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May 18, 2015

Mr. Samuel Unger, Executive Officer
Los Angeles Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013
Via email: Samuel.Unger@waterboards.ca.gov; Renee.Purdy@waterboards.ca.gov;
LB.Nye@waterboards.ca.gov; Man.Voong@waterboards.ca.gov

Re: Comments on Proposed Amendments to the Basin Plan to Revise Total Maximum Daily Load for Trash in the Ballona Creek Watershed and Total Maximum Daily Load for Trash in the Los Angeles River Watershed

Dear Mr. Unger:

On behalf of Heal the Bay, I submit the following comments to the Los Angeles Regional Water Quality Control Board (“Regional Board”) on the proposed amendments to the Basin Plan to Revise Total Maximum Daily Load (“TMDL”) for Trash in the Ballona Creek Watershed and Total Maximum Daily Load for Trash in the Los Angeles River Watershed (“Proposed Amendments”). Heal the Bay is an environmental organization with over 15,000 members dedicated to making Southern California coastal waters and watersheds safe, healthy, and clean for people and aquatic life.

Heal the Bay has advocated for the development and supported the adoption of trash TMDLs in the Los Angeles region and statewide for over a decade. We were major proponents of the original Trash TMDL adopted by the Regional Board on September 19, 2001, as the provisions of the TMDL paved the way for water quality standards attainment. Also, we helped negotiate the definition of full capture device with the Regional Board, Los Angeles County, and City of Los Angeles. Of particular note, the original Trash TMDL itself stood strong against many legal challenges, as the Court of Appeals ruled in favor of the Regional Board in every one of the Plaintiff’s claims against the TMDL, except with respect to CEQA. As final compliance deadlines approach in 2015 and 2016 for Ballona Creek and Los Angeles River Watersheds, respectively, it is critical responsible entities continue to make progress toward TMDL compliance. As such, we believe the Proposed Amendments revisions will assist responsible entities reach water quality standards in the future. However, we also believe some aspects of the Proposed Amendments need further refinement as outlined in our comments below. Because proposed changes to the Ballona Creek Watershed Trash TMDL are similar, if not the same, as proposed changes to the Los Angeles Watershed Trash TMDL, our comments below address them both, when applicable. We appreciate the opportunity to provide comments at this time.

I. Trash Impairs the Beneficial Uses of the Los Angeles River and Ballona Creek

Trash significantly impairs beneficial uses of the Los Angeles River watershed and Ballona Creek watershed. It is a well established fact that runoff from urban storm drains is the number one source of coastal pollution, and is a continuing threat to marine life and human health in Los Angeles County. Urban runoff carries trash and other pollutants that go directly to local streams, such as the Los Angeles River and Ballona Creek, and eventually to the ocean unfiltered and untreated. Heal the Bay has routinely



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documented excessive trash in the River during annual Coastal Cleanup Days. Compton Creek, a tributary of the Los Angeles River, is arguably the most trash impaired waterbody in the region – large amounts of trash have been collected and removed from Compton Creek through various cleanup efforts.

Los Angeles River and Ballona Creek support, or should support, a host of beneficial uses. Today, at various reaches along these waterways, people bike, jog, walk, horseback ride, bird-watch, photograph, picnic, swim, fish, and collect mussels off of the rocks. There are also numerous species of fish and wildlife that spawn, migrate, and live in these waters. There can be no question that trash has tremendously impaired the beneficial uses of these waterways, particularly, but without limitation: REC1; REC2; GWR; WARM; MAR; WILD; RARE; potential MUN, IND., MIGR, SPWN, and SHELL.

