



CITY OF SIGNAL HILL

2175 Cherry Avenue ♦ Signal Hill, California 90755-3799

February 22, 2011

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

Hand Delivered

Electronic Mail (tnguyen@waterboards.ca.gov)

Subject: Comments on Proposed Total Maximum Daily Loads for Dominguez Channel and Greater Los Angeles and Long Beach Waters Toxic Pollutants

Dear Ms. Nguyen:

This submittal is being made on behalf of the City of Signal Hill ("City") in connection with the proposed adoption of the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants Total Maximum Daily Loads ("TMDLs"), which is presently scheduled for consideration by the Los Angeles Regional Water Quality Control Board at a public hearing on April 7, 2011. The City requests that you give due consideration to these comments and that they be included as a part of the Administrative Record for this item.

Although the proposed TMDLs, as written, are extremely confusing, it appears that they would apply to virtually every city within Los Angeles County. Yet, we are not aware of any formal public workshops that have been conducted on the purpose and scope of these TMDLs, and our review of the TMDL documentation has raised a series of questions regarding its goals, as well as over the obligations to be imposed on the various municipalities as responsible parties under the TMDLs. I specifically requested a workshop on January 20, 2011, in correspondence and e-mails with Mr. Unger, to which the Regional Board staff responded by scheduling a 90-minute meeting on February 7th. We also requested that Dr. Susan Paulsen from Flow Sciences follow-up with U.S. EPA with a series of technical and scientific questions.

I requested at the February 7th meeting that staff and U.S. EPA explain the responsibilities of the City of Signal Hill under this TMDL. I left the meeting more confused than when it began. Dr. Paulsen's subsequent discussions with EPA have

revealed a series of technical and scientific problems with the TMDL, which lead us to believe that the TMDL will require Signal Hill and almost every municipality in Los Angeles County to virtually eliminate pollutant loads to the Harbor and perhaps to fund a portion of the 11.2 to 35.5 million cubic yard dredging operation required under the TMDL, at an estimated cost of \$680 million to \$2.2 billion to be expended over the next 15 to 20 years, and yet with even more secondary remediation activities potentially still required. We don't know if this is the intent of the Regional Board. I believe that most of the agencies and the businesses attending the February 7th meeting left confused as to their responsibilities as well and believe that this TMDL is a misguided and illegal attempt to require them to pay for removal and remediation of contaminated harbor sediments.

U.S. EPA amended the TMDL Consent Decree last year to advance the due date of these TMDLs. The advanced due date was done over our objections, since we did not feel for a number of reasons, including lack of basic public outreach to all of the agencies proposed to be regulated under the TMDLs, that these TMDLs were ready for public hearings (see May 3, 2010 letter to U.S. EPA, enclosed). We would ask that these TMDLs not be adopted at this time until the affected local governmental agencies have been given sufficient opportunity to not only fully consider the TMDLs and their impacts, but also to be in a position to have further dialogue with the Regional Board and U.S. EPA over their necessity and scope of the TMDL.

The City submits technical and scientific comments from Dr. Susan Paulsen, Flow Science Incorporated (February 22, 2011) and legal comments from Richard Montevideo, Esq., Rutan & Tucker (February 21, 2011). We have also provided a disc of Mr. Montevideo's exhibits for the record as well. Our main concerns can be summarized as follows:

- (1) The primary purpose of the TMDLs appears to be to implement a cleanup of the contaminated sediment located in the Los Angeles and Long Beach Harbors. However, the City, along with numerous other cities in Los Angeles County, has entered into a federal Consent Decree with the United States and the State of California (including the Regional Board), which federal Consent Decree was first approved by the U.S. District Court in 1993, and was thereafter amended in 1999. This Consent Decree required the payment of \$45.7 million in funds and in-kind services from the settling local governmental agencies, which consideration was to be used, in part, to address the contaminated sediment within the Long Beach and Los Angeles Harbor areas. The TMDLs thus appear to be an improper attempt to further require the cities to pay yet again to address these contaminated sediments. The TMDLs are inappropriate for this reason, and are inappropriate because TMDLs cannot lawfully be used as a mechanism to require the removal of contaminated sediment caused by prior releases of hazardous substances.

