
San Francisco Bay Regional Water Quality Control Board

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February 9, 2017

Ms. Carole D'Elia
Executive Director
Little Hoover Commission
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Email: littlehoover@lhc.ca.gov

Subject: Water Board permitting requirements and coordination with government agency natural resource projects

Dear Ms. D'Elia:

Thank you for the opportunity to provide input for the Little Hoover Commission's review of state permitting processes and requirements regarding natural resource projects. This letter outlines the San Francisco Bay Regional Water Quality Control Board's (Regional Water Board's) areas of responsibility and describes how we work with local government, other agencies, and interested stakeholders on those projects. Such projects include flood management projects, bridges, storm drain outfalls, creek and levee maintenance, and creek and wetland restoration projects.

Our approach is intended to be collaborative with the goal of timely consideration of proposed projects while ensuring those projects meet water quality standards. My discussion here focuses on projects that include discharges of fill to State or federal waters and the associated process for permitting such projects, our regulatory goals, and typical permitting outcomes. I also describe the Regional Water Board's permitting approach to programmatic issues like climate change and anticipated sea level rise.

A. Regional Water Board Overview

Established in 1949, the State Water Board system is comprised of the State Water Resources Control Board and nine Regional Water Quality Control Boards, each with a watershed-based geographic area within which they are responsible to implement State laws and regulations for the protection and restoration of water quality. The Regional Water Board implements the State's Porter-Cologne Water Quality Control Act (California Water Code) and is the delegated State agency responsible for implementation of the federal Clean Water Act. As such, the Regional Water Board has broad responsibility over discharges of waste, fill, and pollutants to waters and to areas that could threaten waters of the State and the United States, and to protect and restore the beneficial uses of those waters. We work with other State and federal agencies; local government, including special districts; private parties; and interested stakeholders to, together, implement the Boards' mission:

To preserve, enhance, and restore the quality of California's water resources and drinking water for the protection of the environment, public health, and all

beneficial uses, and to ensure proper water resource allocation and efficient use, for the benefit of present and future generations.

This Regional Water Board covers, roughly, the nine-county Bay Area, from Silicon Valley in the south to the wine country in the north, and from the Pacific Ocean on the west to Altamont Pass and the Delta on the east.

Besides the Clean Water Act and the California Water Code, the Regional Water Board's regulatory work is guided by our regional regulatory document, the San Francisco Bay Basin Water Quality Control Plan (Basin Plan). The Basin Plan includes:

- A water body-specific statement of the beneficial water uses that the Regional Water Board will protect;
- The water quality objectives needed to protect the designated beneficial water uses;
- The strategies and time schedules for achieving the water quality objectives; and
- The plans and policies the Regional Water Board will use in protecting water quality.

Examples of beneficial uses include estuarine and wildlife habitat, municipal and domestic drinking water supply, agricultural supply, fishing, water-contact recreation, and preservation of rare and endangered species.

Guiding policies for water resource protection and the mitigation of damaging impacts specified in the Basin Plan include the State Antidegradation Policy (Resolution No. 68-16), which directs the Regional Water Board to regulate discharges to "...achieve [the] highest water quality consistent with maximum benefit to the people of the State," and not unreasonably affect the existing and anticipated future beneficial uses of water. The Basin Plan also includes several policies regarding the protection of creeks, wetlands, and the Bay. These include the California Wetlands Conservation Policy (Executive Order W-59-93), which directs the Regional Water Board to ensure no net loss and to achieve a long-term net gain in the quantity, quality, and permanence of wetland acreage in California, and Basin Plan Section 4.23.4, which summarizes the Regional Water Board's responsibility to exercise its independent authority to consider projects that propose discharges of waste as fill to waters of the State. We do this by reviewing applications for Water Quality Certification under Clean Water Act section 401 or, alternately, reports of waste discharge under the California Water Code. The Basin Plan also requires that projects should preferentially avoid or minimize fill or other impacts to waters. Where fill activities are deemed to require mitigation, such mitigation must preferentially be located "within the same section of the Region, wherever feasible." Ultimately, the project and its mitigation, evaluated together, must result in no net loss of both wetland acreage and functions.

The Basin Plan was initially adopted by the Regional Water Board in 1975. Any amendments to it are adopted by the Regional Water Board in a public hearing and are subsequently approved by the State Water Board, the State's Office of Administrative Law, and U.S. EPA. As such, the Basin Plan is considered a state water quality standard under the Clean Water Act.