II. Support Regional Board Inclusion of Load Allocations for Adjacent Waters or Parks, Open Space, or Recreational Facilities to Los Angeles River and Ballona Creek Watersheds

The loading capacity of trash in Los Angeles River and Ballona Creek (“waterways”) watersheds is zero. Both point and nonpoint sources contribute to trash pollution in these waterways. The new load allocations contained in the Proposed Amendments help strengthen both TMDLs as they directly target nonpoint sources; including responsible entities owning or operating recreational facilities directly adjacent to waterways is needed and will help achieve TMDLs’ numeric target of zero trash in all waterbodies. Therefore, we support the Regional Board’s load allocation revisions in the Proposed Amendments. In addition, we believe assigning the City of Santa Clarita a load allocation of 901 gallons of trash per year to replace its waste load allocation from the 2007 Los Angeles River Watershed Trash TMDL is appropriate as Santa Clarita does not have MS4 infrastructure capable of directly conveying trash into the Los Angeles River at this time.

a. Methods for Determination of Applicable Nonpoint Sources Need to be Included in the Proposed Amendments

The Proposed Amendments clearly identify entities responsible for nonpoint source pollution from lands adjacent to the waterways. Although the Proposed Amendments identify cities responsible, it is unclear how the Regional Board ultimately identified these adjacent waters, parks, open space, and recreational facilities included in TMDLs’ amendments. Did the Regional Board rely on municipalities to identify nonpoint source areas? Did the Regional Board use Geographical Information Systems to identify possible nonpoint source land uses? If a park, open space, or recreational facility does not directly share a property boundary with the waterways, is it omitted from being a possible nonpoint source? We ask the Regional Board to clarify how sites given TMDL baseline load allocations were chosen and to include methods/protocol for identification of future nonpoint source sites in the Proposed Amendment. Furthermore, we ask the Regional Board to expand nonpoint sources to area within 0.10 miles of Los Angeles River and Ballona Creek banks as nonpoint source pollution can occur several hundred feet from waterway boundaries.

b. Compliance Determination for Nonpoint Sources is Unclear and Needs to be Revised

TMDL compliance for entities responsible for nonpoint source pollution are determined to by three criteria:



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- 1) The assessment performed immediately after each collection event shall demonstrate that no trash remains;
- 2) The trash amount accumulated between collection events in open space and parks shall not exceed the Load Allocations of 640 gallons per square mile per year (gal/mi²/yr) and shall show a decreasing trend;
- 3) Responsible entities shall increase the frequency of collection and/or implement additional BMPs, should trash amounts collected at collection events not indicate a decreasing trend.

In addition to the above requirements, implementation schedules for nonpoint sources are required to achieve 100% reduction of trash from baseline load allocations three years from the effective date of each reconsidered Trash TMDL. As written, it is unclear what requirements in the Proposed Amendments establish nonpoint source compliance – do responsible entities need to eliminate trash pollution as identified in implementation schedule or complete the three steps outlined above? Both? We ask the Proposed Amendments be revised to address this. Furthermore, the justification of using a blanket load allocation of 640 gallons per square mile per year for all nonpoint source areas is unclear. This value was derived from a City of Calabasas nonpoint source study – can the Regional Board show nonpoint source loading in Calabasas is representative of all nonpoint areas identified in the Proposed Amendments? Generally speaking, we do not believe nonpoint source loading occurring in Calabasas would be the same as nonpoint source loading in heavily urbanized areas of City of Los Angeles or City of Compton. We ask the Regional Board to include site-specific characteristic, such as population densities, land use visitorship, etc., to take into account differences in nonpoint source trash loading incorporated into the Proposed Amendments. It is important that baseline nonpoint source trash reductions are representative of the actual loading occurring at each site.

c. Load Allocations Implementation Reliance on Receiving Water Monitoring Plan

Trash in open space and parks managed by responsible jurisdictions and agencies are to be removed completely at each assessment and collection event as specified in the Trash Monitoring and Reporting Plan (“TMRP”), within 72 hours after critical conditions, and immediately after special events when no safety hazards exist. The frequency of trash removal in the TMRP has little correlation to nonpoint source loading addressed in the Proposed Amendment. TMRP sampling frequency is used to determine trash accumulation rates in receiving waters, not open space and parks. The justification for using receiving water monitoring frequency for terrestrial trash management is unclear. We ask the Regional Board to include more specifics about assessment and collection frequency for nonpoint sources; Heal the Bay urges the Regional Board to require assessment and collection at least monthly for heavily used public areas such as parks and recreational facilities and quarterly for other land uses.

