

Dominguez Channel Watershed Management Committee

2350 E. Dominguez Street, Carson, CA 90810

The cities of Carson, Gardena, Hawthorne, Inglewood, Lawndale, Lomita, Los Angeles, and Torrance, the Unincorporated County of Los Angeles, and the Los Angeles County Flood Control District

February 22, 2011

Transmitted via electronic mail (tnguyen@waterboards.ca.gov)

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CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD
LOS ANGELES REGION

Ms. Thanhloan Nguyen
TMDL Unit
Los Angeles Regional Water Quality Control Board
320 West 4th Street – Suite 200
Los Angeles, CA 90013

Subject: Comments for Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants Total Maximum Daily Load

Dear Ms. Nguyen:

The Dominguez Channel Watershed Management Committee (DCWMC) is pleased to submit comments in connection with the proposed Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants Total Maximum Daily Load (toxics TMDL). Please note that the cities of Gardena, Inglewood, Lawndale, and Lomita (referred to herein as "other cities") are also submitting separate comments that compliment those provided herein.

The DCWMC believes that the proposed toxics TMDL is in need of revision and recommends that the Regional Board postpone adoption of the toxics TMDL, which is currently scheduled for the first week in April, to enable stakeholders and Regional Board staff to work towards a resolution of many issues. The DCWMC comments are enumerated below.

1. Affected MS4 Permittees Should Not be Required to Fund Dredging

Federal stormwater regulations do not authorize the Regional Board to require extra-jurisdictional control of pollutants through MS4 permits. The MS4 permit requires the control of pollutants in stormwater, intra-jurisdictionally, with the compliance point at the end-of-pipe, not in the receiving water (see comments submitted by the other cities). Therefore, should the Regional Board compel affected permittees to clean up or remove downstream contaminated soil, such a requirement would be construed as an unfunded mandate.

2. Federal Funds Should be Available for DDT Sediment Removal

If affected responsible parties are required to fund dredging, any federal funds set aside for the two DDT superfund sites should be accessible to agencies responsible for removing DDT contaminated sediments from the Torrance Lateral, Dominguez Channel and Dominguez Estuary.

3. **Agencies Need Flexibility to Select Compliance Monitoring Sites**

Many of the storm drain outfalls in Dominguez Channel Estuary are at or below sea level and have flap gates to prevent flooding. Sampling during rain events at these storm drain outfalls is often impossible because they are below the water line in the channel at high tide. MS4 agencies should have the option of relocating monitoring sites to accessible points in the MS4 system, such as the nearest upstream manhole for purposes of compliance and BMP performance monitoring, as is described under federal stormwater regulations (*see Federal Register, Vol. 222, November 16, 1990, Rules and Regulations, page 48046*). The permittees also recommend that a single outfall, which best characterizes discharges released from the collective MS4s, be selected, similar to the group monitoring approach specified in General Industrial Activity Stormwater Permit.

4. **Allocation of Responsible Parties Requires Corrections**

Carson, Gardena and Torrance should not be included in the Consolidated Slip Responsible Parties Subgroup. There is no basis for listing these three cities and none of the other upstream cities. Furthermore, Carson, Gardena and Torrance are not tributary to the Consolidated Slip. The city of Carson's most southerly boundary is north of PCH, which is well above Consolidated Slip; and, all MS4 storm water flows into Dominguez Channel at or above Sepulveda Boulevard on the east or into Machado Lake on the west. See enclosed map.

Rolling Hills Estates and Rolling Hills should not be included in the Dominguez Channel/Torrance Lateral/Dominguez Estuary responsible party list(s). Rolling Hills Estates and Rolling Hills are only tributary to the LA Harbor for the subject toxics TMDL.