B. Collaborative Stakeholder and Permitting Approach

The Regional Water Board recognizes that a broad range of stakeholders contribute to efforts to protect and restore water quality in the Bay Area. As such, our approach to permitting and programmatic planning is collaborative, open, scientific, and plan-based. This is illustrated by our work to establish and coordinate the Regional Monitoring Program, a collaborative effort among the San Francisco Estuary Institute, the Regional Water Board, and regulated

dischargers to collect information and develop the scientific basis for pollutant and contaminant trends in San Francisco Bay. Similarly, we have engaged in comprehensive, multi-stakeholder efforts to identify goals for water quality protection and restoration—such as the 1999 Baylands Ecosystem Habitat Goals Report and its 2015 [Science Update](#) (Habitat Goals), which focuses on a comprehensive set of science-based restoration goals to address the impacts of climate change, the Watershed Management Initiative in the Santa Clara Basin, a process intended to help develop and implement multi-objective watershed planning and project design in the South Bay, and the 2016 Comprehensive Conservation and Management Plan, the San Francisco Estuary Partnership’s multi-stakeholder collaborative agreement about what should be done to protect and restore the San Francisco Estuary.

Numerous stakeholders participate in the review and approval of public agency projects. These include the project’s implementing agency (e.g., a special district such as a flood management district), the State and federal agencies responsible to evaluate a project’s potential impacts and issue approvals (often discretionary) for the work (e.g., the U.S. Army Corps of Engineers (Corps), the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, the California Department of Fish and Wildlife (CDFW), and the Bay Conservation and Development Commission (BCDC)), and the affected public, including environmental groups, business organizations, and local residents. Because of the range of stakeholders and the time period over which a local agency may develop a project, communication and coordination amongst all agencies can pose significant challenges. As discussed below, the Regional Water Board engages in a range of activities intended to ensure clear, timely, and productive communication about projects. This includes programmatic efforts, such as high-level meetings, regional planning initiatives, and the development of resources for applicants. On the other end of the spectrum, the Regional Water Board coordinates project-specific information meetings, either via monthly forums, such as the Corps’ monthly interagency meeting, or on a project-by-project basis.

One coordinated permitting approach that involves multiple agency review is the Long-Term Management Strategy for Dredged Material Disposal in the San Francisco Bay Region, commonly known as LTMS. The goals of the LTMS are to maintain navigation channels in the Bay in an economically and environmentally sound manner, maximize the use of dredged material as a beneficial resource while minimizing the impacts of its placement, and establish a cooperative permitting framework between the Regional Water Board, the Corps, U.S. EPA, and BCDC. The LTMS program model is a successful interagency process, which has aligned these agencies’ policies and regulations for dredging and dredged material disposal. Key to LTMS program implementation is the Dredged Material Management Office, a one-stop “permit shop” jointly staffed by the four agencies that coordinates agency-permittee discussions regarding dredging projects and provides further coordination between agencies and permit conditions. In most cases, this has reduced permitting challenges and conflicts, while moving many projects to construction quickly. The multi-agency review structure created through the LTMS has proven to be effective in easing regulatory burden and increasing project review efficiency. We expect to consider a similar approach for evaluation of shoreline adaptation and sea level rise project reviews, since these types of projects would require multiple agency review, regional coordination, and are likely to become more frequent in the future.

The Regional Water Board communicates with stakeholders in a variety of ways on public projects relating to infrastructure, shoreline protection, flood management, and habitat restoration. First, outside of the project-specific permitting process, Regional Water Board staff meets regularly with stakeholder groups, such as the Bay Area Flood Protection Agencies Association (BAFPAA), the San Francisco Bay Joint Venture, and the dredging community; managers of flood management districts, such as the Santa Clara Valley Water District and the

Contra Costa County Flood Control and Water Conservation District); regulatory agencies, such as U.S. EPA, the Corps, and State and federal resource agencies; environmental groups; and others. Those meetings are typically to discuss opportunities for collaboration, evolving issues, upcoming projects, and to proactively identify potential challenges to permitting particular projects.

Second, we work programmatically to address new challenges, such as responses to climate change and the potential impacts of sea level rise (e.g., our work with the San Francisco Estuary Partnership-led Flood Control 2.0 initiative and the BCDC-led Adapting to Rising Tides initiative). Similarly, we work to ensure that general expectations are set to ensure projects are designed in a manner so that they will accomplish their intended purpose while protecting the environment. Simple examples of that work include the Regional Water Board's 2015 [Stream Maintenance and Enhancement Fact Sheet](#) and the Regional Water Board's 2003 [Primer on Stream and River Protection for the Regulator and Program Manager](#). The Regional Water Board now has under development a supplement to that Primer focused on flood management project design.

Finally, we work proactively with applicants (including public agencies) and other interested parties on approvals for specific projects, especially large infrastructure projects that will have a long project life. Because of the importance of those projects both to the agencies and to water quality, we devote resources to begin working with an agency well before an application is ever submitted and often before the agency begins its CEQA review of a potential project (by contrast, other agencies, including CDFW, may be unable to participate in this coordination until they have received a project application and associated fee). Our goal is to help the agency identify multi-benefit project designs that are easy to permit; identify and complete necessary technical analyses of a project's design; and achieve goals like minimizing direct and indirect water quality impacts, future maintenance costs, and unanticipated future problems. Pre-application coordination may also include commenting on environmental documents, including CEQA documents, conducting coordination meetings, reviewing agency submittals, and related tasks.

