



Las Virgenes – Triunfo Joint Powers Authority
 4232 Las Virgenes Road, Calabasas, CA 91302
 818.251.2100



October 15, 2012

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



Subject: CEQA Scoping Comments: California Biological Objectives Policy

Dear Ms. Townsend,

Thank you for this opportunity to comment on the CEQA scoping of the proposed Statewide Biological Objectives Policy and Program of Implementation for Perennial, Wadeable Streams (Biological Objectives Policy).

Policy alternatives for CEQA scoping

Three alternatives were presented in the Biological Objectives CEQA scoping Informational Document:

- (1) No Action
- (2) Adopt biological objectives for protecting high quality streams and preventing further degradation of degraded streams
- (3) Adopt biological objectives for all perennial, wadeable streams in the state

We propose the State Board consider the following additional alternatives:

- (4) *Adopt a phased approach to development and implementation of biological objectives policy so that high quality streams are protected from degradation in a first phase, with later phases applying to other stream types.*
- (5) *Adopt Tiered Aquatic Life Use designations for different waters, similar to those in Ohio where different levels of protection apply to streams with varying levels of anthropogenic impact.*

Rationale: Protection of high quality streams should be a first priority from a resource perspective. Additionally, from an implementation perspective, attendees at the most recent meeting of Stakeholder and Regulatory Advisory Groups suggested that a first phase protecting only high quality streams could serve as a proof-of-concept prior to the development of later phases.

Technical Issues for CEQA scoping

We would also like to address some technical issues important to the development of Biological Objectives Policy.

- 1. Refine the definition of “perennial” to apply to sites or reaches and not streams.** For example, Malibu Creek has year round flow at the gage site, where the Tapia Water Reclamation Facility is required to discharge to maintain habitat for endangered fish,

Charles Caspary
 Chair, Las Virgenes-Triunfo
 Joint Powers Authority
 President, Las Virgenes Municipal Water District
 Board of Directors

Mike Paule
 Vice Chair, Las Virgenes-Triunfo
 Joint Powers Authority
 Chair, Triunfo Sanitation District
 Board of Directors

but many upstream and downstream sites dry up or become isolated pools in the summer. It would be a mistake to apply a designation of perennial to these non-perennial upstream and downstream sites just because there is one site on the stream which has year round flow.

2. **Biological Objectives Policy should include direction on increasing the reference pool and regularly updating the model to minimize the number of sites without appropriate reference.** Reference site selection criteria may need to be changed by eliminating “kill switches” that omit otherwise pristine sites from the reference pool because of high conductivity or high concentrations of phosphorus or nitrogen. In Malibu Creek watershed there are undeveloped headwaters sites that exceed kill switch thresholds resulting in a lack of appropriate reference. Expanding the reference pool and updating the model will improve applicability of the policy.
3. **Biological Objectives CEQA Policy should address the regulatory process at sites without appropriate reference data.** The Informational Document states that reference condition is key to using bioassessments. We agree, but point out that there are locations for which reference condition is unavailable and request the State include guidance in policy for such cases. The state should specify how to apply policy in the extremes in natural gradients not captured by the reference pool.
4. **Biological Objectives Policy should address sites affected by uncontrollable factors from natural sources or natural water quality.** The first regulatory tests of any statewide Biological Objectives Policy will be on waterbodies already listed. Five of the ten streams listed as impaired for Benthic Macroinvertebrate Bioassessments in the State’s 2010 Integrated Report are in Malibu Creek watershed, where local geologic conditions generate water quality that limits benthic macroinvertebrate community composition even in natural, undeveloped headwaters. Regulatory flow charts presented at stakeholder meetings include an “off ramp” not leading to a TMDL for biological impairment when naturally occurring water quality is identified as the cause.
5. **Biological Objectives Policy should include a regulatory path other than discharger-funded Site Specific Objectives for “uncontrollable factors from natural sources.”** The *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (State Water Resources Control Board 2005) states that a Regional Board may develop site specific objectives under the conditions that “a written request for a site-specific study, accompanied by a preliminary commitment to fund the study, subject to development of a work plan, is filed with the RWQCB” and “a demonstration that the discharger cannot be assured of achieving the criterion or objective and/or effluent limitation through reasonable treatment, source control, and pollution prevention measures.” In the case of Malibu Creek watershed, dischargers can meet discharge requirements, so are not qualified to request a Site Specific Objective. And if the cause of the impairment is natural mineral water quality and not the water quality of discharge, then why would dischargers be required to fund a study? Why do TMDLs like the Calleguas Creek Salts TMDL¹ include optional special studies to be conducted by dischargers to “develop natural background exclusion” instead of making the natural source determination as part of the TMDL study?

¹ http://www.epa.gov/waters/tmdldocs/35679_CALLEGUASSALTS.pdf

6. **Biological Objectives Policy should allow for the incorporation of statistical uncertainty in assessments so that the natural variability can be captured.** The technical and the scientific advisory teams both recommended selecting a threshold that balance Type I and Type II errors, adding uncertainty bounds and giving time to do additional assessments until uncertainty is sufficiently reduced. The Scientific Advisory Group added that “some systems are more stable, but some systems are naturally quite variable.”
7. **The Causal Assessment method for identification of the source of impairment should be described in the biological objectives policy.**
8. **If the State Board adopts biological objectives for all perennial, wadeable streams in the state, change the listing policy to delay listing until after a causal assessment ascertains that there is impairment and that the cause is not natural.** Benthic macroinvertebrate impairment listings currently require a pollutant co-listing, but the pollutant does not need to contribute to the impairment. This seems to make it too easy to list, especially when limited data are required to list and more extensive data collection is required to delist.

In closing, we encourage the State Water Resources Control Board to take into consideration potential natural sources of impairment when developing regulations, including the major potential effects contributed by geology. Rulemaking must account for differences in local conditions to come up with attainable, practical and realistic requirements for POTWs that the ratepayers can support.

If you have any questions, please feel free to call Dr. Randal Orton or Janice Dougall on our staff at (818) 251-2100.

Sincerely,



John R. Mundy
General Manager, Las Virgenes Municipal Water District
Administering Agent, Las Virgenes – Triunfo Joint Powers Authority