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Public Comment
Statewide Biological Objectives Policy- CEQA Scoping
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Statewide Biological Objectives Policy – CEQA Scoping Comments

On September 7, 2012, the State Water Resources Control Board (State Water Board) staff held an announced CEQA Scoping Meeting for a Statewide Biological Objectives Policy and Program of Implementation for Perennial, Wadeable Streams. The San Joaquin River Group Authority (SJRG) offers the following comments.

Summary of SJRG Comments

The SJRG comments can be summarized as follows:

1. There is a need to clarify the staff intent as many of the statements in the announcement and supporting documents are contradictory. This makes it unclear which direction staff is pursuing with this policy;
2. The definitions, specifically for wadeable and perennial streams are vague and do not provide the regulated community with guidance on where the policy will be applied;
3. The SJRG is concerned that there are few reference sites for the Central Valley, especially for valley-floor streams;
4. Streams, canals, Ag drains and Ag-dominated water bodies on the valley floor need to be excluded from the present process;
5. Alternatives need to focus on what is achievable and can be uniformly applied;
6. This policy effort needs to be consistent with the State Water Board's present review of the Bay-Delta Plan; and
7. The potential environmental impacts from this policy can be very complicated if the policy is applied to streams, constructed water bodies and/or Ag-dominated water bodies on the valley floor of the San Joaquin River Basin as these may change reservoir releases, reservoir operations or in-stream flow requirements.

Below is a more detailed explanation of each of these seven points.

Need to Clarify Intent

There is confusion as to what the State Water Board is intending to do. The CEQA Scoping announcement title and description shows the intent is to 1) adopt a statewide policy for biological objectives and 2) adopt a program of implementation to apply it initially to perennial, wadeable

streams. The accompanying documentation and the brochure handed out at the scoping session however show a different intent.

The Informational Document that accompanied the CEQA Scoping Announcement and the brochure that was handed out at the CEQA Scoping Session in Sacramento are worded differently and say that this policy effort and CEQA scoping is limited to perennial wadeable streams. The title specifically says “*Proposed Statewide Policy for Biological Objectives in Perennial Wadeable Streams*”. The scope described in the supporting documents and the CEQA Scoping Announcement are thus completely different.

In reviewing the informational document, the suggested proposal switches back and forth between setting a “*Statewide*” policy and setting a policy that applies only to “*Perennial Wadeable, Streams*”. For example, the CEQA scoping document states that “*These efforts have focused primarily on perennial, wadeable streams, which make up an estimated 24% of stream miles in the state. Further work is still needed on other types of waterbodies, such as non-perennial streams, large rivers, lakes and wetlands.*” Yet the CEQA Scoping Session Announcement implies that there will be a statewide policy that applies to all water bodies.

This is further confused by the statements in the document entitled “*Proposed Statewide Policy for Biological Objectives in Perennial Wadeable Streams*”. Under the section entitled “*Biological Objectives*” and the subsection entitled “*Required Characteristics*” it states that the biological objectives must be applicable statewide and under the subsection entitled “*Guiding Principles*” it states that the state should have biological objectives for all water-body types. This implies that the policy being considered under this CEQA Scoping applies statewide and will apply to all water body types, not as the title implies to only perennial wadeable streams.

Because the CEQA Scoping Announcement and the CEQA Informational Document were titled differently and imply differing approaches, the State Water Board staff needs to consider one of two alternatives. The first and the preferred alternative is to re-notice the CEQA Scoping Meeting and be clear which direction the staff wants to proceed. The second alternative is to send out a notice to clarify that the present effort is limited to just adopting a statewide policy for “perennial, wadeable streams” as this was what the staff had information on, had reviewed and what the staff announced in the informational document and the summary brochure that they intended to pursue. The second alternative may require an extension of the comment time period to allow for revisions to comments based on the State Water Board staff clarification of intent.

Definition Clarification Needed

In the Informational Document accompanying the CEQA Notice, the State Water Board staff stated that it “... *is proposing to develop a statewide biological objectives policy for perennial wadeable streams*”. The definition of perennial is given as “*a stream with the year round presence of flowing surface water during a typical water year. Any stream that does not meet this definition is considered “non-perennial”*”. The definition of wadeable stream is given as “*a stream that can be crossed safely by wading during the standard sampling period (index period)*”.