5. **Creation of Dominguez Channel Subgroups is Needed**

Because the Torrance Lateral is being assigned separate final WLAs for freshwater and sediment, the proposed TMDL should be revised to create a separate list of dischargers strictly for the Torrance Lateral, the Dominguez Channel and the Dominguez Channel Estuary. Any MS4 agency which does not discharge to the Torrance Lateral, the Dominguez Channel Estuary or to the Dominguez Channel should not be included on the respective lists. Thus Dominguez Channel would have three subgroups – Dominguez Channel, Torrance Lateral and Dominguez Estuary each with its own list of dischargers. This would provide consistency with Page 21 of Attachment A to Resolution No. R11-XXX which states:

1. *Dominguez Channel, Torrance Lateral, and Dominguez Channel Estuary Compliance Monitoring Program for Dominguez Channel, Dominguez Channel Estuary, and Torrance Lateral, water and total suspended solids samples shall be collected at the outlet of the storm drains discharging to the channel and the estuary. Fish tissue samples shall be collected in receiving waters of the Dominguez Channel Estuary. Sediment samples shall also be collected in the estuary.*

6. **Clarification and/or Recalculation of WLA Calculations is Necessary**

Page 31 of Attachment A to Resolution No. R11-XXX, Item 5, second paragraph states:

The compliance point for the stormwater WLAs shall be at the storm drain outfall of the permittee's drainage area. Alternatively, if stormwater dischargers select a coordinated compliance monitoring option, the compliance point for the

stormwater WLA may be at a storm drain outfalls or at a point in the receiving water, which suitably represents the combined discharge of cooperating parties discharging to Dominguez Channel and Greater Los Angeles and Long Beach Harbor waters. Depending on potential BMPs implemented, alternative stormwater compliance points may be proposed by responsible parties subject to approval by the Regional Board Executive Officer.

Please clarify whether the individual WLA for an MS4 Permittee at the outfall of the permittee's drainage area is to be calculated as its share on an area basis of the mass-based WLA, or whether a concentration-based WLA is applied based on the TMDL targets (and which ones), or whether either approach can be used depending on the type of monitoring program to be proposed. In the mean time, based on our understanding of how the allocations were divided amongst entities, we suggest that the WLAs be recalculated.

7. Allowing Concentration Based or Mass Based Standards Would Improve Coordinated Monitoring Efforts

To allow for a cost-effective approach to monitoring, it would be helpful for MS4 agencies to have the option to comply with either a concentration based or mass based standard in order to combine and coordinate monitoring requirements for other TMDLs. For example, the Machado Lake Toxics TMDL requires compliance with concentration-based WLAs based on analysis of the sediment fraction from stormwater discharges at the outfall of the MS4 agencies' discharge, hence it would be useful to allow a similar approach for compliance with this TMDL so that a single monitoring plan could be developed for both water bodies by an MS4 agency or group of agencies.

8. Outfall-based Monitoring Should be Sufficient to Demonstrate Compliance

As discussed below, a water quality based effluent limitation (WQBEL) needs to be developed to translate the WLA into BMPs, performance-based BMPs or surrogate parameters such as flow or impervious cover reduction (this would necessitate a reasonable potential analysis as described in *USEPA's NPDES Permit Writers' Manual*). The compliance determinant would not be outfall monitoring data results to show compliance with the WLA but instead the implementation of the WLA translated into a WQBEL. Federal stormwater regulations require meeting the WLA in the receiving water through the WQBEL – even if monitoring data taken from the outfall/end-of-pipe or receiving water reveals WLA exceedances. Outfall/end-of-pipe monitoring data should only be used to evaluate BMP or surrogate parameter performance.

9. Fish and Bed Sediment Monitoring Should be Assigned to the Agencies Responsible for Operating the Water Body

Throughout the document it states that responsible agencies are each individually responsible for conducting water, sediment and fish tissue monitoring, but that they are encouraged to collaborate or coordinate efforts to avoid duplication. With respect to fish and bed sediment monitoring in the receiving water, this is an unwieldy and difficult requirement to share, necessitating undue inter-agency coordination and staff time. The responsibility for monitoring fish and bed sediments should be assigned to the agencies within whose jurisdiction(s) the fish and bed sediments lie since they are directly responsible for the operation of those water

bodies. For example, Los Angeles County Flood Control District should be responsible for monitoring fish and bed sediments in Dominguez Channel. Such an approach has been utilized in the Machado Lake Toxics TMDL.

Any monitoring costs incurred by Permittees should be reimbursed by the State using the MS4 permit fee surcharge or other State funding source. Failure to do so is likely to result in an unfunded mandate claim since this monitoring requirement exceeds federal law.

