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October 19, 2012

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Dear Ms. Townsend:

Subject: Comment Letter – Statewide Biological Objectives Policy – CEQA Scoping Comments

The Los Angeles Department of Water and Power (LADWP) appreciates the opportunity to submit comments on California Environmental Quality Act (CEQA) Scoping for the development of a Statewide Biological Objectives Policy. LADWP recognizes the importance of protecting the beneficial uses of the waters within its purview to ensure the health of aquatic life and the health of those who recreate in the waters of LADWP's regions of operation.

LADWP's comments on the proposed Policy are based primarily on our review of information presented in the July 31, 2012 scoping meeting informational document.[1] LADWP recently became aware of additional information that was provided to some stakeholders, and LADWP has referenced some of this information below. LADWP believes that this information should have been included in the CEQA scoping informational document, because the elements and components should be included or addressed in stakeholder comments and subsequently, the Policy.

LADWP's concerns are presented below.

1. Should the State Develop Biological Objectives?

LADWP believes that development of biological objectives (bio-objectives) at this time would be premature. LADWP believes that bio-objectives will be helpful only if they correctly address site-specific concerns, such as gradient, depth, altitude,

[1] Proposed Statewide Policy for Biological Objectives in Perennial Wadeable Streams Public Scoping Meeting Informational Document, July 31, 2012.

shade, seasonality, concrete lining (substrate), temperature, and flow rate. Varying these and other parameters will cause widely differing biological responses; therefore it is not appropriate to pool the biological index scores of hundreds of "reference" waterbodies to create one set of objectives for all other waterbodies of the State.

The procedure for determining the threshold biological objectives, which was described at the September 5 CEQA scoping meeting, does just this. As described in the CEQA Scoping workshop, approximately 500 waterbodies were deemed as reference systems. Each waterbody was observed for species abundance and diversity, and an index score was calculated. These biological index scores were plotted against the frequency of occurrence. The SAG then drew standard deviation lines to arbitrarily pick acceptable, gray-area, and impaired threshold scores, which would be applied to all perennial, wadeable waterbodies within the State. There are two problems with this approach. First, this is a "one size fits all" approach that assigns the same bio-objectives to a variety of different types of streams instead of categorizing each stream and making comparisons to a reference stream within the same category. Second, this approach also causes some reference sites to be in non-compliance with the objectives, which is incomprehensible since 1) reference site conditions are supposed to be the goal for all other comparable streams and therefore we should not eliminate any reference sites because they happen to have low scores, and 2) there may be many streams that are in the same category as the reference sites that were determined to be in non-compliance.

In addition, LADWP has briefly reviewed information contained in Ode et al. (2011).[2] As shown in Figure 1, it appears that habitat disturbance (e.g., grain size concerns, bed stability, instream habitat, etc.) are responsible for a significant percentage of habitat degradation as opposed to water quality concerns. It is inappropriate to place the burden of biological assessments solely on NPDES permittees, who will be incapable of addressing habitat degradation and other non-water quality causes of biological impairments.

[2] Ode et al. (2011). Ecological condition assessment of California's perennial wadeable streams: highlights from the surface water ambient monitoring program's perennial streams assessment (PSA) (2000-2007).

