

Agenda Item #25

Proposed SWRCB Wetlands Policy

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“Old” Wetlands Process

- Army Corps of Engineers has jurisdiction under the Federal Clean Water Act over “waters of the U.S.,” which includes wetlands
- We negotiate with the Corps on impacts to wetlands and get a “Section 404” Permit.
 - This is coordinated with the NEPA process through a State/Federal MOU
- The Regional Water Quality Control then gives a “Section 401” certification that adds in state water quality requirements under the Porter-Cologne Act.
- Some impacts to wetlands are also covered by a “Streambed Alteration” permit from CDFG

Enter the U.S. Supreme Court

- In two decisions, the Supreme Court limits Clean Water Act application to “isolated” Waters of the U.S.
- As a result, the State Water Resources Control Board starts developing a process to apply Porter-Cologne to wetlands no longer protected by the Corp’s permits
- Notice of Preparation January 5, 2011
- ***Comment period now extended until May 20, 2011***

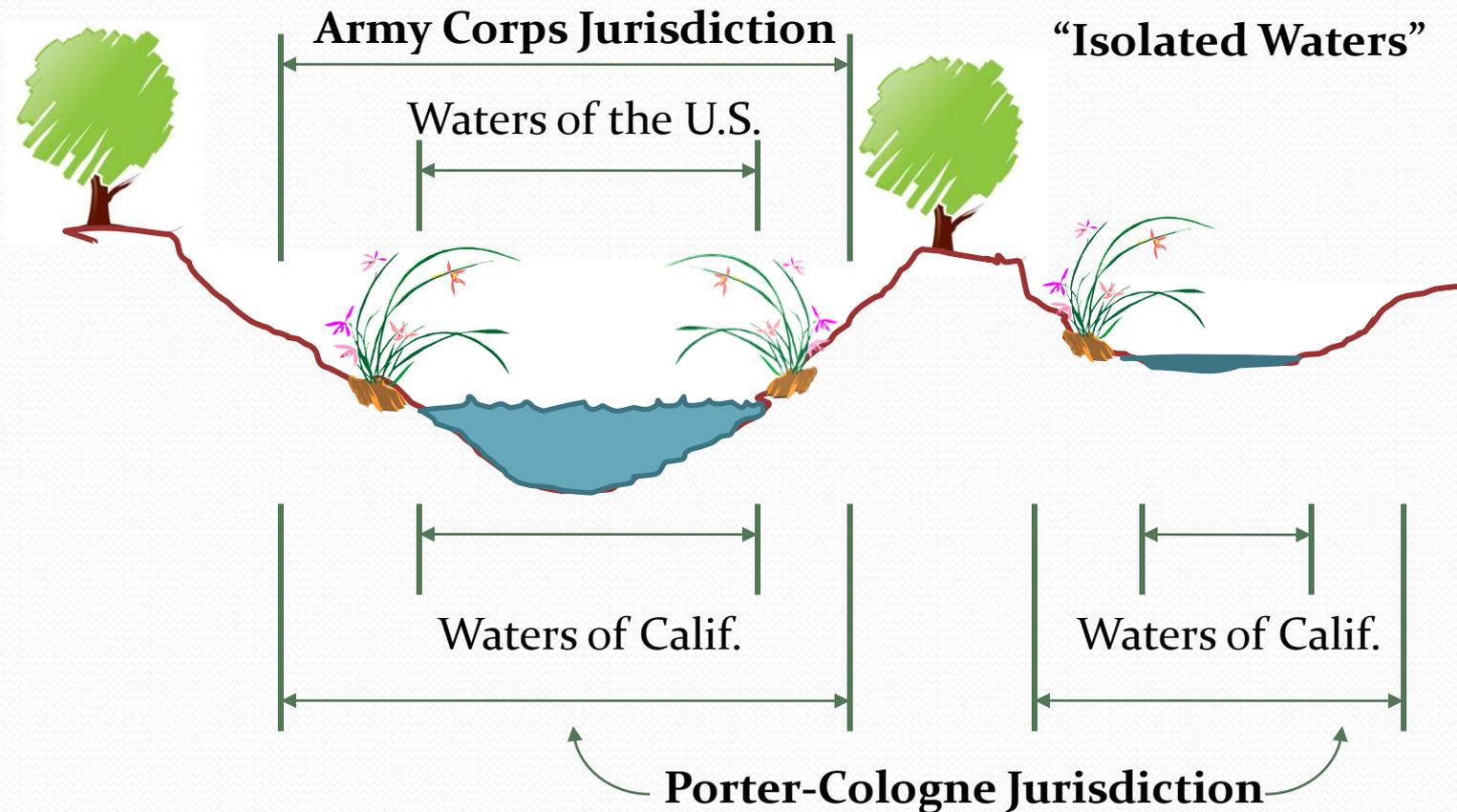
Proposed State Wetlands Policy

- Applies Porter-Cologne explicitly to ALL wetlands, not just “isolated” wetlands

