance & Minimization

When reviewing and approving applications for dredged or fill discharges, Water Board staff must ensure:

- A sequence of actions has been taken to first avoid, then to minimize, and lastly compensate for adverse impacts to waters of the state;
 - The potential impacts will not contribute to a net loss of the overall abundance, diversity, and condition of aquatic resources in a watershed;
 - The discharge of dredge or fill material will not violate water quality standards and will be consistent with all applicable water quality control plans and policies for water quality control;
 - The discharge of dredged or fill material will not cause or contribute to significant degradation of the waters of the state.

Avoidance & Minimization: Alternatives Analysis

- Will require an alternatives analysis when the Corps does not, in some cases
- Water Boards will determine if a project is the Least Environmentally Damaging Practicable Alternative (LEDPA)
- Some exemptions apply, including projects that qualify as an Ecological Restoration and Enhancement Projects
- Comments received – concern over Water Board staff workload

Compensatory Mitigation

- Soft preference
- Watershed approach
 - Watershed profile
 - Condition assessments
- State Supplemental Dredge or Fill Guidelines (Appendix A)



Ecological Restoration and Enhancement Projects

- Streamlined application process
- Projects voluntarily undertaken for the 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 enhance the beneficial uses...
 - Must be in accordance with the terms and conditions of a binding stream or wetland enhancement or restoration agreement or a wetland establishment agreement
 - Undertaken by a state or federal agency statutorily tasked with natural resource management
- Compensatory mitigation projects do not qualify

Next Steps



- Public review & comment periods (June 2016 & July 2017)
- Reviewing and responding to 6,150 public comments
- Targeted stakeholder outreach
- State Water Board Consideration

Questions?