During pre-application coordination, we also work with public agencies to develop project designs that are, as much as possible, self-mitigating. Those are projects for which impacts have been minimized and mitigation, to the extent it is required, has been incorporated into the project design. The degree of expertise available to the local agency's project team often dictates the speed of progress. Such expertise includes familiarity with and ability to evaluate the range of environmental processes that may occur in a project. We continue to work to help agencies develop, involve, and use the expertise necessary to create project designs that are more-resilient and less-impacting.

C. Permitting Process Overview

This section describes:

- Projects that typically require a discretionary approval from the Regional Water Board;
- The permitting process and Regional Water Board efforts to streamline that process; and
- Examples of permitted projects

The Regional Water Board considers approvals for a variety of projects that place fill into waters of the State or the United States or in a location where fill could impact those waters. The approval required is typically either a Water Quality Certification under Clean Water Act section 401, which is issued to certify that an associated federal approval meets the State's water

quality objectives, or Waste Discharge Requirements under the California Water Code. The Regional Water Board authorizes projects using both individual permits and programmatic general permits issued for certain classes of activities, such as flood control maintenance, levee maintenance, and small habitat restoration projects.

The Regional Water Board issues about 250 project-specific certifications annually with staffing of approximately 5 PY and assistance from 3 additional contract-supported staff funded by the agencies to which they are providing the support. While certifications can be issued by the Executive Officer after a public notice period, Waste Discharge Requirements must be adopted by the Regional Water Board during a public hearing. As a result, Waste Discharge Requirements are typically reserved for large or particularly complex projects or for general permits where projects may be individually small, but may have a cumulatively significant impact over time.

Public agency projects can include large infrastructure projects, such as the replacement of the eastern span of the San Francisco-Oakland Bay Bridge, the seismic retrofit of San Francisco's water supply system, shoreline levee maintenance and construction, and flood control channel capital improvement projects. They also include relatively more-modest projects such as those that maintain existing infrastructure, including utility line crossings, storm drain outfalls, and existing bridge repairs, as well as projects to maintain flood capacity in existing creeks, typically by removing sediment, controlling vegetation, and stabilizing creek banks. Finally, the Regional Water Board considers applications for restoration and enhancement of creeks, wetlands, and the Bay. Such projects may be regionally significant, such as the South Bay Salt Pond Restoration Project, or may be on a more local scale, such as removal of barriers to fish passage in a creek, rancher projects to support habitat beneficial uses in existing stock ponds by removing accumulated sediment and maintaining their water control structures, or grant-funded urban creek restoration. The number and extent of all of these projects are expected to grow as agencies increasingly respond to the challenges associated with climate change.

These types of fill projects are significant because they can result in major direct and indirect impacts to waters' beneficial uses. For example, flood management capital improvement projects may channelize miles of creek; limit the growth of woody and other riparian vegetation, thus increasing water temperatures; and modify a creek's transport of sediment and other ecological flows, impacting the creek's beneficial uses for habitat, fish, and recreation. Even where direct impacts may not be as significant, poorly-designed flood management projects may accumulate sediment at accelerated rates, resulting in unnecessarily-frequent repetitive impacts from sediment removal activities. Similarly, poorly-designed storm drain outfalls, utility line crossings, or bridge crossings can result in impacts including barriers to fish passage, downstream erosion and sedimentation, and additional impacts to a creek in order to protect the poorly-designed project. These can result in significant costs to the environment as well as the public agency (and its taxpayers) responsible for maintaining the poorly-designed structure.

Because of the large and growing number of project applications relative to available staff and the need for timely consideration of project approvals, Regional Water Board staff use efficient permitting tools such as general permits that provide conditioned approvals for a class of projects. General permits are intended to provide predictable and timely permitting outcomes for agencies while appropriately protecting water quality. For example, flood control maintenance activities are currently covered under general permits issued to the Santa Clara Valley Water District, the Napa County Flood Control and Water Conservation District, the Sonoma County Water Agency, and the City of Livermore. The Regional Water Board is developing additional general permits for the City of American Canyon and Marin and Contra Costa counties, and the

East Bay Regional Park District has just requested reissuance of its own general permit for maintenance activities. Other examples include:

- A shoreline maintenance permit recently issued to the Port of San Francisco;
- A levee maintenance permit for managed wetlands in Suisun Marsh;
- A statewide general permit for small habitat restoration projects;
- General permits for pond maintenance habitat restoration activities in Alameda and Contra Costa counties; and
- The development of a general permit for maintenance and installation of overwater structures, such as pier-supported docks and wharves.