10. Conduct a Special Study for Legacy Pollutants if Necessary

A special study may be helpful to assess the relative significance of background levels of bioaccumulative legacy pesticides outside the area of influence of the two superfund sites. Since these pesticides have been banned for decades, it may be that existing background levels/concentrations in sediment and soils present in the watershed outside the influence of the superfund sites will not result in exceedance of the TMDL objectives in receiving water bed sediments. A special study could be conducted to assess whether background levels in soils are present at levels that could exceed the WLA; and, if not, the MS4 agencies should be relieved from further compliance actions with respect to those legacy pollutants. In fact, model results in the November 29, 2010 memorandum from Tetra Tech to USEPA (included in Appendix III to the Draft Staff Report) indicate that even if watershed loadings of DDT are reduced to zero, concentrations of DDT in bed sediments will remain largely unchanged (reduced by at most 6.7%); these model results indicate that eliminating all watershed loads of DDT will fail to achieve compliance. Tetra Tech concluded that "DDT bed sediment is predominantly a legacy issue and upland sources appear to be contributing loads of sediment that are cleaner than what is currently in bed sediments...the model shows that the combination of clean sediment deposition and the diffusion of legacy DDT contamination are causing bed sediment concentrations to gradually decrease over time."

Any monitoring costs incurred by Permittees should be reimbursed by the State using the MS4 permit fee surcharge or other State funding source. Failure to do so is likely to result in an unfunded mandate claim since this monitoring requirement exceeds federal law.

11. Mirror Machado Lake Toxics TMDL WLAs for Monitoring Bioaccumulative Compounds at Construction Sites

The WLAs assigned to point source discharges other than MS4 agencies such as the General Construction Permittees and the General Industrial Permittees and other point source dischargers are listed as water column concentrations. For construction sites in particular the bioaccumulative compounds Chlordane, DDT, Dieldrin, Total PCBs and PAHs, if present in stormwater discharge, would be associated with soils or sediments discharged from the site rather than dissolved in water. Please clarify whether the water column based WLAs for point source discharges require the collection of suspended solids and analysis in the bulk sediment fraction, in which case the WLA should be expressed as $\mu\text{g}/\text{kg}$ on a dry weight basis in the sediment fraction. Please see the Machado Lake Toxics TMDL WLAs to see how this was done.

12. Limit Monitoring if Compliance is Demonstrated

If an MS4 agency demonstrates through compliance monitoring at the outfall of its drainage area that the TMDL targets for organochlorine pesticides and PCBs are already being attained, further compliance monitoring should not be required of that MS4 agency. Given the fact that these pollutants have been banned from use and/or no longer manufactured, it is very unlikely that the concentrations of these pollutants would increase, but rather they will continue to decrease over time; thus, continued monitoring would be a waste of public funds. Any monitoring costs incurred by Permittees should be reimbursed by the State using the MS4 permit fee surcharge or other State funding source. Failure to do so is likely to result in an unfunded mandate claim since this monitoring requirement exceeds federal law.

13. Limit Toxicity Testing

- Toxicity testing is cost prohibitive and overly burdensome for MS4 agencies if it must be done at the storm drain outfall of a permittee's drainage area twice per year.
- It is inappropriate to apply toxicity requirements as effluent limitations. Toxicity tests measure the responses of certain test organisms, and toxicity test results can be influenced by numerous factors other than and in addition to effluent toxicity. For this reason, failure of any single toxicity test should not automatically be considered a violation but rather should trigger further investigation to determine if the effluent is indeed toxic and/or to identify the toxicant(s).
- The Draft TMDL would apply toxicity limits for chronic toxicity to stormwater discharges. This use of toxicity testing is inappropriate, as it is unsupported by appropriate studies and data collection, and because it is unclear that current chronic toxicity test methods could be applied to stormwater discharges. For example, most methods require the collection of new samples daily for eight (8) days, and most stormwater discharges persist for a much shorter time period.
- The Draft TMDL calculates an interim limit for toxicity using "average values" from toxicity tests conducted by the Los Angeles County Department of Public Works. It is inappropriate to use the average of available test data as a measure of current performance that can be applied to single samples.
- Toxicity testing should be conducted in the receiving water, but the interim and final toxicity allocations in the Draft TMDL appear to apply to individual effluent samples. This method of application is inappropriate.
- Any monitoring costs incurred by Permittees should be reimbursed by the State using the MS4 permit fee surcharge or other State funding source. Failure to do so is likely to result in an unfunded mandate claim since this monitoring requirement exceeds federal law.

