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June 3, 2010

Mr. Sam Unger, Acting Executive Officer
California Regional Water Quality Control Board
Los Angeles Region
320 West 4th Street
Los Angeles, CA 90013

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CALIFORNIA REGIONAL
QUALITY CONTROL BOARD
LOS ANGELES REGION

Dear Mr. Unger:

COMMENTS ON THE PROPOSED AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE LOS ANGELES REGION TO INCORPORATE A TOTAL MAXIMUM DAILY LOAD FOR BACTERIA IN THE LOS ANGELES RIVER

The City of Los Angeles, Bureau of Sanitation (Bureau) appreciates the opportunity to provide the following comments and recommendations to the Water Quality Control Board Los Angeles Region (Regional Board) on the April 20, 2010 Tentative Basin Plan Amendment to incorporate a Total Maximum Daily Load (TMDL) for Bacteria in the Los Angeles River. The Tentative Basin Plan Amendment (BPA) comes at the end of a lengthy and detailed stakeholder process called CREST (Cleaner Rivers through Effective Stakeholder-led TMDLs) during which the City of Los Angeles worked closely with Regional Board and USEPA staff as well as many other municipal and environmental stakeholders to conduct groundbreaking scientific studies and collaborate on content for the dry weather components of this TMDL. We thank the Regional Board staff for the time and energy contributed to the process and the many CREST contributions that were incorporated (described below). However, because the TMDL was released before completion of the stakeholder process there are several areas with which the Bureau has concerns. As such, the Bureau is submitting comments to support constructive changes to the BPA and draft Staff Report. The footnotes in this letter provide additional details regarding the stakeholder process that has been the driving force behind all CREST deliverables described herein.

Background on Stakeholder TMDL Development Process

Based on a Memorandum of Understanding between the Regional Board, USEPA, and the City of Los Angeles, the CREST stakeholder group began focused efforts to evaluate and address bacteria issues within the Los Angeles River Watershed in 2005. The primary motivation behind those early efforts was to conduct scientific studies to support TMDL development and implementation¹.

In March 2008, relying heavily on the scientific data generated by CREST, a stakeholder-led process was begun to develop a bacteria TMDL for the Los Angeles River and tributaries. Due to the complicated nature of the TMDL – and a desire to develop a TMDL that was much more comprehensive than previous TMDLs with regards to integration of scientific information and detail of potential implementation actions – CREST took on the responsibility of supporting Regional Board staff by leading the development of the LA River Bacteria TMDL. The agreed-upon approach to TMDL development was based on CREST generating a “Technical Report”² (e.g., Stakeholder TMDL) using feedback on concepts discussed during a long series of stakeholder meetings³. Subsequently, the Regional Board Staff Report⁴ would be presented section-by-section and discussed with stakeholders following the corresponding sections of the Technical Report.

¹ Starting in 2005, CREST evaluated dry weather storm drain system inputs to the Watershed through two groundbreaking bacteria source tracking studies. The studies were designed with input from a broad range of stakeholders and the results were vetted through an independent Technical Advisory Committee, comprised of world-leading experts on bacteria contamination. The second effort (conducted during summer 2007), known as the Bacteria Source Investigation (BSI) Study, is still regarded as one of the most advanced scientific studies of bacteria in urban runoff that has been performed in California, the U.S., or elsewhere.

² CREST developed a TMDL Technical Report, containing extensive analyses sections for a dry weather TMDL (targets, source assessment, linkage analysis, allocations, implementation plan, and monitoring). When necessary, the sections evaluated multiple approaches to key aspects of the TMDL in order to allow for the vetting of issues with the range of stakeholders.

³ To facilitate discussions on the Technical and Staff Reports, CREST Steering Committee and Technical Committee meetings were held almost monthly. Over 15 CREST Committee meetings were held to discuss the TMDL sections (in addition to the many previous meetings held to discuss scientific studies), including several CREST workshops that drew up to 75 attendees each.

⁴ The original approach agreed to by CREST included a presentation of the sections of the draft TMDL documents as they are drafted by the Regional Board, as well as stakeholder section-by section discussions with the corresponding CREST Technical Report. It was understood that not all aspects of the Technical Report would be incorporated into the TMDL documents, particularly the Staff Report, but technical and policy decisions by Regional Board staff would be clearly conveyed to stakeholders as the process moved forward. However, due to time constraints, some of the sections in the draft TMDL documents and the Staff Report, that were public noticed on April 20, 2010, were not presented and did not go through discussions with stakeholders, unlike the CREST Technical Report which went through comprehensive stakeholder discussions.

Incorporation of the Stakeholder TMDL into the draft Staff Report and Basin Plan Amendment

Development of the stakeholder TMDL led to engaging and productive discussions on key TMDL issues identified by participants. CREST stakeholders now have a greatly expanded understanding of each other's perspectives and a better comprehension of the policies that affect various components of a TMDL. Outcomes of the CREST process that were successfully incorporated into the TMDL and Staff Report include the following:

- **Source Assessment:** based on the CREST scientific studies and years of long-term data collected throughout the Watershed by various agencies, the Staff Report clearly identifies the need for further study of non-point, in-channel bacteria sources (e.g., growth) that may cause or contribute to exceedances of Water Quality Objectives.
- **Load Reduction Strategies:** the Staff Report embraces the Load Reduction Strategy as a robust approach to plan, execute, and assess the numbers and locations of dry weather TMDL implementation actions for an LA River segment or tributary
- **Cost information:** the Staff Report cites the dry weather cost estimates of the Technical Report, which were based on an intensive analysis of storm drain loading data coupled with costs and timelines of previous BMP implementation efforts (e.g., Santa Monica Bay).
- **Implementation Schedule:** the prioritized schedule includes early implementation actions at the reaches where recreational users are most likely to be affected by bacteria discharges.