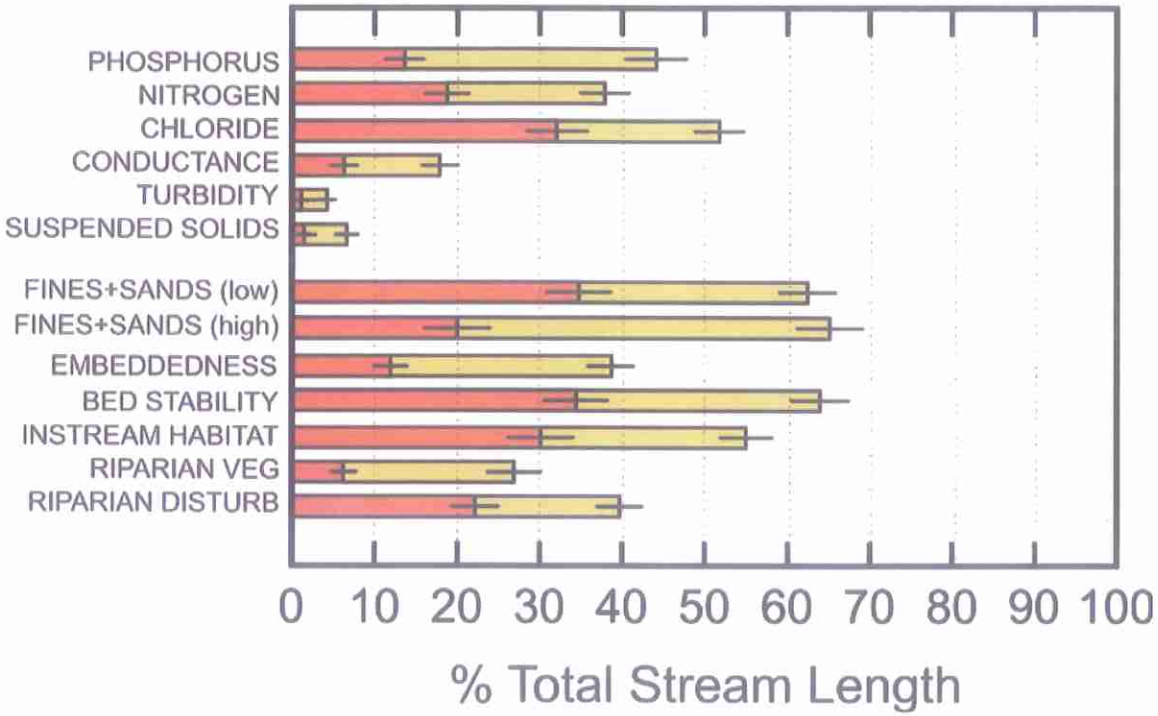

Figure 1. Percentage of wadeable perennial stream length showing degradation for each stressor type; water chemistry stressors are represented by the six bars nearest the top of the figure, and physical habitat stressors are represented by the remaining bars; yellow indicates moderate degradation and red indicates severe degradation. Reproduced from Figure 7a in Ode et al. 2011.

Finally, LADWP has recently become aware of a flow chart distributed on October 11, 2012, via Lyris list to selected stakeholders for discussion at a Joint Regulatory /Stakeholder Advisory Group meeting. This flow chart is reproduced as Figure 2. LADWP only recently became aware of this information, and is unclear how it relates to the CEQA scoping document, the proposed project, or alternatives. As shown in this flow chart, a causal assessment must be conducted for any site found to be in poor biological condition to determine if water quality is the cause. If water quality is not the cause, the site would be listed under integrated report category 4c, and it is unclear how the condition would be addressed or remedied. It is also unclear who would be responsible for conducting or paying for the causal assessment, and how water quality requirements would be developed if water quality is found to be a cause of impairment. In addition, the concerns identified by the flow chart with regards to the CEQA alternatives are not fully addressed. This information is essential to understanding the State Water Resources Control Board's (SWRCB's) proposal, and therefore LADWP requests that the State Board clarify their proposals prior to commencing the CEQA analyses.