14. MS4 Agencies are Not Responsible for Pollutants from Extraneous Sources

This TMDL places the responsibility for control of indirect air deposition of metals solely on the MS4 agencies when they have no or limited jurisdictional authority over the sources of those pollutants. This limited jurisdiction is acknowledged by the Los Angeles Regional Water Quality Control Board in finding B.2. *Nature of Discharges and Sources of Pollutants* in the LA County MS4 Permit as follows:

Certain pollutants present in stormwater and/or urban runoff may be derived from extraneous sources that Permittees have no or limited jurisdiction over. Examples of such pollutants and their respective sources are: PAHs which are products of

*internal combustion engine operation, nitrates, bis (2-ethylhexyl) phthalate and mercury from atmospheric deposition, lead from fuels, copper from brake pad wear, zinc from tire wear, dioxins as products of combustion, and natural-occurring minerals from local geology. . . .*¹

Because the authority for regulation of such extraneous sources rests with the State and USEPA, MS4 agencies should not be held unilaterally responsible for controlling water pollution that results from these extraneous sources.

15. More Time is Needed to Prepare the Monitoring and Reporting Plan

Six months from the effective date is insufficient time to prepare a Monitoring and Reporting Plan (MRP). The monitoring being requested will most likely require that filtration of stormwater be performed in the field as it would be too cumbersome to haul to the lab the tens of gallons of water that will be necessary to obtain sufficient sediment sample to conduct the requisite analysis. Municipal budgets are severely strained and municipalities will need to budget a fiscal year in advance for what are essentially non-existent resources to prepare and implement this monitoring plan.

Should this requirement be imposed, any monitoring costs incurred by Permittees should be reimbursed by the State using the MS4 permit fee surcharge or other State funding source. Failure to do so is likely to result in an unfunded mandate claim since this monitoring requirement exceeds federal law.

Any monitoring and reporting plan should be approved by the Regional Board governing body in accordance with Porter-Cologne and take into consideration §13241's balancing of factors requirement.

16. Regional Board Should Provide Funding for Monitoring

Monitoring requirements under federal stormwater regulations are limited to the outfall or other end-of-pipe structure (see above referenced Federal Register citation). Any requirement imposed by the Regional Board beyond this must be authorized under Porter-Cologne. However, so doing raises the issue of an unfunded mandate. The Regional Board can avoid such challenge by allocating the monitoring fee surcharge that is annually assessed on MS4 permits.

17. Regional Board Should Evaluate All Possible Pollutant Sources

In the Staff Report for the toxics TMDL, the Regional Board states there are two-hundred-seven (207) General Permitted industrial facilities and ninety (90) construction sites subject to the state General Construction Permit. These sources of pollutants should be held to the same requirements as MS4 agencies and Caltrans.

18. WLAs Should be Applied to General Stormwater Permittees

Although a WLA has been ostensibly assigned to General Construction Activity and Industrial Activity Stormwater permittees, the implementation schedule does not appear to apply to them. Implementation requirements are being imposed on the MS4 Permittees and Caltrans, but not on the general construction and industrial MS4 permittees. Yet the latter are equally or more likely to be the source of potential hot spots of the toxic constituents of concern. This regulatory inequity places a disproportionate burden on municipalities. If WLAs are to be assigned to the MS4 at

¹ Order No. 01-182 Amended by Orders R4-2006-0074, R4-2007-0042, and R4-2009-0130 and further amended pursuant to LA Superior Court Case No. BS122724.

this time, then implementation and monitoring requirements must also be required of all general permittees within the watershed. These data are essential to developing an effective and appropriate implementation plan. If indeed there is any current discharge from the MS4 conveyance system in excess of the toxics TMDL targets, it may be far more effective to identify and control hot spots of residual contamination at industrial and construction sites than to control suspended sediments in storm drain discharges from the entire watershed. Additionally, many of the Industrial Dischargers are directly connected to the Dominguez Channel/Torrance Lateral/Dominguez Channel Estuary.