These maintenance permits, typically issued for 5-year periods, allow local agencies to predictably complete needed maintenance activities because the permits specify up front the type of work allowed, any necessary mitigation, and an adaptive management process for the agencies to review and make changes to their ongoing work. The permits are intended to both allow work and help identify an arc of improvement where agencies develop improved information about their maintenance needs and how the beneficial uses of their waters can be maximized given the waters' other goals, including the provision of flood protection. The permits typically require an annual submittal of proposed work, a multi-agency coordination meeting, and submittal of an annual report identifying work completed, including mitigation monitoring and reporting and adaptive management.

Bay Area creeks are significantly impacted by urbanization, past agricultural use, and the historic construction of single-purpose flood control projects that did not consider the creeks' full range of functions and uses. Bay Area flood management districts are challenged to maintain flood capacity in these constrained waters. At the same time, there is a significant opportunity for improvement. The Regional Water Board uses the general maintenance permits as an adaptive management framework that allows the districts to collect information and revise practices to maximize beneficial uses and reduce costs while maintaining flood protection.

For example, under its general maintenance permit, the Sonoma County Water Agency has collected field data and developed vegetation templates specifying how a range of its channels could be allowed to develop a woody riparian overstory while still maintaining flood flow capacity. This will allow the agency to avoid the more-common, but more-impacting, approach of maintaining channels solely by preserving low-lying herbaceous vegetation, such as grasses, which limits habitat and other beneficial uses. The shady overstory will reduce water temperatures, improving fish habitat, while also limiting growth of in-channel vegetation, which may reduce the agency's long-term maintenance costs.

Permitting process: opportunities for improvement to projects and timelines

The Regional Water Board continues to refine its efficient and predictable permit process, which includes, as appropriate, early involvement with local agencies and coordination with the other agencies responsible to issue project approvals, that is ultimately intended to result in projects that achieve their project purpose while meeting water quality objectives and requirements. That process has also included, as noted above, development of regulatory guidance to inform project designs and expectations, as well as the use of regular coordination meetings to avoid unexpected surprises that will result in delays. While this process is effective in many permit-issuances, there are potentials for delay over which the Regional Water Board has little control.

We further recognize that projects with significant capital investment, including large flood management projects, are a two-edged sword: on the one hand, a poorly-designed project may

result in excessive environmental impacts and future maintenance costs to an agency and its taxpayers; on the other, a well-designed project can provide resilient flood protection while also improving a water's beneficial uses and even contributing to larger-scale ecosystem benefits. As a result, we have worked to develop systematic general permits for those kinds of projects, like maintenance, with regular, repeatable impacts. Use of general permits is intended, in part, to allow us to focus limited staff resources on projects with permanent impacts and on restoration projects, including the expected upcoming increase in habitat and climate change-related projects, such as projects funded by the recently-adopted Measure AA and the Cal EcoRestore program in Suisun Marsh and the Delta.

While limited staff resources are an ongoing challenge, the primary factor that causes permitting delays is the failure of applicants to provide complete or detailed applications. Where the applicant has not completed the analyses necessary to understand how the project will function in the environment, its application may not adequately evaluate potential water quality impacts that may necessitate design changes or identify mitigation for unavoidable impacts.

For example, an applicant for a flood management capital improvement project may engage a consulting firm that is knowledgeable in hydraulics and traditional methods of bank stabilization (e.g., rock and concrete) but not in fluvial geomorphology—how creeks change over time, including sediment transport modeling—or in less-impacting biotechnical bank stabilization methods (e.g., willow planting). Absent a broader understanding of creek processes, the project designs produced by “standard” civil engineering or hydraulics expertise are likely to be more-impacting and less-resilient and to require more maintenance over time.

As an example, without an appropriate sediment transport analysis, a costly flood management project may wind up being simply a sediment sink, requiring the local agency repeatedly to remove deposited sediment to maintain flood capacity. Similarly, bridge designs that direct stream flows at unprotected stream banks may require future significant unnecessary downstream bank hardening. These are both examples of issues in projects for which the Regional Water Board recently has received an application. Because these foreseeable project outcomes can result in impacts to beneficial uses and may not meet State water quality standards or the State's policies associated with discharge of fill, they are, appropriately, part of Regional Water Board staff's application review. While Regional Water Board staff subsequently identify such deficiencies to the agency during application review, correcting these deficiencies causes delay in project permitting and wastes both the agency's and the Regional Water Board's resources.

As noted above, State policies require that projects and their mitigation, when evaluated together, must result, essentially, in no net loss and long-term net gain in wetland area and function. As such, another source of project delay can be where an applicant simply proposes mitigation for the impacts identified in its application without considering how to avoid and minimize impacts as part of the project's design. However, the avoidance and minimization process is a key part of the Regional Water Board's application review. Consistent with approaches taken by other agencies, including the Corps, we look at opportunities for less-impacting project designs separate from evaluating mitigation for remaining impacts.

