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Comment Letter # 5

August 18, 2016

Ms. Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812

Dear Ms. Townsend:

Subject: Comments on the Draft Procedures for Discharges of Dredged or Fill Materials to Waters of the State

The Los Angeles Department of Water and Power (LADWP) appreciates the opportunity to submit comments on the Draft Procedures for Discharges of Dredged or Fill Materials to Waters of the State (Draft Procedures). LADWP would first like to recognize the work of the State Water Resources Control Board (State Board) staff in developing this draft, and the staff's efforts to reach out to the stakeholders in the ongoing process.

LADWP is the largest municipally owned utility in the nation, which serves a 465 square mile area in Los Angeles with approximately 4 million residents and a portion of the Eastern Sierra's in Owens Valley. Its mission is to deliver clean and reliable water and power in an efficient, cost-effective, and environmentally responsible manner. To accomplish its mission, it must continuously maintain its systems, as well as engage in large capital construction projects to integrate new technologies.

Maintenance and/or construction projects that may affect the quality of waters of the state will require permit approval and issuance through the Draft Procedures from the appropriate regional water quality control board (Regional Board) or, in some circumstances, the State Board. As written, the Draft Procedures have the potential to delay the commencement of critical maintenance and construction projects, which could cause reliability issues for both LADWP's Water and Power systems. LADWP is mandated by its City Charter to provide reliable water and power and therefore, it is imperative that LADWP be able to obtain any permits in a timely manner to deliver reliable water and power to the millions of people who depend upon it.

5.1

LADWP understands the State Draft Procedures are intended to establish regulatory consistency across the Regional Boards with respect to discharges of dredge and fill materials into waters of the state, including wetlands. However, LADWP believes certain portions of the Draft Procedures could potentially disrupt reliable and efficient delivery of water and power need further discussion or clarification. These are addressed below.

**1. Appendix A, Subpart H, Section 230.94, Page 36 – Final compensatory mitigation plan must be approved before commencing work in waters of the state.**

The Draft Procedures require applicants to submit a draft mitigation plan for review prior to certification, and to obtain approval of a final mitigation plan before commencing work in waters of the state. The latter requirement will extend the already lengthy certification process, and likely will cause unnecessary delays in project schedules.

5.2

Finalizing a mitigation plan before commencement of a project is difficult due to the current unavailability of mitigation banks and the extensive process for finalizing an individual mitigation project. A mitigation bank that is in the process of being certified (which can take years) may not be available at the initial permitting stage of a project, but may become available by the end of the project. If the applicant undertakes its own mitigation project, it would require that all other regulatory approvals for the proposed mitigation be finalized before the plan is considered final and approved by the permitting authority and the certification issued. Therefore, approving a mitigation plan may not be feasible until after the construction project has begun. The requirement to have a final mitigation plan in place will cause undue hardship and problems with the construction schedule, procurement process, and any planned outages that are required for the work.

5.3

LADWP proposes the applicant only be required to submit a draft mitigation plan prior to the permitting authority's issuance of either the Waste Discharge Requirement (WDR) or 401-certification in order to commence work. This would avoid delays with necessary construction projects and/or maintenance.

5.4

**2. Section IV.A.2.c, Page 4 – Alternatives Analysis**

The Draft Procedures state that, following the submission of the initial project application, the permitting authority may require the applicant to perform an alternatives analysis to deem the application complete. Conducting an alternatives analysis during the 401 certification process or WDR permitting process would be duplicative and significantly delay the certification process and

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project schedules. The U.S. Army Corps of Engineers (Corps) performs an alternative analysis for federal waters, when required, and alternatives for state waters are considered through the CEQA process. LADWP thus proposes removing the alternatives analysis requirement.

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**3. Section IV.A.2.b, Page 4 – Assessment of the potential impacts associated with climate change**

The Draft Procedures state that, following the submission of the initial project application, the permitting authority may require “an assessment of the potential impacts associated with climate change related to the proposed project and any proposed compensation, and any measures to avoid or minimize those potential impacts.” LADWP believes that this assessment, if required, should be conducted earlier during the CEQA process..

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LADWP suggests that the State Board develop detailed guidance to assist dischargers in evaluating potential impacts associated with climate change.

