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February 13, 2014

Christopher Calfee, Senior Counsel
Governor's Office of Planning and Research
1400 Tenth Avenue
Sacramento, CA 95814

SUBJECT: 2014 CEQA Guidelines Update

Dear Mr. Calfee:

In response to the recent letter entitled, "Possible Topics to be Addressed in the 2014 CEQA Guidelines Update," and dated December 30, 2013, we oppose mentioning vectors as an example of potential impacts that result from mitigation measures.

Currently, according to the CEQA Guidelines, if a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be discussed but in less detail than the significant effects of the project as proposed. (CEQA Guidelines § 15126.4(A)(1)(D)). Including vectors as an example of a potential impact resulting from mitigation measures would be the first such example in the CEQA Guidelines. To be clear, the CEQA Guidelines do not currently include, nor have they ever included, a specific example of a potential impact that may result from mitigation measures. Including vectors as an example may lead to special interest groups requesting that OPR include specific examples of potential impacts caused by mitigation measures in the CEQA Guidelines. Evaluating what types of impacts may occur as a result of implementing mitigation measures is a responsibility traditionally left to the discretion of the lead agency, and, absent any case law or statutory authority to the contrary, we oppose any attempt to usurp that discretion.

Second, including such a provision regarding vectors has no basis in existing case law. Specifically, no case law has ever held that a lead agency must evaluate vectors when evaluating the impacts as a result of mitigation measures. For this reason, we are perplexed as

to how this suggestion would “appear consistent with [CEQA] and case law “as that phrase is used in OPR’s “Possible Topics to be Addressed in the 2014 CEQA Guidelines Update.”

Notwithstanding the lack of case law on this issue, absent a specific legislative mandate, we also question whether OPR has authority or discretion to amend the regulations this way.

Third, from a policy perspective, including vectors as a potential impact that may result from mitigation measures would undoubtedly discourage the creation of wetland habitat and/or water reservoirs as mitigation measures. The creation of wetland habitat is an often used and commonly upheld mitigation measure to mitigate impacts to biological communities. (See, e.g., *California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603 [creation of vernal pool and seasonal wetland habitat sites to ensure no net loss in wetland habitat acreage, values and functions, was an adequate mitigation measure under CEQA].) Indeed, discouraging the creation of wetland habitat as mitigation under CEQA would have a profound impact, both economically and practically, on developers’ ability to reduce potential impacts to a level of insignificance.

Voluntary restoration and enhancement projects which may be looking to create specific wetland habitats that may conflict with Mosquito and Vector Control Association of California Best Management Practices (BMP’s), but nevertheless have significant conservation and/or ecological values, could be affected and/or limited by the requested changes and the additional cost burden placed upon these projects. We have strong concerns about this proposed approach related to vector management due to effects on project costs, procedures, and uniqueness that may make important conservation projects infeasible. Ducks Unlimited has a history of active engagement with local project proponents and vector management authorities on a case by case basis to coordinate design features and vector reduction to the extent practicable, but not to the point of reducing the restoration and enhancement of valuable ecological habitats or by reducing wetland functions and values.

A one size fits all approach as proposed here is not in the best interests of wildlife concerns and state habitat and wetlands restoration goals. Without diving into technical and biological specifics, Ducks Unlimited has concerns related to various impacts proposed by BMPs, including but not limited to:

- The biological impacts on waterfowl and shorebirds and late season species that may be affected if all seasonal wetlands are drawn down by March or early April.
 - Draw down timing affects the ability of wetlands and irrigated agricultural lands to serve as food supplies for waterfowl and shorebirds and other species. With an estimated loss of over 95% of naturally occurring wetlands in the Central

Valley, proper management of remaining seasonal wetlands is critical to maintaining a healthy ecosystem and food supply for many species.

- The biological impacts on waterfowl and shorebirds related to moist soil management priorities that may be limited by requiring seasonal wetlands to be drawn down by early March or April.
 - Soil management practices are critical to ensuring appropriate seeding and growth of seasonal wetlands vegetation that serve as habitat and food supply for waterfowl and other species.

Finally, we note that our opposition to addressing this issue as part of the Update should not be mistaken as an attempt to understate the seriousness of the spread of the West Nile virus in the State of California. It is our position, however, that doing so through the Update process would be unprecedented and flawed from a policy perspective. In this respect, to the extent a particular interest group would like to see lead agencies adopting Best Management Practices guidance developed by the California Department of Public Health to reduce the spread of vector borne disease, we believe that effort would be better implemented at the local level.

Thank you for considering our comments. We look forward to an opportunity for further comment on specific CEQA Guidelines amendment language when it is proposed.

Sincerely,



Mark E. Biddlecomb

Director of Operations