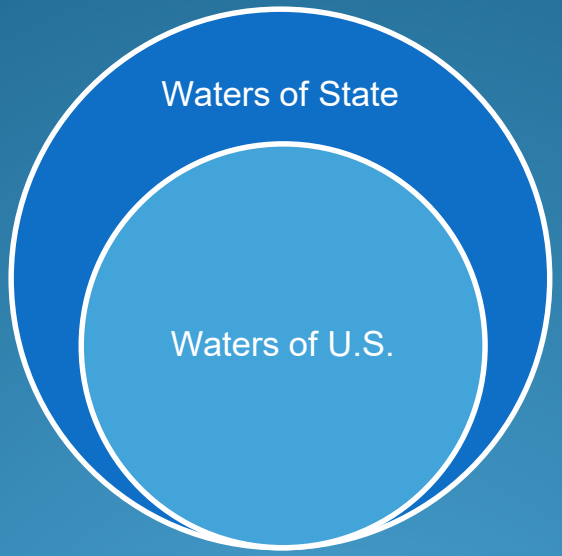
# Procedures for Discharges of Dredged or Fill Material to Waters of the State

Proposed for inclusion in the Water Quality Control Plan for Inland Surface Waters and Enclosed Bays and Estuaries and Ocean Waters of California

Phil Crader
Assistant Deputy Director
Division of Water Quality
State Water Resources Control Board

# Background

- 2001 and 2006 – U.S. Supreme Court decisions left a “gap” between State and federal jurisdiction of waters




- Some aquatic features once protected under federal Clean Water Act were no longer subject to federal jurisdiction

- State Porter-Cologne Water Quality Control Act provides broader jurisdiction over waters than federal CWA

# Background

- Water Boards began regulating impacts to these waters under State authority
- Lacked consistency between the Water Boards
- 2008 – State Water Board directed development of Statewide Policy
- 2016 – Released Current Draft Procedures
  - Protect all waters of the state from dredged and fill discharges
  - Provide consistency between the State and Regional Boards
  - Align with the Corps of Engineers to the extent feasible

# Procedures

- With some exceptions, apply to discharges of dredged or fill materials to all waters of the state, including discharges that impact non-federal waters
- Attempt to align state requirements with federal requirements and promote consistency between all Water Boards
- Largely adopt federal requirements for alternatives analysis and compensatory mitigation and apply those to all waters of the state on a case-by-case basis

# Prevailing Stakeholder Concerns

- Do not duplicate other requirements
  - U.S. Army Corps of Engineers
  - State Department of Fish and Wildlife
- Define waters of the state
  - For wetlands
  - For non-wetland features
- Reduce or eliminate case-by-case determinations
  - Whether a feature is a water of the state
  - Whether an alternatives analysis is required
  - What mitigation is required

# Status and Next Steps

| Action | Date |
|---|---|
| Release draft Staff Report, and Procedures for public review and comment (Complete) | June 17th |
| Public Workshops (during comment period) | June 28th and July 7th |
| State Water Board Hearing (during comment period) | July 19th |
| Written Comments Due | August 18th |
| State Water Board Consideration of Adoption | Spring 2017 |

# Caltrans' Comments
## on the
# Proposed Procedures for Discharges of Dredged or Fill Material in Waters of the State

Katrina C. Pierce
Chief, Division of Environmental Analysis
California Department of Transportation