The Regional Board's incorporation of the dry weather schedule demonstrates understanding of the challenges the City faces in implementing TMDLs in such a large, complex watershed where the City has responsibilities in nearly every reach and tributary. Although the BPA shortened that schedule presented in the stakeholder TMDL by six years, the prioritization and staggered implementation concepts were incorporated. These concepts and the corresponding lengths of time are imperative given the necessity to focus early efforts on protecting recreational users and efficiently use scarce public resources. As such, the Bureau would like to express our support for the schedule in the TMDL.

Requested Changes to the draft Staff Report and Basin Plan Amendment

While there are many aspects of the draft Staff Report that are "next generation" with regards to bacteria TMDLs in the Los Angeles region, the BPA and draft Staff Report do not adequately address several key issues that were vetted through the stakeholder process and detailed in the stakeholder TMDL. It should be noted that many of these issues may remain after the lengthy CREST process because the envisioned stakeholder process (described above) was not completed due to the EPA consent decree time constraints which adversely affected the ability of stakeholders to engage on key issues. Recommendations to address these issues include:

- **Conditions that provide clear mechanisms for “good actor” MS4s to demonstrate compliance with final Waste Load Allocations (WLAs) should be detailed:** the reliance of the BPA on final WLAs that are measured in-stream undermines the ability of MS4s to demonstrate compliance with the TMDL. There are multiple MS4s and thousands of other NPDES Permittees in the Watershed. An exceedance of the WLA at the downstream end of a reach should not equate to all upstream MS4s being in violation of the TMDL; conditions should be included to allow MS4s to demonstrate their loading does not cause or contribute to exceedances. Therefore, we suggest monitoring at the outfall. Furthermore, conditions for MS4 compliance with the final WLA should be built upon load reduction strategies that reduce bacteria discharges through outfall-based activities including dry weather diversions, source control, and in some cases, downstream-based approaches.
- **Interim WLAs should be representative of interim, not final, conditions:** the Regional Board converted the final WLAs of the Technical Report into interim WLAs for the BPA and draft Staff Report. It is important to establish interim requirements that acknowledge the uncertainty associated with developing bacteria load reduction strategies in a highly urbanized watershed. The interim WLA should reflect a percentage of the final WLA.
- **Compliance with WLAs should acknowledge variability of bacteria sources:** a major concern of the Bureau with respect to dry weather implementation is the inherent variability of bacteria sources. The Bureau very much wants to avoid the situation that an “Unexpected Discharge” is observed during WLA compliance monitoring, and the City is found to be in violation even though we acted in good faith and implemented a large suite of bacteria control BMPs that were well-designed and executed. These types of discharges should be acknowledged when evaluating compliance with WLAs. Monitoring at the outfall can also help address these types of discharges.
- **Special Studies and Reopeners should be included in the Staff Report and BPA:** neither optional special studies nor reopeners to consider new information are identified in the BPA or draft Staff Report. However, inclusion of reopeners upon completion of optional special studies should be incorporated to provide stakeholders with confidence that the Regional Board is willing to consider outstanding issues during the early stages of TMDL implementation.

A discussion of these issues and corresponding recommendations are presented in Attachment 1. Attachment 2 contains a detailed Comment Matrix that provides additional Bureau comments, proposed revisions, and further details on the above and other issues. To simplify Regional Board staff efforts when reviewing the Bureau’s comments, Attachment 3 contains a marked-up BPA.

The recommendations made in this letter are based on good science and sound policy, *which will result in the protection of the environment that we all value so greatly*. Addressing the remaining critical issues is paramount to having an implementable and effective TMDL that is scientifically

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and legally defensible. A major goal of these recommendations is simply to allow the Bureau to clearly demonstrate that actions taken by the City successfully address our contribution to the impairments of the Los Angeles River. Finally, incorporating these recommendations will promote future stakeholder TMDL processes, by instilling confidence in stakeholders that the Regional Board is willing to resolve critical issues with a TMDL through all phases of the stakeholder TMDL process.

Thank you for your consideration of these comments. If you have any questions please contact Dr. Shahram Kharaghani, Watershed Protection Division Manager at (213) 485-0587 or Donna Toy-Chen, TMDL Section Manager at (213) 485-3928.

Sincerely,

ENRIQUE C. ZALDIVAR, Director
Bureau of Sanitation

ECZ:AH:SK:DC:SM
WPDCR 8746

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List of Attachments:

Attachment 1 – Detailed Discussion of Key Concerns and Proposed Changes
Attachment 2 – Bureau of Sanitation’s Detailed Comment Matrix
Attachment 3 – Basin Plan Amendment with Recommended Revisions Incorporated