Both of these definitions are vague and do not give the regulated community guidance on where the policy will be applied. For example, does the term “*stream*” mean any water body or is it restricted to a natural stream course? During discussion in the stakeholder meetings, the term stream is being used to cover any water body covered under the Porter Cologne Act. This could include constructed water bodies and ephemeral water bodies but it is often stated that these may not covered by this action. As the term “stream” is not used on a map but the terms creek, river or slough are, does it

include all of these or does it mean something different. Similar confusion lies with the words “*perennial*” and “*wadeable*”. Without clarification, the outcome will be that the Regional Board and the regulated community will spend needless time arguing whether or not the policy applies to that particular stream. It is recommended that the State Water Board staff provide a list of streams that they consider being perennial wadeable streams during the policy consideration process.

During the September 7th CEQA Scoping Meeting, the SJRGA asked for clarification of the definition of “wadeable stream” as it implied you could safely walk across it during sampling. The State Water Board staff confirmed this interpretation in their response and upon further questioning confirmed that it likely would not include the San Joaquin, Tuolumne, Merced or Stanislaus rivers because they could not be safely sampled by wading. “*Likely would not*” is the key phrase that needs to be clarified to avoid confusion and inconsistent interpretation by staff as to which water bodies the policy applies to. We requested that the State Water Board staff make this clear in future documentation and be specific as to which streams and rivers the policy would apply to as the supporting documentation from State Water Board Surface Water Ambient Monitoring Program (SWAMP) used all four rivers as test sites thus adding confusion as to which water bodies the policy would apply to. Similar clarification is needed as to which creeks, rivers, sloughs and other water body types this policy will be applied to. Without this, there will be needless time spent arguing whether or not the policy applies to that particular water body.

Reference Sites Lacking for the Central Valley

If the present effort is directed at all water bodies statewide, the State Water Board staff need to consider how this policy will be applied to valley-floor streams in the Central Valley. These are highly modified and finding a reference condition would be very difficult. During the CEQA Scoping Session conducted in Sacramento, the SJRGA specifically asked whether this policy would apply to valley-floor streams in the Central Valley. State Water Board staff response was that the “present effort” would not apply to valley-floor streams in the Central Valley. This needs to be clarified in the CEQA Scoping documents and any future documents as the CEQA Scoping Announcement points to apply the policy to all water bodies.

Consideration also needs to be given to excluding constructed Ag drains and canals as well as water bodies dominated by Ag return flow and irrigation supply. The use of a reference site from a free-flowing perennial stream is inappropriate for measuring the biological integrity of constructed or highly altered water supply and drainage systems which were constructed for a specific purpose.

The documents listed as reference material for the CEQA Scoping session specifically referred to the State Water Board SWAMP Technical Report entitled “*An Index of Biotic Integrity (IBI) for Perennial Streams in California’s Central Valley*” dated December 2008. In this report, it lists the sites where testing had been conducted in the San Joaquin River Basin. Most of these were not perennial streams. Rather they are constructed Ag drains and canals, Ag-dominated water bodies in highly altered ephemeral streams on the valley floor of the San Joaquin River Basin.

The same report acknowledges that there are no reference sites in the San Joaquin River Basin and the entire San Joaquin Valley, especially on the valley floor. The report however states that “*We recommend using reference conditions in the Sacramento Valley as a benchmark for conditions in the San Joaquin Valley unless future data sets suggest otherwise. The sparseness of data points (especially reference sites) in the southern San Joaquin and Tulare Basins may not be easily remedied given the more arid landscape of the southern Central Valley.*” This would be inappropriate and possibly biologically incorrect.

The Sacramento River Basin is a rainfall-driven basin while the San Joaquin River Basin is highly dependent upon snow melt from the higher elevations of the Sierra Nevada Range. Both of these basins have completely different hydrology as the higher elevations do not exist in the Sacramento River Basin. Combining the two basins would violate the first required characteristic stated in the State Water Board staff report for biological objectives to be effective; *they must be scientifically rigorous to be credible.*

Alternatives for Consideration

The CEQA Scoping documents and presentation at the CEQA Scoping meeting in Sacramento identified three alternatives being considered by the State Water Board staff.

Alternative #1: No Action. The SJRGA cannot support this alternative. This would leave the application of bioassessment and biological objectives to the Regional Board. With the diversity of habitat in streams of the Central Valley between the Sierra Nevada, the foothills, valley floor and delta, and the great diversity of hydrology and climate between the Sacramento and San Joaquin valleys, the Regional Board would not have the resources to develop a program that would be anything more than a broad-brush approach. Such an approach would cause inconsistency in the evaluation and protection of aquatic life uses within Region 5.

