

How are Fields Used for the Cultivation of Rice and Wild Rice Impacted by the State's Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State?

On April 2, 2019, the State Water Resources Control Board (State Water Board) adopted a new policy that defines wetlands under state law and provides procedures for discharges of dredged or fill material to waters of the state. The policy will go into effect nine (9) months after approved by the Office of Administrative Law. In the new policy, fields used in the cultivation of rice and wild rice (aka rice fields) have received specific accommodations. Under some circumstances, rice fields may be excluded from the new definition altogether. In other cases, rice fields are excluded from application of the dredge and fill procedures. This document provides general guidance on how this policy applies to rice fields.¹

Rice Fields that are Not Waters of the State Are Not Subject to the Policy

Rice fields may not be considered a water of the state if the field was constructed, and is currently used and maintained for rice growing, and if the wetland features of the field are considered to be an artificial wetland.² However, rice fields will not be excluded from being considered a water of the state if the wetland features were created by modifying a previous water of the state, was created for compensatory mitigation purposes, or is specifically identified in a water quality control plan as a wetland or water of the state (e.g., Yolo Bypass, Sutter Bypass). Rice fields that do fall within this category are not waters of the state, and are not subject to the dredge and fill procedures. *Examples include bare upland ground never part of the Central Valley Flood Plain that was converted to rice.*

Rice Fields that are Waters of the State Are Excluded from Meeting Requirements under the Policy

Rice fields that do not fall within the category above are likely considered to be a water of the state due to the policy's definition of what constitutes a wetland. Although such fields would technically be considered a water of the state, the impact of this designation is minimal due to other provisions in the policy.

- Rice fields used for the cultivation of rice at least one year in every five will not have beneficial uses designated for the field. Thus, the presence of wildlife can exist without the rice field needing to be protected pursuant to state water laws. Other wildlife laws may apply, but requirements associated with water quality would not attach. Discharges from rice fields will continue to be regulated under the Irrigated Lands Program.
- Normal farming activities that occur in fields used for the cultivation of rice are excluded from being subject to dredge and fill procedures, and growers do NOT need to apply to the water board to conduct such activities. To be considered a normal farming activity and fall within the exclusion, the activity must be part of an on-going farming operation. Activities that bring an area into farming do not qualify for this exclusion.
- Rice fields that qualify as Prior Converted Cropland (PCC), and have not been abandoned due to five consecutive years of non-agricultural purpose, are excluded from being subject to dredge and fill procedures, and growers do NOT need to apply to the water board to conduct activities on such

¹ The information provided here is for general guidance on matters of interest only. The application of this policy and other relevant policies, laws and regulations can vary widely based on the specific facts involved. As such, the guidance provided here should not be used as a substitute for consultation with professional consultants, legal or other competent advisers.

² Artificial wetlands are wetlands that result from human activity.

fields that might otherwise be considered dredge and fill activities in wetland areas. PCC is an area or field that, prior to December 23, 1985, was drained or otherwise manipulated for the purpose of agricultural production. Such determinations are made by the Natural Resources Conservation Service (NRCS), and records of PCC determinations may be retained by your local Farm Services Agency (FSA).

- Rice fields that are wetlands and have been in rice production at least once within five years prior to April 2, 2019, and are not subsequently abandoned due to five consecutive years of non-use in rice production, are excluded from being subject to dredge and fill procedures. Growers do NOT need to apply to the water board to conduct activities on such fields that might otherwise be considered dredge and fill activities in wetland areas.
- The above exclusions do NOT apply to activities that result in discharges of dredge or fill material that convert wetland areas to non-agricultural use.

Practical Implications of the Policy and Frequently Asked Questions

How do I know if my rice field is considered a Prior Converted Cropland?

Check with your local Farm Services Agency to see if there is any documentation on file. If not, then contact the Natural Resources Conservation Services (NRCS). The NRCS may have documentation from a previous determination, or they can provide you information on how to obtain a determination.

Will winter flooding and/or the creation of seasonal wetlands impact my ability to farm rice?

No, as long as the field in question is returned to rice production at least once every five years. For those rice fields that are also PCC, they could be returned to any agricultural production – not just rice production.

Can I change from rice to another crop without triggering the need to apply for a dredge and fill permit?

Yes. For rice fields that are considered to be PCC, dredge and fill permits are not required as long as you do not take the field out of agricultural production for more than five years. For rice fields that are not PCC but are considered wetlands, you may also change crops as long as the field was in rice five years prior to April 2, 2019, and the field is not taken out of rice production for more than five years.

May I convert my rice field to a non-agricultural use without triggering the dredge and fill permit requirements?

The dredge and fill policy applies to wetlands. If the rice field meets the definition of wetland under the policy, then you may not convert the rice field to a non-agricultural use without applying for a dredge and fill permit pursuant to the policy's requirements.

May convert existing habitat or wetlands to rice production without triggering the dredge and fill permit requirements?

It depends if the habitat or wetlands was in rice at least once in the five years prior to April 2, 2019, or, if the habitat or wetlands was previously determined to be prior converted cropland, it would need to have been in agricultural production at least once in the five years prior to the date of conversion from wetland to rice.