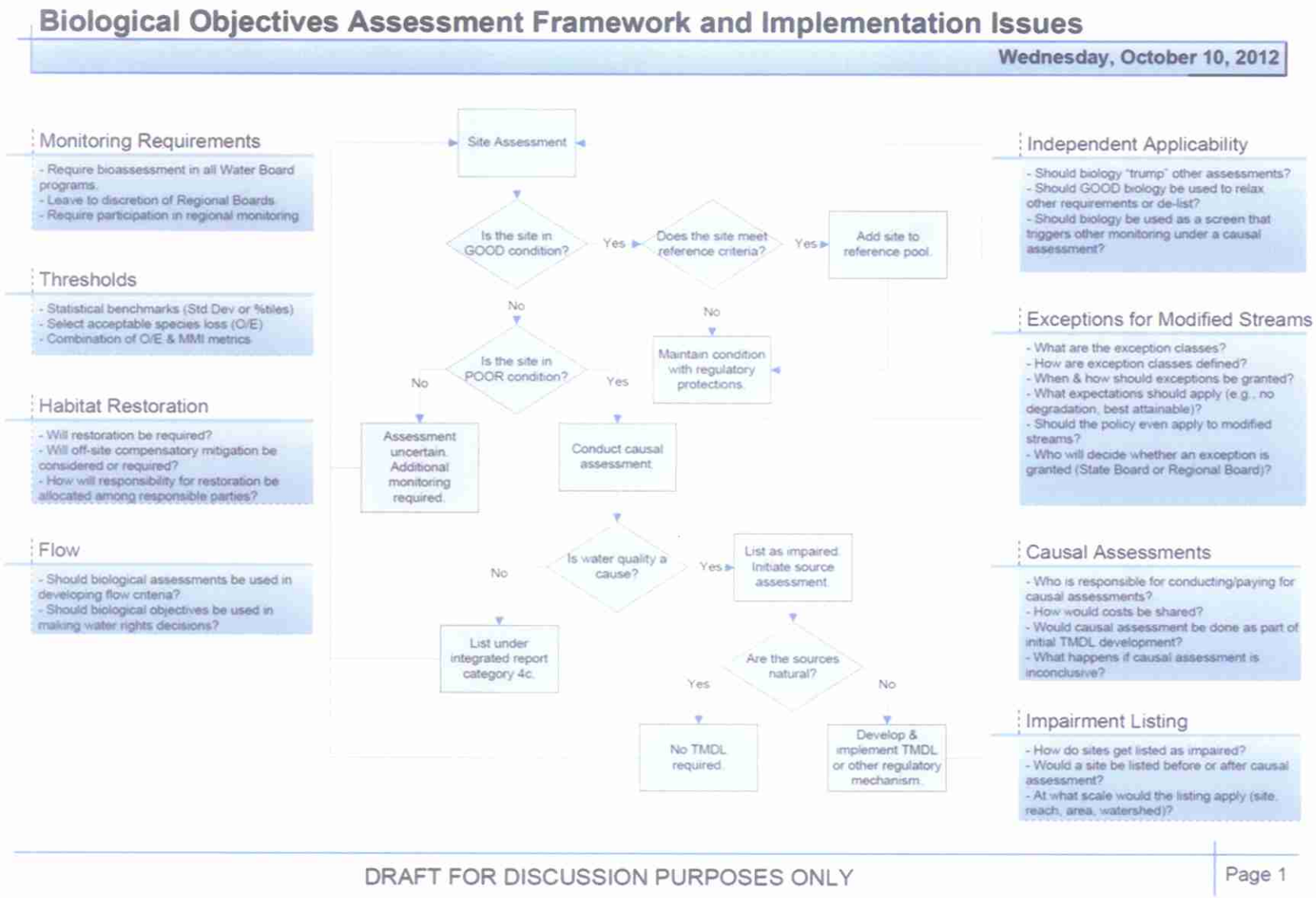

Figure 2. Biological objectives implementation frame work.

Recommendation:

The bio-objectives should not be developed until methods are available to modify the objectives to address site-specific stream conditions, some of which are listed above. Further, additional information is needed to understand the State's CEQA proposal and alternatives. Thus, and until additional clarification is received, Alternative 1 (no action) is recommended by LADWP.

