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June 4, 2010

Man Voong
California Regional Water Quality Board
Los Angeles Region
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

Re: Comments on the Proposed Amendment to the Water Quality Control Plan for the Los Angeles Region to incorporate Total Maximum Daily Load for Bacteria in the Los Angeles River.

Dear Mr. Voong,

On behalf of Heal the Bay, we submit the following 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* ("Draft TMDL"). We appreciate the opportunity to provide these comments.

I. Compliance Deadlines

A. *Dry and Wet Weather Compliance Dates Should not Exceed 10 years and 18 years, respectively.*

The Draft TMDL's proposed *Implementation Schedule* states "Twenty-five years after the effective date of the TMDL, final WLA's and LA's shall be achieved at all segments and tributaries for dry and wet weather". Twenty-five years is *far* too long for compliance, especially in the dry weather. Under the TMDL, Long Beach would have to wait nearly 20 years for their chronically polluted beaches to get cleaned up. As discussed in more detail below, dry and wet weather compliance dates should be separated since wet-weather compliance will likely take significantly longer. We suggest final dry-weather compliance targets, for all reaches and tributaries, take no longer than 10 years. We also believe that the wet weather compliance date should be no more than 18 years.

A tightened compliance schedule for dry and wet weather is consistent with previous TMDLs. The staff report states that "*final compliance dates for this TMDL are based on foreseeable implementation and are reasonably consistent with the Ballona Creek Bacteria TMDL*" (page 64). However Ballona Creek's dry and wet weather Implementation Plans for final TMDL compliance are 6 and 14 years, respectively; nowhere near 25 years. Furthermore, it is stated on **page 45 of the staff report** that "*the*



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implementation of the TMDL should be coordinated with activities and BMP's that are implemented through other TMDL's...notably the Los Angeles River Metals TMDL." The *Los Angeles River Metals TMDL* requires 14 years for final dry weather compliance and 18 years for wet weather compliance. Why are final compliance deadlines 11 and 7 years longer for dry and wet weather, respectively, for bacteria TMDL compliance? This does not make sense, since effective metals and bacteria reduction BMP's are often similar or identical. Using a watershed approach, the LA River should be in full compliance with the wet weather bacteria and metals TMDL's by 2028 at the latest. Heal the Bay will support a wet-weather implementation plan the same length as the LA River Metals TMDL: 18 years.

Of note, the 2001 Los Angeles County Municipal Storm Water permit includes requirements for Receiving Water Limitation exceedances, as well as a Regional Board investigation of Permittees and other responsible agencies in order to determine the source of the exceedance. The requirements state that, "*permittees are to assure that storm water discharges from the MS4's shall neither cause nor contribute to the exceedance of water quality standards and objectives...and the discharge of non-storm water to the MS4 has been effectively prohibited.*" Again, this process has failed due to lack of enforcement from the Regional Board. The 1996 (first permit with strong non-storm water discharge prohibitions) and 2001 (first permit with requirement that storm water cannot cause or contribute to water quality standard exceedances) MS4 permits demonstrate how dischargers have failed to take responsibility for approximately 14 years of dry-weather discharges and 9 years of frequent receiving water exceedances. This has been *more* than enough time. Why should the Regional Board grant dischargers an additional 25 years to meet water quality standards? Water quality and public health should not have to wait any longer than 10 years for dry weather and 18 years for wet weather. One should not forget the intended purpose of a TMDL, which is to restore impaired beneficial uses that could not be protected through permit requirements.

B. Dry and Wet Weather should have separate Implementation Schedules and Compliance Deadlines.

The Implementation Plan for Ballona Creek's Bacteria TMDL is separated into dry and wet weather TMDL compliance deadlines, unlike the LA River Implementation Plan, which merges final compliance dates for both wet and dry weather. It is noted on **page 46 of the staff report**, that due to much higher water volume during wet weather, exceedances of bacterial targets will be much more difficult to reduce than during dry weather. Like all of the other bacteria TMDLs in the region, it is prudent to separate dry and wet weather implementation plans, because wet weather compliance will be more difficult to achieve. Again as discussed above, we recommend a maximum of 10 years for dry weather compliance and 18 years for wet weather compliance.

C. Implementation Schedule Requirements should be streamlined to ensure timely water quality standards attainment.

Additionally, a source abatement program with *proof* of implementation should be required for each river segment within 1 to 2 years after the effective date of TMDL. Load Reduction Strategies (LRS)



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should be completed simultaneously for all segments, in order to reduce compliance time frames. According to the Implementation Schedule (**starting on page 68 of the staff report**), some tributaries have up to 11 years after the effective TMDL to submit a load reduction *strategy* that only includes the first phase of the Implementation Plan. It is unacceptable for the development of *any* load reduction strategy to exceed two years. While *priority* reaches have been established, it is critical for all reaches to achieve final compliance within a timely manner. A structured LRS timeline for priority and outlier outfalls, giving specific dates for milestone targets, should be established by the Regional Board for consistency between reaches.

This is further supported by the *Los Angeles County Municipal Storm Water Permit Requirements from 1996 (Order NO. 96-054)*, which states “NPDES permits for storm water discharges from MS4s to waters of the United States..shall include a requirement to effectively prohibit non-storm water discharges into the storm sewers.” This Order has required the elimination of dry weather non-storm water discharges for 14 years, so these load reduction strategies are already required. If they are not in place, then the responsible municipality is violating the municipal storm water permit. This critical provision in the MS4 has been a complete failure due to the lack enforcement of a very clear requirement.