It should be noted that TMDLs adopted by other jurisdictions require WLA compliance not only for general permittees but Phase II MS4 permittees as well, along with certain entities that are not subject to stormwater permits but are subject to waste discharge permits issued by the Regional Board pursuant to Porter-Cologne.

19. WLAs Should be Applied to Industrial and Construction Permittees

Activities at industrial facilities include metals recycling, auto dismantling, rubber manufacturing, concrete production, etc. These activities are associated with toxic pollutants that may include PCBs.

Furthermore, industrial permittees are currently only required to monitor for pH, total suspended solids, specific conductance, and total organic carbon as well as certain pollutants specific to the facility type. It is unlikely that many of the permittees sample for the pollutants of concern, yet it is a possibility that the permittees are sources of these pollutants. The Industrial General Permit states that:

Effluent limitations and toxic and effluent standards established in Sections 208(b), 301, 302, 303(d), 304, 306, 307, and 403 of the Federal Clean Water Act (CWA), as amended, are applicable to storm water discharges and authorized non-storm water discharges regulated by this General Permit.

It should also be noted that a recent memorandum issued by USEPA Office of Wastewater Management Director James Hanlon, calls for a "disaggregation" or specific WLAs for industrial sources, as the following excerpt reveals:

... EPA recommends that WLAs for NPDES-regulated stormwater discharges should be disaggregated into specific categories (e.g., separate WLAs for MS4 and industrial stormwater discharges) to the extent feasible based on available data and/or modeling projections. In addition, these disaggregated WLAs should be defined narrowly as available information allows (e.g., for MS4s, separate WLAs for each one; and, for industrial sources, separate WLAs for difference sources or types of industrial sources or discharges.)

The Regional Board should require the permitted industrial facilities to monitor for the pollutants identified in the TMDL to ensure they are not contributing to the pollution problem.

Construction permittees are currently only required to monitor for total suspended solids, settleable solids, suspended sediment concentration, and turbidity as well as perform a bioassessment if the site is greater than thirty (30) acres. However, the state Construction General Permit requires that:

The discharger shall ensure that storm water discharges and authorized non-storm water discharges will not contain pollutants that cause or contribute to an

exceedance of any applicable water quality objectives or water quality standards (collectively, WQS) contained in a Statewide Water Quality Control Plan, the California Toxics Rule, the National Toxics Rule, or the applicable Regional Water Board's Water Quality Control Plan (Basin Plan).

Therefore, the Regional Board should require the permitted construction sites to monitor for the pollutants identified in the TMDL to ensure they are not contributing to the pollution problem. For example, the U.S. EPA performed a study in the areas surrounding the Montrose Chemical Corporation Superfund Site that found background concentration levels of DDT in the soil of 1-2 part per million.²

Construction sites that disturb soil are potentially mobilizing residual sources of DDT.

20. Interim WLA Compliance Should be Deleted

The interim compliance begins as soon as the TMDLs are in effect, while the Implementation Plan will be submitted two years from the date the TMDL is in effect. If, at anytime after the effective date, TMDL limits are exceeded, then agencies are out of compliance immediately, especially since not all historical data is being used to set the limits.

But, once again, strict compliance with the WLA in the receiving water is not authorized under federal stormwater regulations. As mentioned above, federal regulations require the translation of the WLA into a WQBEL. As long as the WQBEL, expressed in the form of a BMP, performance based BMP or surrogate parameter is being implemented, the MS4 permittee is deemed to be in compliance with the WLA. (See USEPA memorandum dated November 12, 2010 on *Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs*). Therefore, any reference to an implementation plan that requires strict compliance with a WLA should be deleted from the TMDL.