Alternative #2: Adopt biological objectives for protecting high quality streams and preventing further degradation of degraded streams. The way the alternative is worded, the SJRGA cannot support this alternative. As it is worded, the intent is to adopt biological objectives for all streams in California regardless of whether the stream was ephemeral, perennial or a river or whether the water body was constructed for transporting irrigation supply water. The broad-brush application of biological objectives to all water body types will result in inconsistent application, inconsistent interpretation of results and miss application of the results in the regulatory environment.

The description under the title of Alternative #2 appears to be different in that it states that “*In this alternative, biological objectives would be established for perennial wadeable streams that are currently in biological condition equivalent to reference condition to prevent degradation of those streams*”. This approach is different from described in the title. The SJRGA could only support this alternative if the alternative was clear that valley-floor streams in the Central Valley and all constructed Ag water ways and drains within the San Joaquin Valley were excluded.

The SJRGA would recommend that State Water Board staff consider a modification to this alternative that only adopts an interim policy for high quality streams in the higher elevation watersheds of the foothills, Sierra Nevada and other mountainous areas. This would allow the State Water Board staff to utilize the information they have, learn about how to implement the policy, and how to train regional board staff in its implementation while focusing their efforts on the water bodies with highest need for protection. Any effort to establish biological objectives needs to be limited in scope to something that is achievable and can be uniformly applied while focusing on the highest quality watersheds or water bodies.

The final part of Alternative #2 states that “*This alternative also would set biological expectations for degraded streams to prevent further degradation of those streams. Under this alternative, targets for restoring degraded streams would not be established*”. It is unclear how this would be applied and to what streams and water bodies this action would be applied to. Because of this, the SJRGA cannot support this portion of Alternative #2 until further clarification is provided on which water bodies the actions will apply to.

Alternative #3: Adopt biological objectives for all perennial, wadeable streams in the state. The SJRGA has reservations about how and where this alternative will be applied. As stated earlier, there needs to be clarity as to which water bodies are considered under the policy, prior to its adoption. This clarity needs to consider what the definition of wadeable is and which water bodies it applies to. It also needs to be clear what is considered a perennial stream and how long-term drought and climate change will be considered. To be an acceptable policy that applies only to perennial streams it needs to be clear that it 1) excludes valley-floor streams in the Central Valley, especially in the San Joaquin Valley, 2) excludes portions of the major rivers in the San Joaquin Valley as they flow on the valley-floor, and 3) excludes any constructed Ag water supply canal or drain or Ag-dominated water body on the San Joaquin Valley floor.

Because of the great diversity of streams statewide, again the SJRGA recommends that the State Water Board staff consider only adopting an interim policy and only applying that to the highest quality streams in the higher watersheds of the foothills, Sierra Nevada and other mountainous areas. As stated before, this would allow the State Water Board staff to utilize the information they have, learn about how to implement the policy and how to train regional board staff in its implementation. This effort needs to be limited in scope to something that is achievable and can be uniformly applied.

Consistency with Other State Water Board Policies and Regulatory Actions

The Informational Document for the Public Scoping Meeting was unclear on how this policy effort will be coordinated or how it would be consistent with the State Water Board's present review of the Bay-Delta Plan. The response given by the State Water Board staff at the September Scoping Meeting in Sacramento was that they were coordinating with these other efforts and they did not feel they would be disruptive of the ongoing efforts. This needs to be clear in any policy alternative that is considered. If the State Water Board establishes flow objectives for any stream in the San Joaquin River Basin, compliance with those flow objectives should be considered in compliance with any policy developed for biological objectives as the flow objectives were set by the State Water Board for protection of aquatic life beneficial uses. The SJRGA will oppose any policy that does not include this provision.

As the CEQA Scoping Announcement and Informational Document did not specify any implementation alternatives, it is impossible to comment on their impact or what needs to be considered under CEQA for a specific water body. Any alternative being considered must evaluate whether it would impact or change the ability of the dischargers or water operators to be in compliance with the proposed State Water Board flow requirements during all water-year types and flow conditions and how this would impact salmon survival and out-migration downstream of the reservoir and in the Delta.