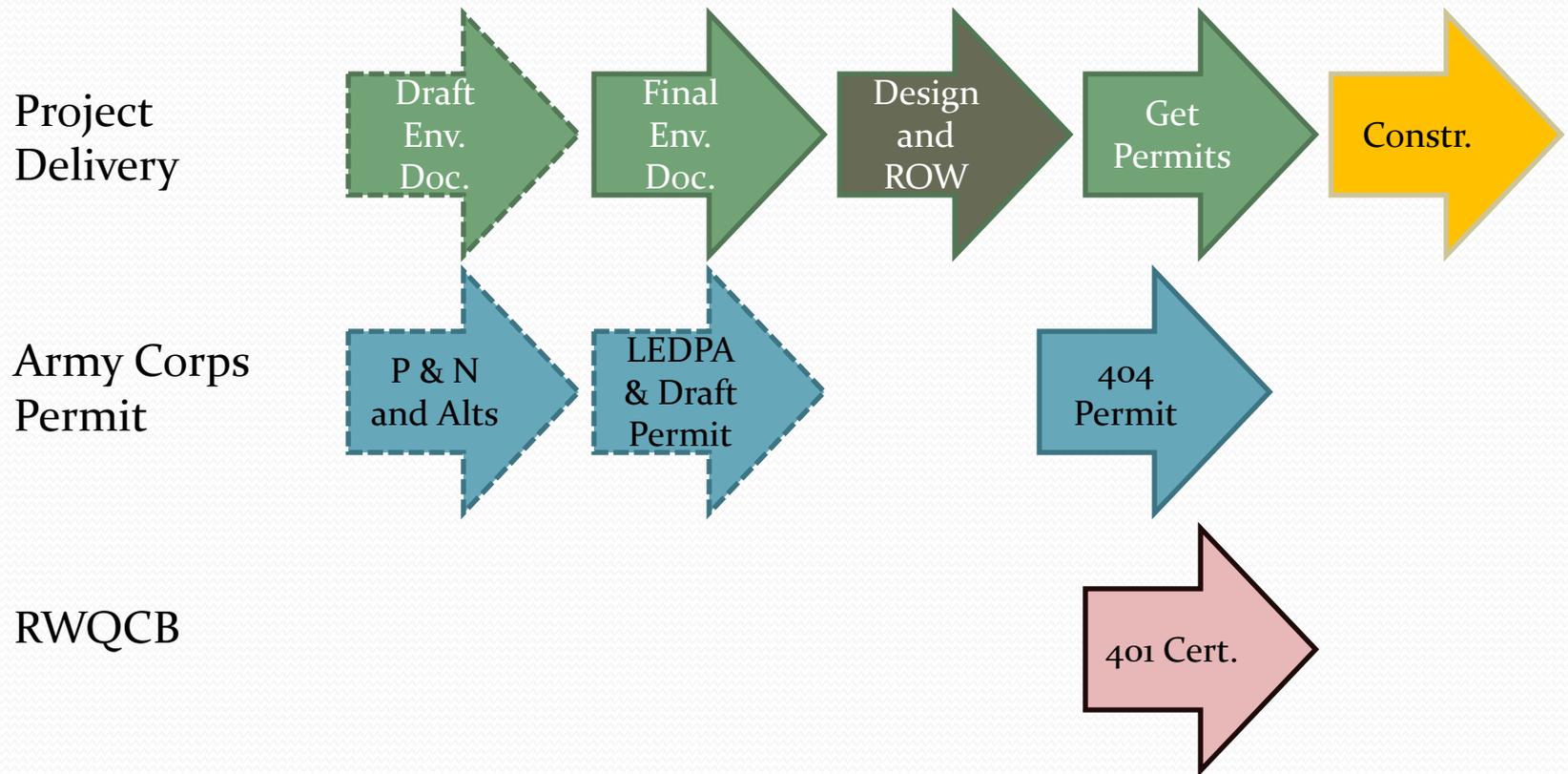
AND

- Applies Porter-Cologne throughout the project delivery process on all projects that impact Waters of California