The Regional Water Board's permitting process is, at its center, a discussion about how to develop projects—and consider design alternatives—that avoid and minimize water quality impacts while accomplishing the project's intended purpose. Traditional assumptions about what works (e.g., a concrete-lined or earthen trapezoidal channel) are not informed by the range of effective options currently available or lessons learned from past impacting projects. Proposing those types of outdated projects can result in additional time to identify appropriate

options and consider their viability for a given project. We have learned it is not efficient to simply permit poorly-designed projects; in addition to their immediate impacts, such projects are more likely to be a future permitting burden as agencies address their long-term effects.

Typically, to minimize the time a project spends in application review and permitting, we will work in parallel with other permitting agencies to review both impacts and mitigation proposed for those impacts. We recognize the Corps' soft preference for wetland mitigation banks, as stated in its Mitigation Rule, and have supported projects obtaining mitigation at available banks. At the same time, available Bay Area mitigation banks are limited. Also, all Bay Area flood management districts and many other public agencies have significant opportunities for mitigation within their own lands or jurisdiction. Mitigation activities can include restoration and enhancement of creeks, wetlands, and at the Bay margin. Recognizing these complexities, we work with applicants, first, to identify opportunities to make projects self-mitigating; second, to identify mitigation the applicants may want to complete near the project site; and third, to identify available mitigation banks or other lands where the applicants may want to complete mitigation. Finally, we have allowed applicants to support projects on other lands—effectively, an in-lieu fee approach, although the applicants remain responsible for the mitigation project's outcomes. Examples include funding the acquisition and restoration of land for the East Bay Regional Park District on Pleasanton Ridge, funding for that district's Berkeley Meadow restoration, and funding for daylighting and restoration of 1,000 feet of creek on park district land at Flicker Ridge, near Oakland.

The Regional Water Board participates on the Interagency Review Team (also known as the Mitigation Banking Review Team) that helps to permit mitigation banks. We will continue to support a flexible range of mitigation options consistent with the Basin Plan and other applicable State requirements. While Regional Water Board staff are well-versed in the availability of mitigation options, permitting delays may occur where applicants fail to propose any mitigation or are slow to incorporate it into project designs.

CEQA

It is understandable that different agencies may view project constraints differently, resulting in different project designs. That, in part, is a purpose of environmental regulation—to help achieve a positive environmental result by shifting the frame with which a project is evaluated. For example, separate from project design, a local district acting as a CEQA-lead agency may make different assumptions than the Regional Water Board regarding impact significance or the effectiveness of proposed mitigation at actually mitigating an identified impact. It may also assume that review processes and standards specific to CEQA are equivalent to those set forth in the Clean Water Act, the California Water Code, or the Basin Plan. To avoid potential confusion, Regional Water Board staff works to set expectations regarding project design, application content, and application review and to clearly communicate those expectations both generally and for particular projects, so that project applications and CEQA documents are complete, responsive to regulatory requirements, and result in expedient application review and permitting.

Where there are differences in CEQA review, the Regional Water Board, as a responsible agency under CEQA, has several options. It can prepare its own CEQA document, sue the lead agency, or address potential differences as a part of permitting. The first two options are time- and resource-consuming, costly to the applicant, typically unlikely to result in significant additional benefit to a project, and tend to work against the collaborative relationships the Regional Water Board seeks. As a result, where a lead agency's conclusions about impacts under CEQA differ from the Regional Water Board's review and conclusions under the Clean

Water Act, the California Water Code, and the Basin Plan, the Regional Water Board will typically work to address those differences during permitting. We see that as an appropriate and efficient approach relative to the other options.

D. Regional Water Board Actions on Climate Change and Sea Level Rise

We are currently conducting a review of our regulatory process to address perceived regulatory constraints to climate change and sea level rise adaptation strategies and to address some of the specific issues identified in the Habitat Goals. This regulatory review project was identified during our 2015 Triennial Review of the Basin Plan. Legally, we are required to review and update the Basin Plan regularly; the last review was completed in 2015. This project, which is being supported in part with U.S. EPA Wetland Program Grant funds, will consider recommendations made as part of the Habitat Goals and evaluate the permitting challenges associated with these recommendations. Fundamental to the Habitat Goals is the scientific communities' acknowledgement that marshes and other types of wetlands provide a range of important ecosystem services, including buffering against sea level rise. Another fundamental concept is that restoration of estuary-upper watershed connections will be required to ensure future tidal marsh resiliency in response to climate change. We see the Regional Water Board's regulatory role as helping to facilitate the natural resource projects that are an outgrowth of the recommendations put forward in the Habitat Goals. Regional Water Board staff were instrumental in the preparation of the original 1999 Habitat Goals and served on the steering committee of the 2015 Science Update. Adapting our bayland habitats to ensure continual viability in light of climate change is an important element of the mission of the Regional Water Board, a goal that is shared by a multitude of stakeholders and regulated entities in the Region.