Need to Document

The CEQA Scoping Notice and Informational Document did not specify any potential implementation actions under consideration by the State Water Board staff. Because of this, it is impossible to comment on specific alternatives and their potential environmental impact. CEQA is supposed to be based on available scientific evidence and studies, not planned or suggested studies, theories or speculation. In the development of the CEQA document for this action, the State Water Board needs to document the scientific evidence available that shows that implementation of biological objectives to San Joaquin valley-floor rivers, streams and constructed water bodies would be successful in increasing the biological integrity of these water bodies and how this increase in biological integrity would offset the impacts to water users of these water bodies. At present, the SJRGA knows of little or no information of how changes in the biological integrity would be

successful in these highly managed water ways. We would appreciate being kept informed on the development of this scientific background information and whether this information has been peer reviewed and/or field tested.

Potential Environmental Impacts

The application of biological objectives to San Joaquin valley-floor rivers, streams and constructed water ways could have a significant impact on water supply, energy production and fishery resources, each of which would have a ripple effect on the farming industry and the local communities and their economies that depend upon this farming. Many of these communities have the highest unemployment rates in the country. For any potential actions or any alternative under consideration that will result in changes in reservoir operations, in-stream flow requirements or discharge limitations, the CEQA process should consider and fully evaluate as to whether that alternative would impact:

- Water supply deliveries for agricultural, municipal and wetland uses and the consequences in either the amount delivered, the timing of the deliveries or the quality of that water supply;
- Water rights and the subsequent water delivery capability of the various water right holders and reservoir operators;
- Repayment capacity for reservoir and downstream infrastructure debt and how these would change downstream operations and water supply delivery capabilities;
- Loss of agricultural crop production and/or fallowing of agricultural lands during various water-year types;
- Changes in cropping patterns that would result from changes in surface water supply availability and the resulting economic impact;
- Water supply carryover used to avoid drought year effects;
- Loss of wetland habitat in and near these reservoirs due to reservoir reoperations and changes in reservoir water levels;
- Flood control needs and requirements and the resulting impacts on downstream communities;
- Consequences of likely increased groundwater use, including, but not limited to, overdraft to replace the lost agricultural, municipal and wetland water supplies caused by reservoir reoperations or increased in-stream flow requirements;
- Changes in groundwater quality likely to occur with increased overdraft to replace lost water supplies;
- Loss of domestic-use groundwater supplies in rural areas due to the resulting overdraft to replace water supplies lost due to reservoir reoperations or increased in-stream flow requirements;
- Increased power needs associated with increased groundwater pumping to replace water supplies lost due to reservoir reoperations or increased in-stream flow requirements;
- Loss of summer-time hydro-power energy production due to reservoir re-operations or increased in-stream flow requirements and changes in water head in the reservoirs;
- Increased carbon emissions from replacement energy supplies from decreased hydro-power operations;

- Increases in carbon emissions caused by increased power consumption during the summers months for groundwater pumping to replace water supplies lost due to reservoir reoperations or increased in-stream flow requirements;
- The costs and ability to transmit the increased power requirement caused by increased groundwater pumping and loss of hydropower production including impacts to the long-term reliability of the California energy grid;
- The long-term sustainability and costs of converting to groundwater pumping;
- State's existing energy and renewable energy policies;
- Cost and consequences of lost recreation opportunities on reservoirs or in-stream created by changes in reservoir operations or increased in-stream flow requirements and the impact on the local communities that rely heavily on the recreational income for their revenue;
- Existing downstream water quality requirements due to reservoir reoperations or increased in-stream flow requirements;
- Existing downstream flow requirements including FERC licensing requirements;
- Existing flow and temperature requirements for protection of anadromous fisheries, including salmon and steelhead;
- Potential for creating "dead pool" status in the reservoirs and the consequences to recreational opportunities, in-reservoir fishery resources and downstream fishery resources;
- Loss of fish habitat in the Delta in drier years due to changes in water supply availability;
- Changes in reservoir reoperation or increased in-stream flow requirements on water temperature in the reservoir and the conflict with existing flow and temperature requirements for protection of anadromous fisheries, including salmon and steelhead;
- Public trust values to upstream river and reservoir habitat and commerce; and
- Reduced water supply for the Pacific Flyway and other wildlife refuges.

We appreciate the opportunity to comment on the proposed CEQA Scoping. If you have any questions, please do not hesitate to contact us.



Dennis Westcot
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