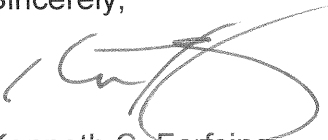
- (2) The City is also very concerned with the significant number of ambiguities in the TMDLs, including what water bodies are to be dredged and by whom, and what requirements are being imposed on the Los Angeles and San Gabriel River cities. For example, the City is unclear as to what its obligations are or even why it has been included within these TMDLs. This is of particular concern to the City given the fact that there are already existing metals TMDLs for the Los Angeles River and the Los Cerritos Channel, and given that the non-metal pollutants that are referenced in the proposed TMDLs, according to the technical documents prepared on behalf of US EPA, are not believed to be migrating from the Los Angeles and Los Cerritos Channel in any quantities of concern. Accordingly, until this and the many other ambiguities (as identified in the technical and legal comments) are addressed, the proposed TMDLs should not be adopted.
- (3) In addition, the tentative Basin Plan Amendment for these TMDLs lists the Los Angeles River as included in the third category of responsible parties for achieving compliance with the proposed TMDLs. This category of responsible parties should be deleted, however, for the reasons set forth above, namely that there is no indication that these alleged responsible parties are contributing any significant pollutant loadings to the non-metal impairments, and given that metal TMDLs are already in place for the Los Angeles River and Los Cerritos Channel.
- (4) Furthermore, the Cities of Bellflower, Lakewood, Paramount and Signal Hill all appear to have been included under the second category of responsible parties for the "Greater Los Angeles and Long Beach Harbors" specifically because they are identified in the Draft TMDL as discharging into a nearshore watershed, defined as a discharge into saline receiving waters. However, as detailed in the attached comments, discharges from these cities are to fresh waters, not to saline waters. The TMDLs should be modified to clearly exclude discharges from these cities from the Category 2 - Greater Los Angeles and Long Beach Harbor list of responsible parties.
- (5) The City also believes that these TMDLs are being adopted without consideration of the various factors set forth under sections 13000 and 13241 of the California Porter-Cologne Act, and specifically without any consideration of whether the TMDLs and TMDL targets are "reasonably" and "economically" achievable, particularly in light of the "environmental characteristics" of the waters in issue. For example, understanding that the environmental characteristics of the Los Angeles and Long Beach Harbors contain pollutants within sediments that must first be remediated before the water bodies can be considered in compliance with water and sediment quality standards, compliance with the Porter-Cologne Act requirements would very likely result in an entirely different set of TMDLs for these waters.

In fact, it appears to us that a TMDL is not the appropriate mechanism for regulating legacy pollutants (including DDT, PCBs, and PAHs) within Harbor water bodies.

- (6) The City is also very concerned about the scant evaluation of the various environmental impacts that will likely result from dredging of the Los Angeles and Long Beach Harbors, along with the lack of consideration given to any feasible alternatives to this project, as required by the California Environmental Quality Act. The economic impacts of this project from the dredging portion alone of the TMDL are estimated at \$680 million to \$2.2 billion. This cost is, in and of itself, significant and there does not appear to have been any real evaluation of the potentially significant environmental impacts caused by such a dredging operation, nor of the likely benefits expected from conducting the dredging. Moreover, paying these amounts of public funds for dredging of the Harbors and to otherwise meet the requirements in the TMDLs will mean that these funds will then not be available for use for other important governmental services, all at a time when local governments are generally across the board experiencing severe budget problems.

We ask that the Regional Board consider the above comments and those submitted on behalf of the City of Signal Hill in its evaluation of these TMDLs. We look forward to working with you on revisions to these TMDLs as necessary to address these and other comments that have been submitted. Thank you for your consideration of these above.

Sincerely,



Kenneth C. Farfaring
City Manager

cc: Mayor and Members of the City Council
David J. Aleshire, City Attorney
Richard Montevideo
Dr. Susan Paulsen

Attachments:

1. Legal correspondence from Richard Montevideo, Rutan & Tucker (2/22/11), Legal Exhibit DISC.
2. Scientific comments from Dr. Susan Paulsen, Flow Science (2/22/11).
3. Comments on the TMDL consent decree, letter to U.S. EPA from Flow Science; (5/3/10).