The recent passage of Measure AA in the Bay Area reflects that shared vision and goal for the San Francisco Bay and created a source of funding for the next 25 years. The San Francisco Bay Restoration Authority's Governing Board oversees implementation of Measure AA and will make decisions about funding projects to protect and restore San Francisco Bay for future generations by (1) improving water quality by reducing pollution and trash and engaging in restoration activities; (2) restoring, monitoring, and maintaining habitat for fish, birds and wildlife; (3) using natural habitats to protect communities from floods; and (4) increasing shoreline access and encouraging public participation in protecting the Bay's health. The Governing Board has established an Advisory Committee, of which I am a member, to provide recommendations on how to implement Measure AA and make funding decisions. The funding of projects supported by Measure AA is likely to increase the pace at which projects are proposed for regulatory permitting and will place additional demands on Regional Water Board staff to coordinate and expedite the regulatory approval process. Hence, this is another reason we are working on this regulatory review project.

As an outgrowth of the project, we anticipate development of a framework or guidance that would apply to permitting climate adaptation projects, including multi-benefit projects that achieve objectives of multiple agencies and/or stakeholders, including ecosystem enhancement and/or restoration, flood protection, stormwater treatment, use of treated wastewater, recreation, infrastructure upgrades, and beneficial reuse of dredge sediment. Response strategies such as adapting existing wetlands to keep up with the pace of sea level rise by placement of natural infrastructure, such as habitat levees, challenge our wetland policies and regulatory approach. One of the outcomes of this effort will be the development of staff recommendations to the Regional Water Board on implementing alternative permitting strategies to support multi-benefit projects. Development of this framework or guidance is also intended to provide clarity and transparency to project proponents about the kind of information the Regional Water Board needs to make decisions about permitting projects along the Bay shoreline. While we are in the

process of developing a framework for project sponsors to use, we continue to permit multi-benefit projects on a permit-by-permit approach.

In addition to our own internal review of our permitting requirements for climate adaptation projects and the coordination efforts described above under section B., we are participating in multiple other regional efforts to develop alternative approaches to climate change and assess permitting challenges. Those efforts include: 1) participating on the Advisory Committee of the San Francisco Bay Restoration Authority as noted above; 2) participating in Responding to Sea Level Rise in the South Bay: Local and Regional Implications of Alternative Future Shoreline Configurations that was held on September 27, 2016. This workshop was organized by the [Bay Area Ecosystems Climate Change Consortium](#) in conjunction with the [Climate Readiness Institute](#) at UC Berkeley; 3) organizing and participating in a January 2017 workshop with U.S. EPA and regional stakeholders on regional permitting and permit monitoring requirements; 4) coordinating an upcoming permitting workshop with the BAFPPA members; 5) coordinating with BCDC on regulatory permitting issues; 6) participating in a Corps project to evaluate sediment placement strategies to adapt wetlands to climate change; and 7) working with the San Francisco Estuary Institute on development of Shoreline Adaptation Strategies for the Bay. It is important to note that this Regional Water Board is not alone in taking the position that the State and Regional Water Boards must play a strong role in developing long-term strategies to address the water resource and water quality impacts of global climate change and promoting the use of natural systems and infrastructure, such as wetlands in climate change adaptation plans. The San Diego Regional Water Board has a [draft resolution](#) out for public comment that identifies important policy considerations related to addressing threats to beneficial uses from climate change.

In addition, the Regional Water Board participates in other climate change initiatives and incorporates climate change considerations into decision-making for other types of projects, such as water recycling and conservation, landfill permitting, toxic site cleanup, wastewater treatment plant operation, ocean discharge, nutrient management, and remediation of harmful algal blooms in lakes and reservoirs.

E. Selected Issue-Specific Discussion: East Bay Regional Park District

Emergency Permits vs. Long-term Maintenance Permits

East Bay Parks stated it could quickly receive emergency permits for maintenance, but could face much longer timelines for long-term shoreline maintenance permits intended to prevent emergencies.

We agree that we have been able to quickly issue multiple emergency permits for shoreline maintenance to East Bay Parks. However, we are not aware of delays in issuance of long-term shoreline maintenance permits. Since 2004, many of East Bay Parks' routine maintenance activities have been covered under a general permit (currently Order No. R2-2011-0050).

Permit Streamlining Act

East Bay Parks identified a concern that in order to meet Act deadlines, permitting agencies may deem an application incomplete and return it to the applicant. They requested that limits be placed on the number of times an application may be returned for additional information.

