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DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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February 22, 2011

IN REPLY PLEASE

REFER TO FILE:

WM-9

Mr. Samuel Unger, P.E.
Executive Officer
California Regional Water Quality
Control Board – Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013-2343

Attention Ms. Thanhloan Nyugen

Dear Mr. Unger:

**COMMENT LETTER – DOMINGUEZ CHANNEL AND
GREATER LOS ANGELES AND LONG BEACH HARBOR WATERS
TOXIC POLLUTANTS TOTAL MAXIMUM DAILY LOAD**

Thank you for the opportunity to comment on the proposed Amendment to the Water Quality Control Plan for the Los Angeles Region to incorporate the Dominguez Channel and the Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants Total Maximum Daily Load. The enclosed comments are being submitted on behalf of the Los Angeles County Flood Control District.

We look forward to your consideration of these comments. If you have any questions, please contact me at (626) 458-4300 or ghildeb@dpw.lacounty.gov or your staff may contact Ms. Rossana D'Antonio at (626) 458-4325 or rdanton@dpw.lacounty.gov.

Very truly yours,

GAIL FARBER
Director of Public Works

GARY HILDEBRAND
Assistant Deputy Director
Watershed Management Division

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Enc.

**COMMENTS OF LOS ANGELES COUNTY FLOOD CONTROL DISTRICT ON THE
PROPOSED TOTAL MAXIMUM DAILY LOAD FOR TOXIC POLLUTANTS IN DOMINGUEZ
CHANNEL AND GREATER LOS ANGELES AND LONG BEACH HARBOR WATERS**

1. The Los Angeles County Flood Control District Cannot be Named a Responsible Party for the Dominguez Channel and the Greater Los Angeles and Long Beach Harbors as such Action Would Conflict with the Amended Consent Decree Entered by the Federal District Court

The designation of responsible parties under the proposed TMDL for Toxic Pollutants in Dominguez Channel and Greater Los Angeles and Long Beach Harbor conflicts with an Amended Consent Decree entered by the federal district court in Los Angeles. Pursuant to the terms of the Amended Consent Decree, the proposed TMDL should be modified to delete the Los Angeles County Flood Control District (LACFCD) as a responsible party for the Dominguez Channel, including the Torrance Lateral and Dominguez Channel Estuary, and the Los Angeles and Long Beach Harbors.

In 1999 the United States and the State of California settled a lawsuit with local governmental entities over the environmental condition of the Dominguez Channel and the Los Angeles and Long Beach Harbors. The lawsuit was brought by the United States on behalf of the United States Environmental Protection Agency, the Department of the Interior and the National Oceanic and Atmospheric Agency, and by the State of California on behalf of the State Lands Commission, the Department of Fish & Game, the Department of Parks and Recreation, the Department of Toxic Substances Control and the Regional Board.

The settlement is set forth in an Amended Consent Decree entered by the federal district court on August 24, 1999. The LACFCD was one of the parties to this settlement. The Regional Board also was a party, with the Executive Officer signing the Amended Consent Decree on behalf of the Regional Board.

The Amended Consent Decree resolved all liability of the settling local governmental entities for all natural resource damages with respect to the "Montrose NRD Area" and all response costs incurred in connection with the "Montrose NPL Site" (Amended Consent Decree, p. 19). The Montrose NRD Area was defined to include the Los Angeles and Long Beach Harbors (Amended Consent Decree, ¶ 6.J). The Montrose NPL Site was defined to include the Torrance Lateral, the Dominguez Channel from Laguna Dominguez to the Consolidated Slip, and that portion of the Los Angeles Harbor known as the Consolidated Slip (Amended Consent Decree, ¶ 6.I.).

Under the Amended Consent Decree, the Regional Board explicitly agreed that, except for certain circumstances not applicable here, the Regional Board would not take any civil or administrative action against any of the settling local governmental entities, including the LACFCD, for any civil or administrative liability for natural resource damages (Amended Consent Decree, ¶ 11). Natural resource damages were defined to include loss of use, restoration costs and resource replacement costs, among other costs (Amended Consent Decree, ¶ 6.L).

The Regional Board also agreed that, except for certain circumstances not applicable here, the Regional Board would not take any civil or administrative action against any of the settling local governmental entities, including the LACFCD, to compel response activities or to recover response costs in connection with the Montrose NPL site (Amended Consent Decree, ¶ 17). Response costs were defined to include all costs of response as provided in 42 U.S.C § 9607(a)(1-4)(A) and as defined by 42 U.S.C § 9601(25). (Amended Consent Decree, ¶ 6.M). These response activities and costs included activities to remove hazardous substances from the environment, to monitor, assess, and evaluate the release or threat of release of hazardous substances (see 42 U.S.C. §9601(23)), and actions consistent with a permanent remedy such as diversions, dredging and excavations (see 42 U.S.C. §9601(24)).

The proposed TMDL's assignment of responsibility to the LACFCD for the Dominguez Channel and the Los Angeles and Long Beach Harbors violates this Amended Consent Decree. The obligations imposed by the proposed TMDL, such as preparing monitoring plans and implementation plans, monitoring, dredging of sediments and diverting stormwater, clearly fall within the definition of natural resource damages and response activities under the Amended Consent Decree. (See Amended Consent Decree, ¶¶ 6.L and M.) By naming the LACFCD as a responsible party for the Dominguez Channel and the Greater Los Angeles and Long Beach Harbors, the Regional Board is requiring the LACFCD to take these or related actions. Under the Amended Consent Decree, however, the Regional Board has explicitly agreed that it will not require the LACFCD to take these and other actions (Amended Consent Decree, ¶¶ 11 and 17).