III. Support Addition of New Monitoring Requirements in Proposed Amendments

Proposed Amendments include the addition of three new monitoring requirements to track and assess trash in waterways. We support the inclusion of these requirements, receiving water monitoring, plastic pellet monitoring, and Minimum Frequency of Assessment and Collection (MFAC) Program monitoring, contained in the Proposed Amendment and believe they are necessary to accurately assess trash accumulation volumes over time. Given the lack of clear compliance demonstrations, as documented by the Regional Board in Table 1 and 2 of the Staff Report¹, requiring additional trash monitoring is necessary

¹ Compliance Summary for Los Angeles River Trash TMDL 2013-2014 Reporting Year shows 12/44 responsible



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to ensure implemented trash controls are working effectively and to identify if additional management approaches are necessary to reduce trash pollution in waterways. Further, these new requirements will aid in the collection of trash data and create comparable monitoring metrics across multiple jurisdictions, which can assist the Regional Board in compliance determination and assessment of trash impairments along waterways in the long-term.

a. Receiving Water Monitoring Sampling Sites and Frequency Needs more Specificity

The Proposed Amendments require responsible entities to submit TMRPs outlining proposed receiving water monitoring sites and at least two additional alternative monitoring locations. In addition, TMRPs require entities to identify at least one monitoring station per reach and tributary. Although we support the inclusion of receiving water monitoring requirements in the Proposed Amendments, we believe sampling one site per reach and tributary will not accurately assess trash accumulation in receiving waters. Trash accumulation rates can vary considerably across reaches and tributaries because of differences in channel construction; trapezoidal channels differ from box channels, soft bottom differ from hard bottom, etc. Because of these differences, we request that further clarity be added to the Proposed Amendments to include language requiring responsible entities to monitor more than one monitoring site in reaches and tributaries that have variable channel configurations. For example, reaches and tributaries that have trapezoidal channels consisting of both hard and soft bottom would at least have two different receiving water monitoring sites.

The Proposed Amendments also state that “each sampling evaluation should consider trash levels over time and under different seasonal conditions”. It is unclear what “different seasonal conditions” is referring to – does the Regional Board want responsible entities to monitor in each season, wet/dry weather, or four times per year at each site? The language in the Proposed Amendments is not specific enough to identify this. We ask that the Proposed Amendments be revised to clearly state how many times per year the Regional Board requires a sampling site to be monitored. To accurately assess seasonal difference, we believe sampling evaluations should take place four times per year (summer, winter, fall, and spring) to characterize seasonal behavior difference and accompanying trash accumulation which may be influenced by seasonal weather changes.

IV. New Alternative Compliance Methods for Full and Partial Capture Devices Should be Approached with Caution

The Proposed Amendments include three new alternative compliance approaches for full capture and partial capture devices. The numeric target for trash in both the Los Angeles River Watershed and Ballona Creek Watershed Trash TMDLs is zero. Both TMDLs were developed with the notion that final compliance would be attained when zero trash is discharged into waterways. Heal the Bay understands the complexity of managing the region’s trash problem, and are fully aware of the challenges presented with implementation of each trash TMDL. We commend the efforts responsible parties have put forth up to this point to comply with the Los Angeles River Watershed and Ballona Creek Watershed Trash TMDLs; however we want to reiterate the importance of these TMDLs in the region. Los Angeles is one of the most heavily developed counties in the nation. Trash pollution is chronic and the Regional Board rightfully

entities not in compliance and 17/44 responsible entities “undetermined”. Compliance Summary for Ballona Creek Trash TMDL 2013-2014 shows 3/7 responsible entities not in compliance and 3/7 responsible entities “undetermined”.