**4. Section IV.A.2.a, Page 4 – Supplemental field data from the wet season**

The Draft Procedures state that following the submission of the initial project application, the permitting authority may require supplemental field data from the wet season if the wetland area delineations were conducted during the dry season. LADWP would like clarification on what kind of supplemental field data will be requested, and how the data will be obtained if wet season field data has not been conducted at the project site previously. If supplemental field data can only be obtained during the next wet season, there will be significant delays that could postpone the project for months or years. Many LADWP maintenance projects are time-sensitive and cannot wait until the following wet season data is obtained. For example, outages must be scheduled months in advance and maintenance must be performed within the time frame of the outage in order to maintain water and power system reliability, and would not be able to wait for the wet season to collect data.

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LADWP suggests that the Draft Procedures include an exemption from obtaining supplemental field data from the wet season if the project activity is time sensitive and cannot be delayed, such as operations and maintenance projects, which would compromise grid reliability.

**5. Section IV.B.4, Page 7 – Final restoration plan for temporary impacts must be approved before issuance of the Order**

The Draft Procedures require that an applicant obtain approval of a final restoration plan for temporary impacts before issuance of the Order. This requirement likely will cause delays in the certification process, which, in turn, would cause delays in project schedules.

5.8

LADWP proposes that applicants only be required to submit a draft restoration plan prior to issuance of the Order. This would minimize delays. Additionally, the temporary impacts of the project can be evaluated more accurately during the duration of the project or once the project has been completed. Therefore, the draft restoration plan can be finalized with permitting authority's approval.

**6. Section II, Page 1 – Wetland Definition**

The Draft Procedures expand the definition of wetlands beyond the areas currently regulated by the Corps and the U.S. Environmental Protection Agency (EPA). However, one of the main goals of the Draft Procedures is to provide consistency with the federal process by relying on the Corps' delineation procedures for non-federal wetland areas. The proposed definition does not appear to be consistent with this goal and has the potential to cause more confusion. Since the waters of the United States (WOTUS) rule is currently stayed by the U.S. Court of Appeals for the Sixth Circuit, it may be appropriate to wait until this rule has been finalized before redefining the current wetlands definition. The State Board's goal may be accomplished by the Court's ruling.

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Moreover, the proposed state wetlands definition may include water features not intended by the State Board, such as puddles and ditches, placing an unnecessary additional workload on limited resources for both the regulated community and the regulator. Currently, the regulations allow the permitting authority to determine whether it has jurisdiction on a water feature on a case-by-case basis. Therefore, expanding the definition of wetlands at this time does not appear necessary.

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LADWP requests that the wetland definition not be changed at this time; however, if the State Board does make a change, LADWP requests that any revision be consistent with the federal definition to avoid confusion with the term "wetlands."

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To promote consistency among the Regional Boards in determining whether a particular water feature is a waters of the state, LADWP also requests the specific criteria and process for this case-by-case determination be included in the Draft Procedures. And the guidance be a stakeholder process for input and comments from all stakeholders.

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## 7. Section IV.A, Page 3 – Timeline of Application Submittal and Response

The Draft Procedures require the permitting authority to either deem the initial application complete or request additional information within 30 days of receiving the initial application. Once the applicant submits the additional information, the permitting authority has 30 days to determine whether the application is complete. The Draft Procedures do not explain what happens if the permitting authority does not respond after the 30 day timeframes.

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LADWP has experienced a request for information after submitting the initial application, and then further requests for information after each subsequent submittal of information. This often results in information that previously had been submitted being submitted again, which causes significant delays.

LADWP requests that the Draft Procedures include language that states the application is considered complete if there has been no response from the permitting authority after 30 days. LADWP also requests that the Draft Procedures include language that requires the permitting authority to be more specific with their requests, and to avoid making repetitive requests for information.

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LADWP appreciates the opportunity to provide comments. Should the State Board continue with the development of the Draft Procedures, LADWP looks forward to continue working with State Board staff on a procedure that is workable and protective of the environment. If you have any questions regarding this letter, please contact Ms. Andrea Yip at (213) 367-4230.

Sincerely,



Katherine Rubin  
Manager of Wastewater Quality and Compliance

AY:dms

c: Ms. Felicia Marcus, Chair, SWRCB  
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