



State Water Board Issues New Proposed Permitting Procedures for Dredge & Fill to Waters of the State

06.28.2016 | By [Mary Lynn K. Coffee](#)

On June 17, 2016, the State Water Resources Control Board (State Board) issued its much-anticipated draft Procedures for Discharges of Dredged or Fill Materials to Waters of the State (Draft Permitting Procedures). The release of the Draft Permitting Procedures marks over 15 years of the state's rulemaking process for discharges of dredge and fill material into waters of the state, under consideration in one form or another since the 2001 U.S. Supreme Court decision in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001) (SWANCC). SWANCC arguably left a gap in regulatory coverage for certain aquatic features in California that do not qualify as waters of the United States subject to federal Clean Water Act (CWA) permits. As part of the now-formal rulemaking, the State Board will conduct workshops, hearings, and receive public comment on these proposed regulations.

- **Dates/locations for hearings on the Draft Permitting Procedures:**
 - June 28, 2016 in Los Angeles
 - July 7, 2016 in Rancho Cordova
 - July 19, 2016 in Sacramento
- Written comments are due 12:00 p.m. (noon) on August 4, 2016

Now that the formal rulemaking process has started, stakeholder engagement is essential, as it will determine the scope, content, and stringency of the final Permitting Procedures.

If adopted, the Draft Permitting Procedures will expand the permitting jurisdiction of the California water boards, and impose additional regulatory hurdles and permit requirements on a wide range of industries and activities, including: private development; agricultural operations; infrastructure development, and

operations and maintenance (including transportation and water conveyance infrastructure); and conservation/mitigation banking.

As proposed, the Draft Permitting Procedures would authorize the exercise of permitting jurisdiction by water boards in a manner that:

- Duplicates and overlaps the jurisdiction of the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency to issue Section 404 permits under the CWA;
- Duplicates and overlaps with the California Department of Fish and Wildlife's (CDFW) jurisdiction under streambed alteration agreement provisions of California Fish and Game Code sections 1600 et. seq; and
- Expands the permitting jurisdiction of the California water boards to an unprecedented degree to areas beyond the boundaries of federal CWA and streambed alteration agreement/Fish and Game Code section 1600 jurisdiction.

Specifically, the Draft Permitting Procedures require permits for discharges of dredge or fill not only to drainages, streams, ponds, lakes, and other aquatic features more commonly recognized as waters of the state, but also expand the jurisdictional boundaries of, and require permits for discharges to, the following as waters of the state:

- Canals, regardless of construction in uplands;
- Constructed waterways / conveyances, regardless of construction in uplands;
- Historical floodplains;
- Uplands with nexus to waters, and
- Non-vegetated areas.

As a result, not only will water board permits be required for more proposed projects and operations and maintenance activities, but mitigation requirements for those projects and activities are likely to increase in a manner that is directly proportional to the expansion in water board jurisdiction.