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adopted Trash TMDLs for Los Angeles River and Ballona Creek in 2001 and 2007. Both TMDLs are approaching their final compliance deadlines. Adding alternative compliance determination methodology at the end of TMDL implementation schedules is a slippery slope; if this approach is used regularly, it has the potential to seriously undermine already adopted TMDLs. Further, the precedent setting nature of changing final compliance metrics for TMDLs that have been implemented for almost a decade, especially when new alternative compliance methods are less stringent than what was proposed in the original TMDLs, is concerning. Because of this, we urge the Regional Board to approach the new alternative compliance methods for full and partial capture devices with caution.

a. The Alternative Full Capture Compliance Approach Needs to be Strengthened to Require Downstream Trash Controls in Areas where it is Technically Infeasible to Implement Full Capture Devices

The original Ballona Creek Watershed and Los Angeles River Watershed Trash TMDLs included a technological based compliance option for responsible entities. Cities which chose to retrofit all catch basins with full capture devices, following TMDL implementation schedules, were deemed to be in compliance with the TMDL. Pursuing this approach is resource intensive, encountering not only financial, but also engineering constraints. Yet, many cities have already achieve compliance. As identified in the staff report and Proposed Amendments, in some cases it was technically infeasible to install full capture devices at some catch basins because of physical constraints associated with channel configuration.

To address trash in areas that are not managed by full capture systems because of technical infeasibility, the Regional Board proposes alternative compliance criteria (below) in the Proposed Amendments.

- 1) 98% of all catch basins within the agency's jurisdictional land area in the watershed are retrofitted with FCS (or, alternatively, 98% of the jurisdiction's drainage area is addressed by FCS) and at least 97% of the catch basins (or, alternatively, drainage area) within the agency's jurisdiction in the subwatershed (the smaller of the HUC-12 equivalent area or tributary subwatershed) are retrofitted with FCS.
- 2) The agency submits to the Regional Board a report for Executive Officer concurrence, detailing the technical infeasibility of FCS retrofits in the remaining catch basins and evaluating the feasibility of partial capture devices, and the potential to install FCS or partial capture devices along the storm drain or at the MS4 outfall downgradient from the catch basin.
- 3) The agency submits to the Regional Board a report for Executive Officer approval, detailing the partial capture devices and/or institutional controls that are currently and will continue to be implemented in the affected subwatershed(s), including an assessment of the effectiveness of the partial capture devices and/or institutional controls using existing data and studies representative of the subwatershed or jurisdictional area. If, based on Regional Board evaluation, existing data and studies are determined non-representative, responsible jurisdictions may also be required to conduct a special study of institutional controls and partial capture devices in the particular subwatershed(s) where the non-retrofitted catch basins are located.²

² Proposed Amendment to Los Angeles River Watershed Trash TMDL at 5; Proposed Amendment to Ballona Creek Watershed Trash TMDL at 4.



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These criteria are a good start to offset full capture installation challenges. However, we believe criteria one and two need to be adjusted to ensure trash capture effectiveness by alternative compliance approaches are comparable to the full capture effectiveness originally developed in the Trash TMDLs.

Criteria One

- 1) ~~98% of all catch basins within the agency's jurisdictional land area in the watershed are retrofitted with FCS (or, alternatively,~~ 98% of the jurisdiction's drainage area is addressed by FCS) and at least 97% of the ~~the catch basins (or, alternatively,~~ drainage area) within the agency's jurisdiction in the subwatershed (the smaller of the HUC-12 equivalent area or tributary subwatershed) are retrofitted with FCS.

We ask that the 98% threshold apply only to the jurisdiction's drainage area in the Proposed Amendments, as the percentage of catch basins outfitted with full capture systems and the percentage of the jurisdictional drainage area in a watershed are two different things. All catch basins do not capture the same percentage of a watershed - remaining 2% of catch basins not retrofitted with full capture systems could represent over 2% of jurisdictional drainage area in the watershed. Because of this, we ask the Regional Board the strike the above language and solely rely upon jurisdictional drainage covered by full capture devices in criteria one. Only 2% of the drainage area should be allowed to not be retrofitted by full capture systems in the Proposed Amendment.