2. Are There Additional Alternatives?

At the September 5 CEQA scoping meeting in Riverside, CA, there was brief mention of a model capable of culling the reference waterbodies so that only reference streams appropriate for a given waterbody would be used to determine the biological threshold values. Thus, there would be unique site-specific bio-objectives determined for each stream in the State. Developing this model more fully and using it for bio-objectives may be a component of Alternative 3, but insufficient detail is provided, and therefore if not part of Alternative 3, LADWP suggests that this could be considered another alternative. Additional recommendations are provided below.

Recommendations:

- A CEQA alternative should be developed to explore the regulation of biological condition in a separate program – as discussed above, it is unfair to place the burden of biological assessments on NPDES permittees, whose discharges likely have no or little nexus to many of the biological impairments that may be present.
- The State Board should refine the model so it can be applied to different categories of streams and validate it with empirical data so that the public can compare the site-specific objectives generated by the model to empirical data from waterbodies of interest. In this way, stakeholders may consider the refined model as an additional alternative to determine site-specific bio-objectives. We understand that this may be a consideration to be incorporated into Alternative 3, but there is not enough information provided in the CEQA scoping documents to enable us to comment upon this concept.
- Another alternative might be to randomly select 600 streams throughout California (instead of 600 reference streams) and identify the lowest five percentile scores of streams for further causal analysis. This type of analysis could help determine if the NPDES program is the appropriate program for conducting biological and causal assessments.

3. What are the Environmental Impacts of the Proposed Alternatives?

LADWP believes that the application of bio-objectives that do not account for site-specific characteristics of a stream may cause that stream to be incorrectly identified as being in exceedance. This will cause resources to be diverted from other water quality programs and municipal projects that address social and environmental problems to remediate a non-existing impairment.

Many of southern California's streams have been altered to function as flood control channels. Some of these are concrete-lined, while others have been engineered in other ways (e.g., riprap sides, leveed), to move large volumes of water to the ocean as quickly as possible during storm events to prevent flooding. Instream habitat is frequently washed away and/or under water during intense storm events. These flood control channels should be exempt from the proposed policy. Otherwise, the function of flood control could be jeopardized by efforts to restore streams for biological habitat, or dischargers could be found in repeated and frequent violation of biological objectives with no means to correct the alleged impairment.

Recommendations:

- Do not apply the bio-objectives to concrete-lined, rip-rapped, or other types of engineered channels until suitable reference system(s) can be found or simulated in a validated model.
- Consider alternatives that apply biological objectives in phased fashion – e.g., to the most valuable habitat areas first, followed by engineered channels at a later date, when more knowledge is available concerning the biological condition in these waterbodies.
- Ensure that waterbodies are evaluated several times per year over all seasons so that single sample "snapshots" do not give biased results. Study how the bio-objectives will change during dry years versus wet years. Study how the bio-objectives change month-by-month throughout a year as weather and flow conditions change. Also, the index scores along the length of streams should be studied, so we can learn about the importance of sample location selection when evaluating a stream.
- The SWRCB should validate the biological index by using a model to predict conditions for different stream categories and then comparing with empirical data.

In summary, LADWP believes that a procedure that causes reference streams to be out of compliance because they happen to have low biological index scores is inappropriate and draconian. LADWP believes that index scores may vary widely due to physical, meteorological, hydrological, and seasonal conditions. LADWP

also believes that the burden of biological assessments should not fall upon NPDES permittees, since pollutant discharges are only a part of a waterbody's stressors.

LADWP requests that the State Water Board provide additional information to define both the proposed project and the alternatives to this project for CEQA purposes. Until additional information is made available, LADWP believes that CEQA scoping and the development of a policy to require biological assessments to be conducted by NPDES permittees are premature.

LADWP looks forward to receiving additional information in order to work with the SWRCB on the biological objectives policy CEQA scoping document and future Policy. If there are any questions, please contact Mr. Clayton Yoshida of the Wastewater Quality and Compliance Group at 213-367-4651.

Sincerely

Katherine Rubin
Manager, Wastewater Quality and Compliance Group

CY:lr
c: Mr. Clayton Yoshida