CTC Meeting
August 17, 2016

# Current Wetland Permit Process

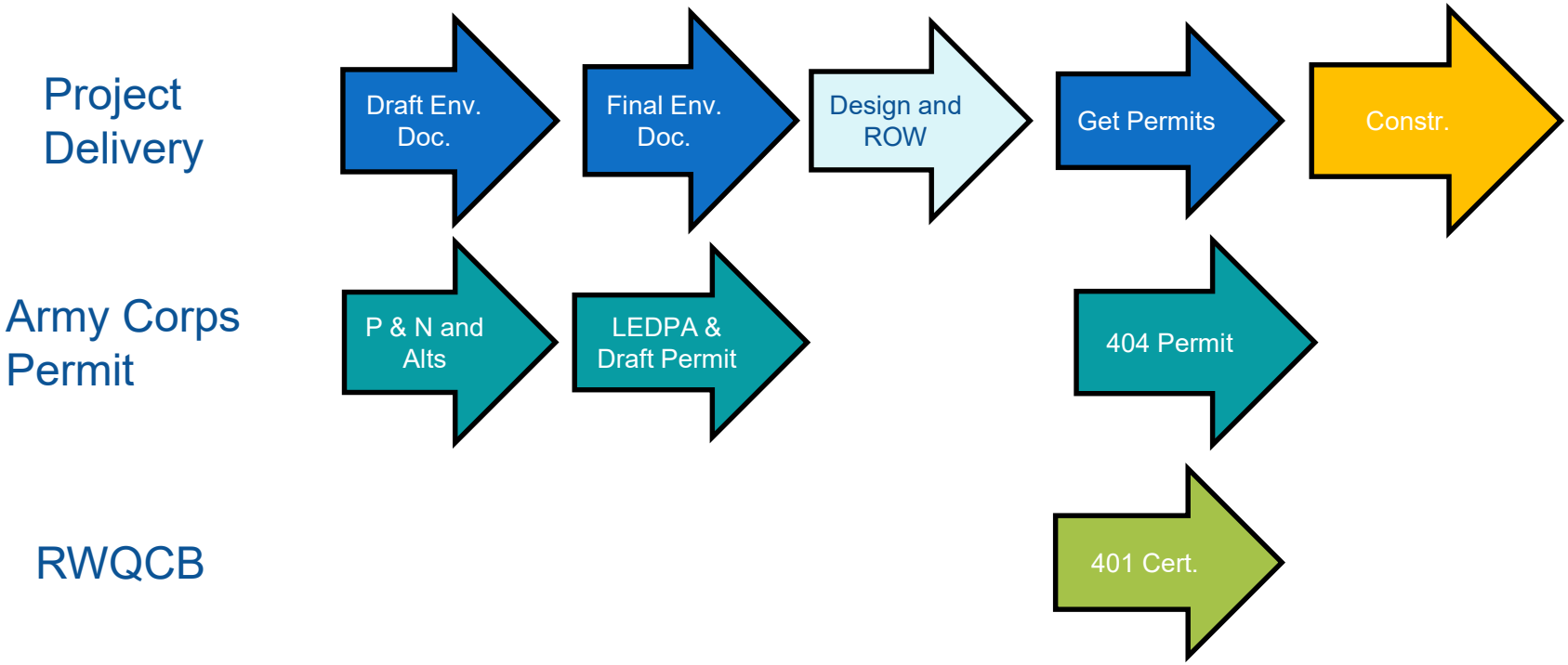
- The US Army Corps of Engineers has jurisdiction over “Waters of the US” (which includes Wetlands) under the Federal Clean Water Act
- Caltrans negotiates with the Corps on impacts to wetlands and obtains a “Section 404” Permit
  - We utilize a host of Nationwide Permits for minor impacts to waters or
  - Obtain an Individual Permit through a State/Federal MOU for projects with > 5 acres of impacts

# Current Wetland Permit Process

- The Regional Water Quality Control Boards rely on the “Section 401” certification to meet their responsibility under the Clean Water Act and the Porter-Cologne Water Quality Control Act

- Some impacts to water of the State are also regulated by a “Streambed Alteration” permit from CDFW