Given our resource limitations, we work to minimize back-and-forth during our application review. However, failure to provide information requested on numerous occasions should not be rewarded by a limit on a permitting agency's ability to get requested information. In the Regional

Water Board's case, the proposal to limit communication during application review may have the unintended effect of reducing our ability to ensure that project designs meet State water quality standards.

Modification of California Water Code to Allow for Management and Protection of Shoreline Marshes

East Bay Parks identified the need to maintain levees at the Hayward Regional Shoreline in the face of anticipated sea level rise, and discussed the need for potential policy changes to allow potential "restoration and enhancement" maintenance options, as well as the need for funding for project implementation.

As noted above, the Regional Water Board is actively participating in stakeholder efforts to identify needed policy changes; Bay Area voters' approval of Measure AA recognizes the need for projects to address anticipated sea level rise, and we will continue to search for additional sources of funds to implement projects across the Bay Area.

Conservation Easements and Long-Term Funding Requirements

East Bay Parks identified a concern about California Department of Fish and Wildlife requirements to maintain endowments on lands protected by conservation easements.

We believe this is a CDFW requirement. The Regional Water Board's practice is not to require public agencies with a stewardship role to maintain perpetual endowments for conservation easements on their own lands. We note that for those instances where a mitigation project on public lands has been funded by a third party, we have required the third party to provide an appropriate endowment to the public agency, sufficient to allow the maintenance of the mitigation project in perpetuity.

F. Issue-Specific Discussion: Santa Clara Valley Water District

Issue L.1 – improve permitting efficiency for anticipated maintenance activities

The District states that a project design and maintenance schedule and activities should be agreed upon before a project is built. It notes, further, that under this approach, projects would be designed with maintenance activities in mind.

We agree with the District and are taking this approach during permitting of its Upper Berryessa Creek Flood Risk Management Project. Regional Water Board staff engaged in this project and provided feedback on its design a decade before the District (and its federal partner, the Corps) submitted a project application. The project design did not reflect Regional Water Board input and the District did not propose a maintenance schedule and activities for that project (rather, those will be informed through the development of a maintenance manual in coordination with the Corps). We have proposed a mechanism by which the District may develop maintenance expectations and predictably complete initial maintenance and adaptive management measures under the project's Waste Discharge Requirements and Water Quality Certification, before folding the project's maintenance activities into the District's general permit for stream maintenance.

As discussed above, the Upper Berryessa project was not designed with maintenance and habitat value in mind; rather, its design reflects a more-traditional approach to flood management. However, we continue to support a more-integrative approach for future projects.

Issue L.2 – Improve permitting for routine channel maintenance

The District identified an opportunity to balance flood protection and habitat functions to encourage multi-use flood channel planning.

The District currently completes routine channel and stream maintenance under a 5-year general permit issued by the Regional Water Board. We meet annually with the District and resource agencies to discuss lessons learned and opportunities for improvement and make changes, as appropriate. We anticipate reissuing this permit and will work with the District to further incorporate multi-use flood channel planning into its permit.

Issue L.3 – Improve coordination of mitigation requirements among regulatory agencies

The District states that state and federal agency mitigation requirements can be conflicting and can delay projects. It suggests that the federal Mitigation Rule's soft preference for mitigation banks and in-lieu fee programs over permittee-implemented mitigation is a requirement, rather than a preference. Finally, it states that complying with the Mitigation Rule's soft preference results in "higher state agency mitigation ratios and requirements."

We are not aware of any instances in which the federal Mitigation Rule has resulted in an increase in Regional Water Board-required mitigation beyond what we would have required in the rule's absence. That is because we determine mitigation based on a project's specific impacts in association with the Basin Plan and related State requirements.

As noted above, we work to coordinate with other agencies responsible to provide project authorizations, including coordinating on potentially acceptable mitigation. Although the District does not identify an instance where mitigation requirements were in conflict, we would certainly work with all parties to address such a conflict.

Issue L.4 – Endowments for Long-term Management of Mitigation Sites

The District expresses concern that permanent endowments are required to be placed on mitigation lands.

We believe this is a CDFW requirement. The Regional Water Board's practice is not to require public agencies with a stewardship role to maintain perpetual endowments for conservation easements on their own lands. We note that for those instances where a mitigation project on public lands has been funded by a third party, we have required the third party to provide an appropriate endowment to the public agency, sufficient to allow the maintenance of the mitigation project in perpetuity.

Issue L.5 – Improve Permitting Agencies Timeliness and Consistency with Other Plans Approved Through the Environmental Review Process

The District asserts that its Permanente Creek Flood Protection Project was delayed by the Regional Water Board's review. It suggests that agency permitting processes should not result in project design changes, once those projects have obtained CEQA review by a lead agency (typically the sponsoring flood control district or local municipality), and suggests that agency comments during CEQA can be "vague and ambiguous." Finally, it asserts that the Regional Water Board has required mitigation under Clean Water Act Section 401 Water Quality Certifications for impacts not associated with the certified project.