21. Dredging Dominguez Channel Estuary is Not an Option

The Dominguez Channel Estuary was constructed by the Los Angeles County Flood Control District in phases. Plans for that portion of the Dominguez channel from Pacific Coast Highway to Wilmington Avenue, for example, required the excavation of existing native material (as much as 20 feet in depth) from the bottom of the shallow drainage channel and construction of a clay lining (approximately 6 feet thick) with a stone revetment over a filter blanket over a clay lining along the banks at a 2:1 slope. Although the plans provide for "locations of material suitable for clay lining", it is highly unlikely that this "suitable material" was ever tested for any of the constituents of concern. Dredging or disturbing the clay lining in the estuary is not appropriate even though it is a potential source of contamination. Sediment removal, if necessary, must be limited to that which has settled on top of the clay lining and any removal must be done by or at the direction of the property owner - Los Angeles County Flood Control District.

However, the clay lining does not prevent contaminants from surfacing as is being observed in the channel now, just south of Carson Street, where fuel/oil from an unknown source is bubbling up to the surface. A clay lining does not prevent mixing

² U.S. Environmental Protection Agency. 2001. *"Responding to You" Series 2, Kenwood Avenue Project. What We Found What We are Doing.* Accessed: 5/10/2010.
[http://yosemite.epa.gov/r9/sfuna/r9sfdocw.nsf/3dc283e6c5d6056f88257426007417a2/ce8aafb6eac63906882570070063c38b/\\$FILE/kenwood2.pdf](http://yosemite.epa.gov/r9/sfuna/r9sfdocw.nsf/3dc283e6c5d6056f88257426007417a2/ce8aafb6eac63906882570070063c38b/$FILE/kenwood2.pdf)

of soil either. The clay lining can be disturbed by the rapid flow of water during rain events and extraneous sediments can mix quite readily with the lining. In a simple soil identification test, gravel and sand will settle almost immediately and silt will settle next (in about a minute) but clay will take as much as an hour or more to settle. Therefore, there is more potential for contaminants to settle in the top layer of disturbed clay.

22. **The Toxics TMDL Staff Report Should Reference Water Quality Based Effluent Limits and an Adaptive/Iterative BMP Approach**

The staff report suggests strict compliance with the WLAs numeric limits. Affected MS4 permittees will be required to meet WLAs as strict numeric limits, through an assortment of structural and/or non-structural BMPs. Failure to meet the WLAs would expose non-compliant permittees to enforcement action and third party litigation. However, DCWMC members believe that the Regional Board is required under federal stormwater regulations to translate WLAs (once they are revised) into water quality based effluent limits (WQBELs), as the following indicates:

Federal regulations require that NPDES requirements incorporate water quality based effluent limitations (WQBELs) that must be consistent with the requirements and assumptions of any available WLAs, which may be expressed as numeric effluent limitations, when feasible, and/or as a best management practice (BMP) program of expanded or better-tailored BMPs.³

In other words, when a TMDL is incorporated into an MS4 permit, compliance is determined not be strict compliance with WLAs through the implementation of BMPs, but by BMPs that make progress towards meeting them. In effect, BMPs are a type of effluent limitation used in MS4 permits.

Other Regional Boards have placed WQBELs in MS4 permits. The Santa Ana Regional Board referenced WQBELs in the Riverside and San Bernardino MS4 Permits. The San Diego Regional Board has begun referencing WQBELs in recently adopted TMDLs, including the *Total Maximum Daily Loads for Indicator Bacteria, Project I – Twenty Beaches and Creeks in the San Diego Region (Including Tecolote Creek)*.⁴ It is also planning to insert WQBEL language into its next MS4 permit which is due for renewal.

Hand-in-hand with WQBELs is the adaptive/iterative process. MS4 permits issued in California specify certain minimum BMPs and incorporate an iterative process that requires increasingly more effective BMPs if the Water Quality Standards are not met. This also applies to WQBELs in meeting TMDLs, as stated in the Riverside MS4 permit, which "incorporates the WLAs as Water Quality-Based Effluent Limitations (WQBEL) and requires Permittees to achieve the WLAs for Urban Runoff through an iterative process of implementing BMPs."⁵

³Code of Federal Regulations, Title 40 section 122.44(k)(2)&(3).

⁴See California Regional Water Quality Control Board San Diego Region, Revised *Total Maximum Daily Loads for Indicator Bacteria, Project I – Twenty Beaches and Creeks in the San Diego Region (Including Tecolote Creek)*, February 2010, page 5.