# Current Process*



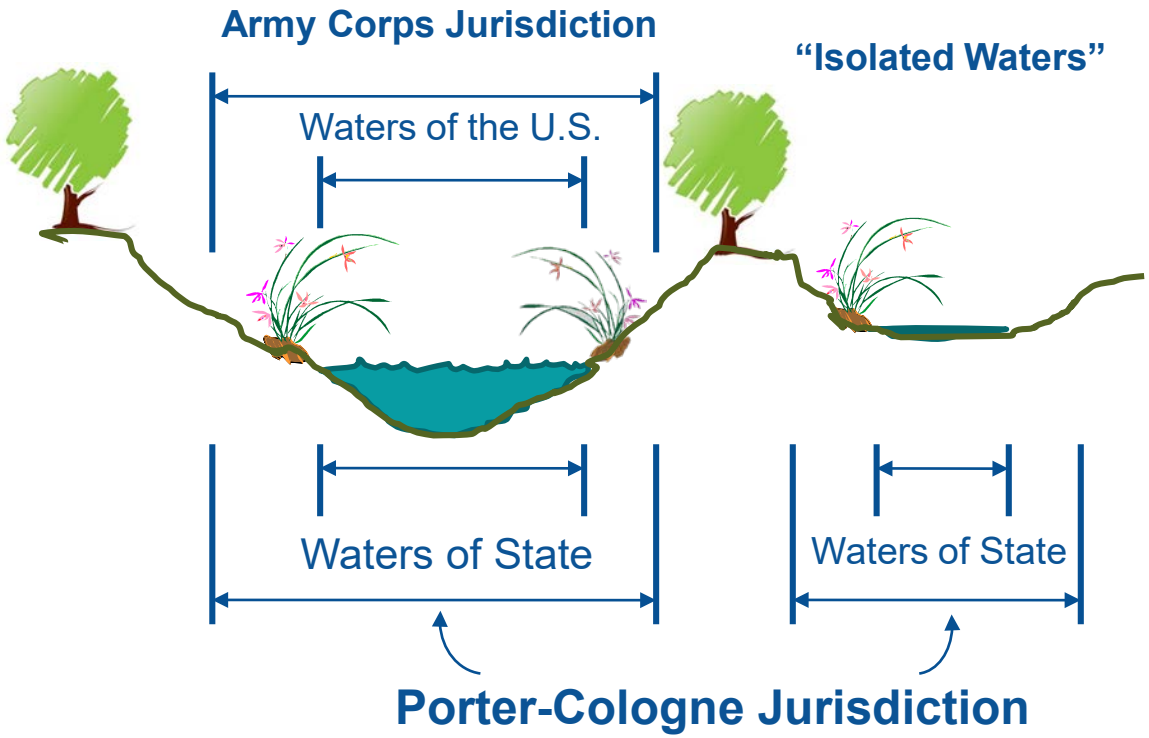

*RWQCBs also issue WDRs

# U.S. Supreme Court Decisions

- Two U.S. Supreme Court decisions limit Clean Water Act application of “isolated” Waters of the U.S. – 2001 (SWANCC) and 2006 (Rapanos).

- As a result, the State Water Resources Control Board started developing a process to apply Porter-Cologne to wetlands no longer protected by the Corp’s Jurisdiction AND standardize the procedures for all “Waters of the State”.

