Public Comment
Water Quality Enforcement Policy
Deadline: 10/18/16 12:00 noon

October 18, 2016

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

Via email: commentletters@waterboards.ca.gov

Dear Ms. Townsend:

Subject: Comment Letter – Water Quality Enforcement Policy

The Los Angeles Department of Water and Power (LADWP) appreciates the opportunity to provide comments in regards to the proposed changes to the State wide Water Quality Enforcement Policy (Policy). The Policy has and will continue to impact LADWP since LADWP is a Legally Responsible Person (LRP) due to its land ownership and operation and maintenance activities as well as capital projects needed to maintain both its Water and Power Systems.

LADWP is the largest municipally owned utility in the nation and serves approximately four million customers within the City of Los Angeles (City). The City Charter requires LADWP to provide both water and power reliably in an environmentally responsible manner to the City residents. LADWP's land ownership begins as far north as the Owens Valley and continues as far south as Wilmington, California. LADWP owns both an aqueduct and transmission lines in order to bring water and power to the residents of Los Angeles. To allow continued efficient delivery of water and power, LADWP engages in many capital and operation and maintenance projects. In addition, land owned by LADWP is leased to various types of businesses, such as fisheries, recreation camps, and nurseries where in these instances LADWP carries the responsibility of being the Legally Responsible Party (LRP). Therefore, how enforcement is applied through this Policy is of great importance to LADWP.

LADWP is pleased that the State Water Resources Control Board (State Water Board) is working to develop a more transparent and consistent application of the Policy and supports the State Board's efforts in providing a more level-playing field for all regulated entities. In addition, LADWP agrees that when performing an assessment of an administrative civil liability, evidence based and/or policy based findings must be provided in order to understand the basis for a decision.

LADWP's comments on the Policy are as follows:

1. **Page 2, Introduction – "Re-affirms the principle of progressive enforcement, which contemplates an escalating series of actions beginning with notification of violations and compliance; assistance, followed by increasingly severe consequences, culminating in a complaint for civil liabilities where compliance cannot be attained within a reasonable time. While progressive enforcement is the most typical approach to enforcement, it may not be an appropriate enforcement response when violations result from intentional or grossly negligent misconduct, or where the impacts to beneficial uses are above moderate or major;"**

   While LADWP appreciates the State Board in implementing a progressive enforcement agenda, and agrees that intentional and gross misconduct should be enforced with quick and full enforcement, LADWP believes that additional clarification is needed. If a violation is brought into compliance to the satisfaction of the State Water and/or Regional Boards, it does not seem that this violation should be added or taken into consideration for progressive enforcement. Once a violation is corrected, it should not be considered as a progressive violation should another violation occur within the same location. Site specific issues can vary and even though the same violation may occur at the same location at a future date, it may not be knowingly. The violator should be able to have the opportunity to defend its actions before progressive enforcement is applied.

   LADWP requests that this section be more specific as to when progressive enforcement applies.

2. **Page 2, Section 1 – "The Water Boards acknowledge that contractors or agents for legally responsible persons (the discharger(s) named in the underlying order, or the owner and operator in the case of an unpermitted discharge) frequently bear some of the responsibility for violations. In appropriate cases, the Water Boards may bring enforcement actions against contractors and/or agents, in addition to the legally responsible person(s) or permittees, for some or all of the same violations."**

   LADWP agrees with the language that has been added to the Policy on sharing liability with the contractors and/or agents. Although this is helpful, since in many cases the LRP has contracted out the work to be done or has leased the land and does not operate the facility responsible for the violations, LADWP recommends also including language that more specifically holds accountable the individuals responsible (entity) for contributing to the violation. Enforcement would be done on a case by case basis, with the entity responsible for the violation being subject to the enforcement action.

3. **Page 6, Section II.A – "Class I priority violations are those violations that pose an immediate and substantial threat to water quality and/or that have the potential to individually or cumulatively cause significant detrimental impacts to human health or the environment. *Class I violations ordinarily include, but are not limited to, the following*:"**

   LADWP believes that this statement will create inconsistency because a Class I violation isn't clearly defined. LADWP recommends the phrase "not limited to" be removed and a

specific list of clearly defined Class I violations be included in the Policy as an appendix. This will allow for less confusion in determining what is considered a Class I violation.

4. **Page 9, Section II.B – "3. History of the entity:**
   a. **Whether the violations have continued over an unreasonably long period after being brought to the entity's attention and are reoccurring;**
   b. **Whether the entity has a history of noncompliance; and,**
   c. **Compliance history of the entity and good-faith efforts to eliminate noncompliance"**

   LADWP requests more clarification in what is regarded as an "unreasonably long period after being brought to the entity's attention" and "whether the entity has a history of noncompliance". LADWP recommends that part (a) be replaced with "Whether the violations have continued for more than 30 days after being brought to the entity's attention and are reoccurring". Also, LADWP recommends part (b) be replaced with "Whether the entity has had five (5) or more violations within a single year". These revisions allow for a more clear definition of what is considered an "unreasonably long time" or an entity that has a "history of non-compliance." This will also allow for more consistent analysis for different violations as it doesn't leave these definitions up for interpretation.

LADWP appreciates the opportunity to provide these comments and looks forward to working with your staff on finalizing the Policy. If you have any questions, please contact Mr. Maher Qassis at 213-367-2976.

Sincerely,

Katherine Rubin
Manager, Wastewater Quality and Compliance

KR:mq
c: Ms. Felicia Marcus, Chair, State Water Resources Control Board (SWRCB)
Ms. Frances Spivy-Weber, Vice Chair, SWRCB
Ms. Tam Doduc, Member, SWRCB
Ms. Dorene DAdamo, Member, SWRCB
Mr. Steven Moore, Member SWRCB
Mark J. Sedlacek, LADWP
Maher Qassis, LADWP