⁵See California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2010-003, NPDES No. CAS 618033, *National Pollutant Discharge Elimination System (NPDES) Permit and Waste Discharge Requirements for the Riverside Flood Control and Water Conservation District, the County of Riverside, and the Incorporated Cities of Riverside County*, January 29, 2010, page 15.

23. Implementation Plan is Inappropriate

It is recognized that Porter-Cologne requires an implementation plan (IP) for TMDLs. However the version presented in this and other TMDLs adopted by the Regional Board are inconsistent with Porter-Cologne and federal storm water regulations. First, the IP requires only approval by the Regional Board's Executive Director. And since the IP involves best management practices (BMPs) or other actions to meet a WLA, federal stormwater regulations require a reasonable potential analysis and the development of a WQBEL.

Porter-Cologne requires not only a TMDL but any component thereof to be adopted by the Regional Board's governing body. This is because they are basin plan amendments. For example, the Santa Ana Regional Board's governing body adopted Bacterial Indicator Source Evaluation Plans and Water Quality Monitoring Plans three years after the Middle Santa Ana River Bacterial TMDL was adopted. Because the IP and the MRP require an expenditure of public funds to comply with the TMDL, a public hearing is necessary to, among other things, address §13241, which requires a balancing of factors, including cost. By only requiring Executive Officer approval side-steps that process which the State legislature clearly intended to be followed. It should be noted that Resolution No. 98-08 was adopted by the Regional Board in April of 1998 to approve BMPs required to implement several MS4 SQMP elements including illicit connection and discharge detection and elimination, development planning, development construction, and industrial/commercial inspection programs. The same must be done for each of the TMDLs. IP should be discussed at the time of adopting the TMDL, since it is part of the basin plan amendment, but could be deferred after it is adopted.

With respect to federal stormwater regulations, a reasonable potential analysis and a WQBEL should be discussed during the TMDL development process. Resulting from the discussion should be a determination of appropriate BMPs (quantifiable and enforceable) or surrogate parameters needed to address the WLA. The Regional Board could also defer such discussion after the TMDL has been adopted. It is recommended, however, that the WQBEL expressed as BMPs, performance-based BMPs or surrogate parameters should be incorporated into the MS4 within the framework of its stormwater quality management program (SQMP) and not be referenced as a separate attachment. For example, LID, as a BMP or as flow or impervious cover reduction surrogate parameter, should be implemented through the development planning/SUSMP program. The WQBEL is to be implemented over the 5 year term of the MS4 permit.

The bottom line is that the Regional Board staff cannot require implementing BMPs in the IP once the TMDL is placed into the next MS4 permit without performing the required analysis and discussion and obtaining Regional Board approval.

24. The Need for a Workshop

A workshop is needed discuss the several issues raised in this letter, including how to meet the WQBEL requirement and the kinds of BMPs or surrogate parameters that can be applied to address the WLA. This is a very different compliance approach from the one specified in the toxics TMDL, which essentially requires strict compliance with WLAs through BMPs. It is understood that Regional Board TMDL staff is operating under a compressed time line. However, not addressing these

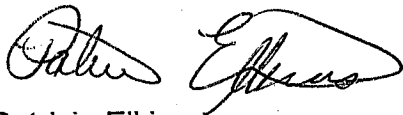
valid issues could result in an administrative and legal challenge from permittees, which could cause an unacceptable delay and force USEPA to adopt the TMDL to avoid being in contempt of the consent decree deadline (as it had for the Los Angeles River trash TMDL and as it has for the San Gabriel River metals TMDL).

Given that USEPA has greater expertise in translating WLAs into WQBELs, Regional Board staff should give serious consideration to letting it adopt this TMDL.

The unincorporated County of Los Angeles and the Los Angeles County Flood Control District will jointly submit their own comment letter. The city of Los Angeles will also be submitting a comment letter.

Finally, DCWMC members would like to thank you for taking the time to read these comments and hope that they will result in revisions to the toxics TMDL that reflect our concerns and recommendations. In the meantime, should you need clarification or require additional information, please feel free to contact me at (310) 847-3529.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patricia Elkins', written in a cursive style.

Patricia Elkins

DCWMC Chair

Attachment: referenced map