COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

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June 7, 2010

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

Attention Mr. Yanjie Chu

Dear Mr. Unger:

COMMENTS OF THE COUNTY OF LOS ANGELES ON THE PROPOSED TOTAL MAXIMUM DAILY LOAD FOR INDICATOR BACTERIA IN THE SANTA CLARA RIVER ESTUARY AND REACHES 3, 5, 6, AND 7

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 Total Maximum Daily Load (TMDL) for bacteria in the Santa Clara River Estuary and Reaches 3, 5, 6, and 7. Based on our review of the proposed TMDL and the supporting draft Staff Report, the following comments are submitted on behalf of the County of Los Angeles. As a general note, our review found numerous inconsistencies between the proposed Basin Plan Amendment and the draft Staff Report, which should be corrected to minimize confusion.

1. **Responsible parties should be responsible for their own discharges**

   The proposed Basin Plan Amendment provides that the responsible parties are responsible for meeting the waste-load allocations (WLAs) assigned to the Municipal Separate Storm Sewer System discharges. We support the proposition that each responsible party should be responsible for its own discharge. We note that Section 7.1 of the draft Staff Report on page 54 states that responsible parties are "jointly responsible" for meeting the WLAs assigned

to the Municipal Separate Storm Sewer System discharges. The draft Staff Report should be modified so that it is consistent with the Basin Plan Amendment itself, which does not use the "jointly responsible" language. This comment is based on the fact that agencies cannot be held jointly liable for meeting the WLAs because each does not have control over the actions of another. Additionally, the Los Angeles County Municipal Stormwater Permit provides that each discharger is responsible only for a discharge for which it is the operator. The TMDL, as it applies to municipal permittees, should be consistent with the permit.

Recommendation: Revise the draft Staff Report to indicate that responsible parties are not jointly responsible for meeting the WLAs assigned to Municipal Separate Storm Sewer System discharges.

2. **The deadline to achieve compliance should be substantiated by analysis**

The proposed TMDL provides 8 and 14 years to achieve compliance with WLAs for dry and wet weather, respectively. Neither the draft Staff Report nor the TMDL contains an analysis of whether the TMDL's limits can be reached within the time frame proposed.

Recommendation: Perform an analysis of whether the TMDL's limits can be reached within the time frame proposed before assigning the compliance deadlines.

3. **The geometric mean should not be calculated daily**

The U.S. Environmental Protection Agency (EPA) originally intended the use of the geometric mean as a tool to determine the condition of a water body over a longer period of time and to detect chronic problems. The EPA's 69 Fed. Reg. 67218, 67225 (Nov. 16, 2004), states that "because a geometric mean provides information pertaining to water quality that looks backwards in time, it is not necessarily useful in determining whether a [water body] is safe for swimming on a particular day." Further, the EPA (page 67224 of the 69 Fed. Reg.) states that "it would be technically appropriate to apply the averaging period on a set basis such as monthly or recreational season." In other words, the geometric mean is intended as an assessment tool for condition over time and not from day to day. Therefore, the proposed TMDL's use of the rolling 30-day period is inconsistent with the EPA's original intent.

Recommendation: Revise the proposed TMDL so that the geometric mean is calculated once per month or once per season.

4. **The geometric mean WLA should be based on the reference system approach**

The proposed TMDL sets the geometric mean WLA at zero day without providing adequate justification. According to a Los Angeles River Watershed study conducted by Cleaner Rivers through Effective Stakeholder-led TMDLs, a significant number of geometric mean exceedances were found at the reference sites in that watershed. Including results from the so-called minimally impacted sites, the reference system exceeded the geometric mean numeric target 16 percent of the time; the number of exceedances is reduced to 1.5 percent when results from the minimally impacted sites are excluded. By arbitrarily setting the geometric mean WLA at zero, the proposed TMDL is essentially requiring the treatment or diversion of nonanthropogenic sources of bacteria. Further, setting a reference system-based geometric mean standard would not be unprecedented; it has been applied by other California Regional Water Quality Control Boards, including the San Diego Region.

Recommendation: Revise the proposed TMDL so the geometric mean WLA is established in accordance with the reference system approach and include minimally impacted sites in the calculation.

5. **The TMDL should recognize the ongoing scientific progress on bacteria**

There are ongoing scientific studies of the bacteria indicators currently being used in the TMDL. Recent studies conducted in Southern California have indicated the absence of correlation between traditional bacteria indicators and human health risks. The EPA recognizes the lack of sound science on bacteria and is currently conducting studies to establish new bacteria indicators and associated criteria for recreational waters by 2012. Further, the Southern California Coastal Water Research Project is also currently conducting an epidemiological study in Southern California and is expected to address some of the existing scientific limitations. Therefore, developing the Los Angeles River Bacteria TMDL based on traditional indicators, which do not accurately predict the risk of illness, may lack scientific justification and needs reconsideration as new findings are made available.

Recommendation: Revise the TMDL resolution to add language that acknowledges the existence of ongoing studies and the possibility that the TMDL would be revised in the future to reflect the findings of the studies and/or new standards that may result thereof.

6. **Establish allowable exceedance days for weekly sampling**

Table 7-36.2 of the proposed TMDL shows the allowable exceedance days for dry and wet weathers without indicating whether they apply to a specific sampling frequency. Although the draft Staff Report provides more information, it does not sufficiently clarify Table 7-36.2 of the proposed TMDL.

Recommendation: Revise Table 7-36.2 of the proposed TMDL to show the allowable exceedance days for both daily and weekly sampling.

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
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Watershed Management Division

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cc: Chief Executive Office