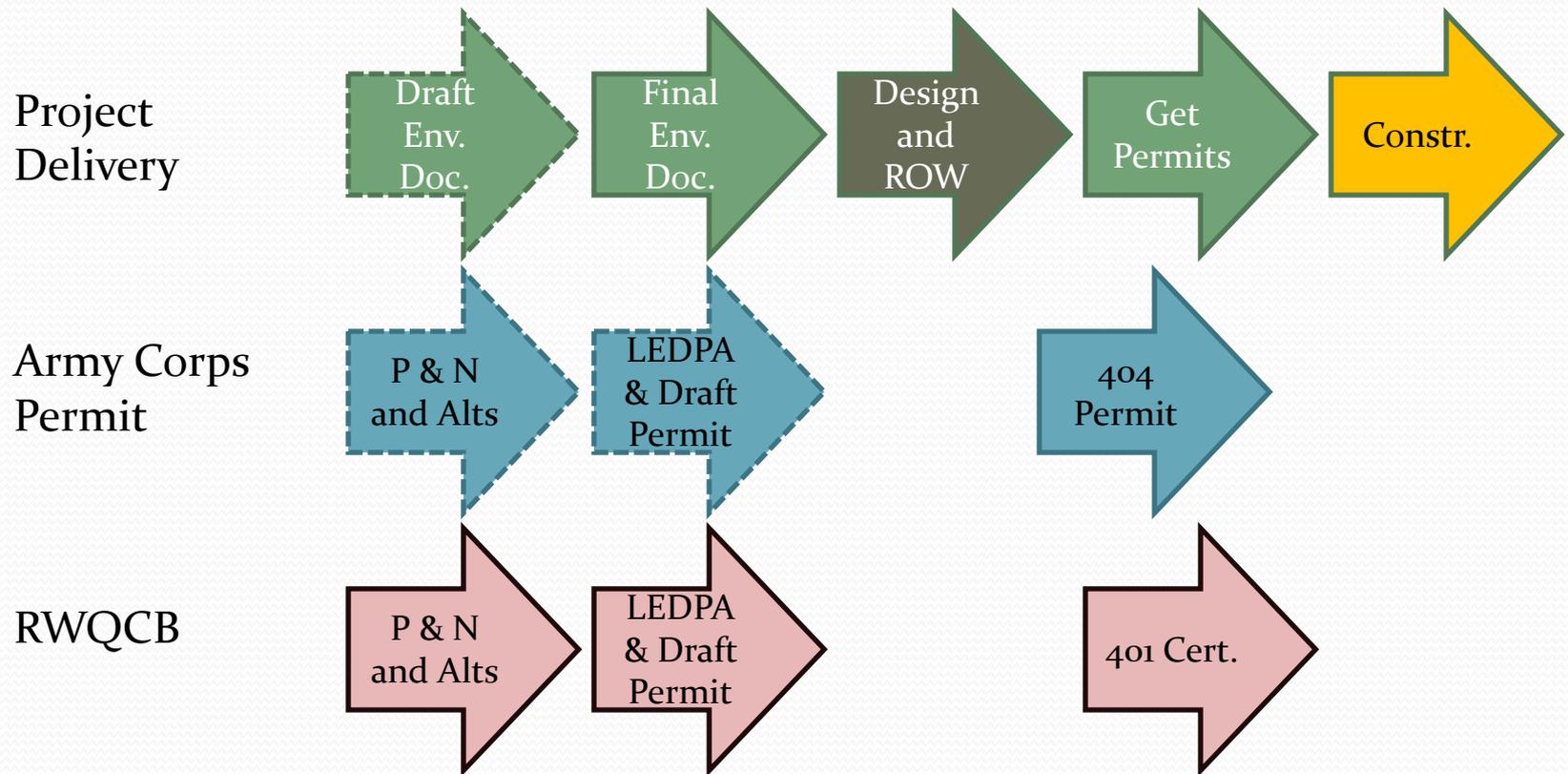
Jurisdiction



Current Process



Proposed Process



Issues

- More than a backfill of the Corps jurisdiction over “isolated wetlands”
- Potential duplicative process
- Potential additional process
- Potential difference in mitigation approach
- Potential additional costs and delays

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