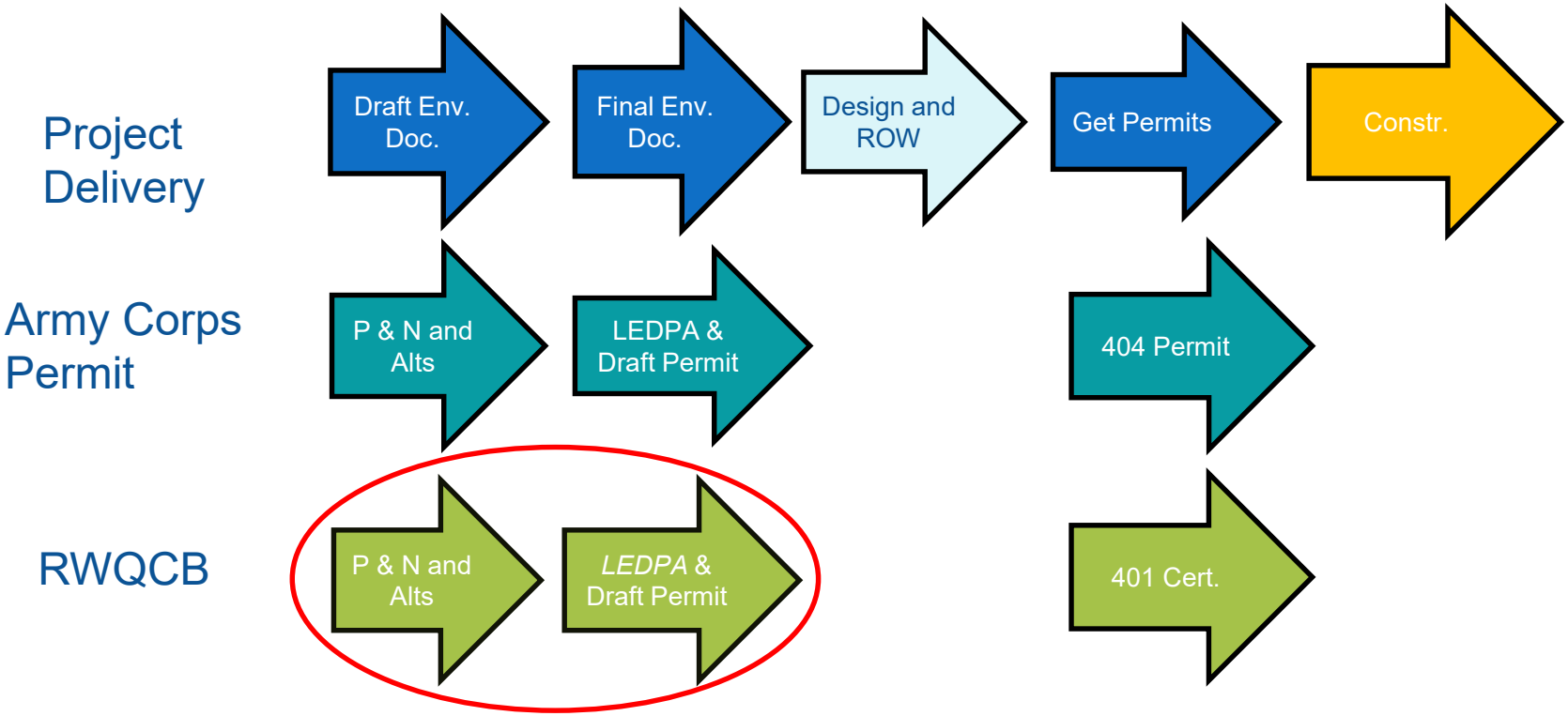
# Jurisdiction



# Work in Progress

- SWRCB started their efforts to develop these procedures in 2007.
- Proposing to address the “gap” and “standardize permitting processes”
- Caltrans has submitted comments at several past  opportunities:
  - April 2007, September 2008, July 2010, April 2011 and October 2012

# Proposed Process



# Caltrans' Primary Concerns

- More Clarification Needed – Definitions – Guidelines
- Much is still left up to the Regional Water Boards
- Duplicative Requirements
- Potential Additional Efforts
  - LEDPA Analysis
  - Climate Change Analysis
  - Compensatory Mitigation Plans for already approved Mitigation Banks or In-Lieu Fee Programs

# Caltrans' Recommendations

- Provide definitions and clarify ambiguity
- Develop a General Permit Program similar to the 404 Nationwide Permit Program OR waive the LEDPA requirement for these projects
- Eliminate requirements that are covered in other permits or approvals
  - Accept Alternatives Analysis from the Environmental Document
  - Water Boards involvement early and often (concurrently) for LEDPA determinations if we're obtaining an Individual Permit for the 404 Permit
- Have stronger language to ensure the Regional Boards are more consistent
- Accept/Address our comments and Continue working with us to eliminate over-burdensome and duplicative requirements

Questions?