Criteria Two

- 2) The agency submits to the Regional Board a report for Executive Officer concurrence, detailing the technical infeasibility of FCS retrofits in the remaining catch basins and evaluating the feasibility of partial capture devices, and the potential to install FCS or partial capture devices along the storm drain or at the MS4 outfall downgradient from the catch basin. **The agency shall implement FCS and/or partial capture devices at remaining catch basins, along the storm drain, or at the MS4 outfall downgradient from the catch basin unless deemed technically infeasible. If deemed technically infeasible, the agency shall implement additional BMPs upstream to address catch basins not retrofitted with trash capture devices.**

The Proposed Amendments, as written, only requires agencies to develop a report for the Regional Board detailing technical infeasibilities and the potential to install additional capture devices along storm drain and MS4 outfall. It is important to highlight that the Proposed Amendment does not require agencies to actually implement any trash controls. We ask the Regional Board to specially require agencies to install these potential capture devices if deemed feasible. If deemed infeasible, we request that the agency be required to implement additional control measures, such as institutional controls or upstream/downstream controls, to address trash loading from catch basins not retrofitted with full capture systems. This approach would ensure trash that is not managed through full capture devices will be captured by other control measures up or downstream of the catch basin.

b. The Alternative Partial Capture Compliance Approach Should Not be used for Final Compliance with TMDLs

Responsible entities that chose to pursue a partial capture device approach for TMDL compliance should not be granted an alternative compliance approach at this time. The intention of the partial capture approach is to reach baseline loading reductions identified in the original TMDLs by a specific date. Therefore, meeting baseline load reductions is critical for compliance. Responsible entities should not be



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given the opportunity to request that 97% or 98% of baseline load reduction constitute full compliance with final waste load allocations. Between 99%-100% reduction in baseline trash loading should be the only criteria for TMDL compliance. Given the fact that responsible entities that pursued a partial capture compliance approach were not required to retrofit all catch basins in jurisdictional boundaries and that opportunities still exist to install partial or full catch devices at non-retrofitted catch basins clearly identifies that more can be done if baseline load reductions have not be achieved. Further, it is inappropriate to alter final water quality based compliance approaches 1-2 years prior to final compliance deadlines. Additionally, the Trash Policy adopted by the State Water Resources Control Board in April 2015 requires that Track 2 (which allows for a combination of BMPs and treatment controls to meet full capture system equivalency) specifically demonstrate equivalency with full capture systems. Allowing for responsible parties to decrease their trash load reduction requirements to demonstrate compliance is in direct contravention with the Track 2 approach, as it does not represent equivalency and instead represent trash capture that is less-than equivalent. It is important that any amendments to these TMDLs are consistent with the statewide Trash Policy. Moreover, altering final compliance criteria for a sunseting TMDL is a slippery slope. Will this be an approach used for other TMDLs, such as bacteria or metals when responsible agencies cannot attain final waste load allocations? We believe the alternative compliance approach for partial capture devices should not be included in the Proposed Amendment as it is clearly unjustified at this time.

- c. Compliance with the Interim and Final WLAs though Scientifically Based Alternative Compliance Approach as Approved by the Regional Board or Executive Officer should have a Public Comment Period*

The Proposed Amendments allows for responsible entities to conduct studies of institutional controls and partial capture devices for their particular subwatershed(s) or demonstrate that existing studies are representative and transferable to the implementing area. This is an entirely new compliance approach for the Los Angeles River Watershed and Ballona Creek Watershed Trash TMDLs. Given this is a new approach, entities that pursue this approach should be required to incorporate public input at critical milestones throughout study development, implementation, and finding. Furthermore, responsible entities should be required to demonstrate equivalency to full and partial capture devices when conducting studies or when demonstrating existing studies are representative. It is critical that scientifically based alternative compliance maintain schedules contained in the original TMDL and effectiveness of new trash controls are as protective as existing compliance metrics.

We appreciate the opportunity to comment on proposed amendments to the Basin Plan to Revise Total Maximum Daily Load for Trash in the Ballona Creek Watershed and Total Maximum Daily Load for Trash in the Los Angeles River Watershed. If you have any questions, please contact me directly at (310) 451-1500 ext. 189.

Sincerely,

Peter Shellenbarger, MESM
Water Resources Manager
Heal the Bay