We were surprised to read the District's comments on this issue, as we have worked with District staff for more than 25 years to collaboratively identify watershed management

approaches, clarify project design approaches and expectations, and discuss impacts and opportunities for mitigation. That period includes countless watershed-planning, program-level, and pre-project and project meetings, letters, and other communications, including CEQA comment letters. The result of all of that collaborative work should be that the District is well aware of Regional Water Board regulations and approaches and be able to incorporate them into its project designs. Indeed, to its credit, the District has successfully completed public votes on two bond measures, in large part due to its stated commitment to creek restoration and stewardship. The statements regarding those bond measures are in sync with the approach to projects the Regional Water Board is required to take by our applicable laws, regulations, and policies.

As discussed above, we work to avoid exactly the situation the District describes here—submittal of an application with a project design that is unapprovable or that requires significant additional information. Yet such applications have been submitted despite our best efforts. In those cases, we continue our collaborative approach with the goal of reaching agreement on an approvable project design that meets the applicant's goals.

Specific to the Permanente Creek project cited by the District, we agree that project permitting took longer than it should have. In this case, during the four-year period leading up to the District's submittal of an application for the project, Regional Water Board staff regularly submitted comment letters during the District's multi-year CEQA process, specified the aspects of the project's design that still needed evaluation once the CEQA process was complete, and reiterated our expectations for the application's contents at the Corps' interagency meeting immediately prior to application submittal. However, the District's initial application bore little resemblance to our stated expectations, and it took nearly two years to receive all information we needed to permit the project. The District's CEO later admitted that the District had already prepared most of this information and could have submitted it much earlier.

Our experience with permitting the Permanente Creek project also demonstrates that the implicit assumption that, through the CEQA process, a lead agency will always develop a project that fully addresses applicable regulatory requirements is false on its face. The CEQA process is a useful process when it is completed in an open fashion, including an evaluation of all potential project alternatives, impacts, and constraints, and fully accounts for associated regulatory requirements and policy expectations. To that end, we regularly provide detailed comments on CEQA documents prepared for significant projects proposed by the District and other local agencies. For example, our comment letter on the Upper Berryessa project cited in L.1 was 93 pages, including its attachments, supported with specific data and analyses.

Rarely are all agency comments addressed during the CEQA process. Mitigation details are often deferred; the CEQA alternatives process has different standards from other regulatory processes; and lead agencies may weigh constraints much differently than regulatory and resource agencies. As a result, it is not unusual that the regulatory and resource agencies' comments are not fully addressed; in some cases, they may be largely or entirely dismissed. The CEQA Guidelines recognize that agency priorities and jurisdictions may differ. Section 15096 of the Guidelines require that a responsible agency, such as the Regional Water Board, separately and independently evaluate a project and adopt alternatives and mitigation that will reduce significant effects within the responsible agency's jurisdiction. Thus, the notion that CEQA, in and of itself, should supplant the more-detailed discretionary environmental reviews set forth in the Clean Water Act, the California Water Code, the Basin Plan, the State and federal Endangered Species Acts, the McAtteer-Petris Act, and related laws and regulations, creates the potential for an end-run around those laws.

We are not familiar with District projects for which the Regional Water Board has required mitigation for impacts not resulting from the project. As noted elsewhere herein, where impacts have not been avoided, State laws and regulations require mitigation for identified project impacts.

Issue L.6 – Improve Permitting Staff Inefficiencies

The District notes that regulatory agencies can lack staff resources to quickly respond to permit applications. It funds a staffer at the Regional Water Board and states that it receives timely responses as a result. It suggests creation of a single regional general permit that could combine information required for separate State and federal permitting processes.

We support efforts to obtain staff resources sufficient to respond expeditiously to all permit applications and to allow us to work in advance with applicants as they develop projects and mitigation.

We have participated in efforts to develop joint permit applications, including the San Francisco Estuary Partnership's Joint Aquatic Resource Permit Application (JARPA). We also worked collaboratively with the local Corps district on a project designed to allow the Regional Water Board be the lead agency for both State and federal permitting of natural resource projects (as it is for the permitting of the discharge of liquid wastes to the waters of the State and United States) until the Corps' headquarters terminated the project. We support efforts that can help reduce process complexity as seen by applicants. However, our experience with projects submitted using JARPA has been similar to that with other projects—our application review can be hampered by incomplete project information, limited analyses, or inadequacy of mitigation. A relatively greater benefit may be gained by helping applicants obtain and incorporate appropriate expertise into their project designs.

Closing

I look forward to providing additional information at the Commission's February 23, 2017, meeting. Should you have any questions prior to that, please contact me at 510-622-2314 or bruce.wolfe@waterboards.ca.gov.

Sincerely,

Bruce H. Wolfe
Executive Officer