Accordingly, the proposed TMDL must be modified to delete the LACFCD as a responsible party for the Dominguez Channel, including the Torrance Lateral and Dominguez Channel Estuary, and the Los Angeles and Long Beach Harbors. Under the Amended Consent Decree, the Regional Board has agreed that it will not compel response activities by or seek natural resource damage or response costs from the LACFCD. Naming the LACFCD as a responsible party is barred by this Decree.

2. Los Angeles County Flood Control District Should Not Be Responsible for Meeting Waste Load Allocations

The proposed TMDL inappropriately names the LACFCD as a responsible party for meeting waste load allocations (WLAs). The purpose of the proposed TMDL is to identify discharges and assign waste load and load allocations so that the receiving waters will meet water quality objectives. The water bodies addressed by the proposed TMDL are Torrance Lateral, Dominguez Channel, Dominguez Channel Estuary, Greater Los Angeles and Long Beach Harbors, and Los Angeles River Estuary. Land areas draining into LACFCD storm drains that empty into these water bodies are under the jurisdiction of upstream municipalities. The WLAs, therefore, should be allocated in a manner that will further reduction of those pollutant loads to the receiving water bodies. This means that the WLAs should be assigned to those parties that have jurisdiction or control over the land uses which generate the proposed TMDL's pollutants of concern, and thus have the ability to prevent the pollutants from entering the water bodies.

Because the LACFCD does not have jurisdiction over the land areas that drain to the water bodies, and thus cannot control the pollutant generation thereof, requiring the LACFCD to meet WLAs does not accomplish the proposed TMDL's goal of reducing the contribution of the pollutants to the receiving water bodies. The LACFCD functions simply as a conveyance for urban and stormwater runoff from the upstream municipalities, California Department of Transportation, and the unincorporated County of Los Angeles.

Assigning WLAs to the LACFCD when the LACFCD does not have authority over the land uses generating the pollutants is also inconsistent with the Los Angeles County Municipal Storm Water Permit (Permit), one of the stated means by which the proposed TMDL will be implemented (See Proposed TMDL, Table 7-40.1, page 26). The Permit provides that each Permittee "is required to comply with the requirements of this Order applicable to discharges within its boundaries . . . and *not for the implementation of the provisions applicable to . . . other Permittees* (Permit, Part 3.E., page 26)". The permit provides that the LACFCD, as principal permittee, is to "coordinate and facilitate activities necessary to comply with the requirements of this Order, but is not responsible for ensuring compliance of any individual permittee (Permit, Part 3.D, page 25)". Finding G.4 provides that the LACFCD will coordinate with other municipalities, but "each permittee is responsible only for a discharge for which it is the operator (Permit, page 20)". Under the permit, the LACFCD is not responsible for discharges from land areas over which it has no jurisdiction. Assigning WLAs to the LACFCD for pollutants that are generated from those land areas will result in WLAs that cannot be implemented through the Permit.

Therefore, allocation of WLAs to the LACFCD is contrary to the proposed TMDL's goals. The LACFCD should be removed from the responsible parties listed in Table 7-40.1 on pages 31 and 32 of the proposed TMDL.

3. The LACFCD Should Not Be Responsible for Monitoring or Clean Up In the Harbor Waters

The proposed TMDL requires the LACFCD to participate in water, sediment, and fish tissue monitoring in the Los Angeles and Long Beach Harbors. While the LACFCD agrees to facilitate monitoring in the Dominguez Channel and Dominguez Channel Estuary by granting access to its facilities where feasible, the LACFCD should not be responsible for conducting monitoring because it does not generate any of the pollutants of concern being discharged into the receiving water bodies under the proposed TMDL. Monitoring and implementation actions should be the sole responsibility of those entities that have authority over the land uses that generate the pollutants entering the water bodies, and thus possess the means to prevent polluted runoff from entering the flood control drains and channels.

4. Dominguez Channel Contains No Sediment

The proposed TMDL requires responsible parties to develop a plan to address "contaminated sediments" in the Dominguez Channel. (Draft BPA, Page 27, Table 7-40.1) even though the Dominguez Channel is a concrete-lined channel and does not contain sediments. Little sediment exists in the soft bottom Dominguez Channel Estuary, but not in

Dominguez Channel. We suggest the second paragraph in Table 40.1 be revised as follows:

~~“The Los Angeles County Flood Control District (District) owns and operates Dominguez Channel; therefore, the District and the cities that discharge to Dominguez Channel shall each be responsible for conducting implementation actions to address contaminated sediments in Dominguez Channel. Responsible parties in Dominguez Channel Watershed shall develop a Sediment Management Plan to address contaminated sediment in Dominguez Channel and Dominguez Channel Estuary.”~~

5. The Proposed TMDL Should Be Consistent in Assigning Responsibilities

The proposed TMDL requires the LACFCD as owner and operator to undertake implementation actions in Dominguez Channel and Estuary. However, as the owner of the Los Angeles River Estuary, the United States Army Corps of Engineers (USACE) is not required to undertake similar implementation actions or named as a responsible party in the proposed TMDL. The USACE was not named as a responsible party in any of the Los Angeles River TMDLs despite the fact that it owns and operates portions of the Los Angeles River. The proposed TMDL should be consistent in assigning responsibilities.

6. County of Los Angeles Comments

Comments are also being submitted by the County of Los Angeles. The LACFCD hereby incorporates those comments by reference.