Also the two-phase, staggered implementation process for each segment adds significant time to reach final compliance. The iterative process, already ineffective in the MS4 permits, should be deleted from the TMDL. Further, a staggered implementation plan is not the most effective way to achieve *timely* final compliance. Each reach should begin implementation simultaneously, to achieve compliance targets throughout all reaches much more quickly. By implementing phase 1 simultaneously for all reaches, the implementation of phase 2 (if needed) would also start simultaneously, thus drastically shortening the implementation schedule by over 5 years. Early implementation for *only* priority segments, may improve water quality in receiving waters by diluting the overall bacteria density, but also may be used as an excuse not to maximize water recycling in the watershed (See below section II).

Additionally, a total of 52 responsible entities are responsible for bacteria WLAs along the Los Angeles River (**Table 9-1**), and through collective collaboration, they can also greatly reduce the proposed 25 year implementation schedule. In doing so, beaches suffering from extremely poor water quality, such as Long Beach, won't have to wait decades for improved water quality.

D. Incentives for Dischargers

We recommend that temporal compliance incentives be added to the TMDL as they were in the Santa Monica Bay Beach Bacteria TMDL. One incentive would be to augment conventional BMPs such as diversion and disinfection, with the addition of a comprehensive LID approach that includes: 1) a strong ordinance for new and redevelopment (capture and reuse or infiltrate 100% of the ¾ inch design storm on-site); 2) a green streets, alleys and parking lot retrofit program; and 3) a residential downspout redirection, rain-barrels, and rain garden program. If all of these above-mentioned programs are developed and approved, and implementation begins within 3 years of TMDL adoption, we would support the extension of interim and final dry and wet weather compliance deadlines. Specifically, dry



weather interim and final deadlines could be given 3 additional years to comply (13 years for final compliance). In wet weather, discharges implementing all three programs could receive 5 additional years (23 years for final compliance). Providing incentives for a true, comprehensive, integrated approach is critical for watershed based approach to meet TMDL requirements for multiple pollutants.

II. Water Recycling in Los Angeles

The Proposed Implementation Plan should consider Los Angeles' Future Water Recycling Plan.

The implementation of Los Angeles' water recycling plan (to be completed in 2011) was not taken into consideration in the Draft TMDL. Water reclamation plants including Tillman and Glendale, which already meet Title 22 water quality standards for effluent, currently discharge over 50 MGD into the LA River. As the state water crisis continues to worsen and there is greater focus to implement the state's water recycling policy and meet stated targets, this vast amount of recycled water must not be depended upon to dilute bacteria densities in the LA River. Without larger volumes of Title 22 effluent from these two facilities, the bacteria densities will increase in the river. As written, the TMDL inadequately provides an incentive to maximize water recycling and to maximize river discharges. The TMDL fails to take into account that Title 22 recycled water volumes in the river will be drastically reduced within the next decade. Please remove the disincentive to increased water recycling.

III. Interim Waste Load Allocations

Interim Bacteria Reduction should be based on Concentration and not Microbial Loading.

The Draft Permit provides interim WLAs in terms of microbial loading per day. The interim phase should better reflect final compliance conditions, by allotting dischargers additional exceedance days or higher bacteria targets (in density), in order to identify implementation problems and acclimate dischargers to final compliance conditions. For example, a 50% reduction in exceedance days and/or geometric mean bacterial density makes more sense as an interim target. This approach is consistent with the Regional Board's past TMDL approach and it doesn't rely on calculating inaccurate, enormous loading estimates that are irrelevant for public health protection. As stated under *Allocations* on **page 34 of the staff report**, "*Final WLA's and LA's are expressed as allowable exceedance days because the bacteria density and frequency of single sample exceedances are the most relevant to public health protection.*" The same reasoning should hold true during the interim period.

Further bacteria reduction should *not* be based on microbial loading, as estimating billions of bacteria per day is too broad and unquantifiable and will not help dischargers achieve final WLA's. It is inappropriate to extrapolate findings from BSI studies in order to calculate *E. coli* loads expressed as billions per year. There is no accurate way to quantify *E. coli* loading in MPN/day, as this method shows



only a “snapshot” of water quality from a particular storm drain or tributary at a particular day and time. Setting interim WLA’s as number of bacteria loading per day makes it much easier for dischargers to game the system. In other words, samples collected by dischargers may not give an accurate representation of water quality, due to un-captured intermittent discharges. The only way to justify this approach would be through continuous monitoring of flow and *E. coli* density, which is not feasible with current technology. Even if extensive research was conducted within all reaches, Bacterial Source Identification (BSI) studies do not account for intermittent discharges, or high variability rates of bacteria. Additionally, this is not a reliable approach, due to the inability to predict future problem reaches and/or storm drains (**Page 32 of the staff report**).

IV. Compliance Monitoring

Compliance Monitoring Should be Strengthened

According to page 8 (**Attachment A of the proposed Amendment**) only *one* monitoring station per river segment is required for compliance monitoring. This number needs to increase to at least 3 stations per segment (upstream, downstream, and middle) to better improve prediction of problem areas. More importantly, outfall monitoring needs to be a critical part of the program in order to provide needed compliance assurance. A recent court ruling regarding MS4 dischargers’ storm drains (Natural Resources Defense Council (NRDC), Inc., *et al.* versus the County of Los Angeles *et al.*) deemed that “*standards-exceeding pollutants must have passed through a County or District outflow in order to constitute a discharge under the Clean Water Act and the Permit.*” This ruling supports the need for monitoring outfalls in addition to receiving waters, in order to determine compliance. Cities within the LA River watershed must monitor their outfall discharges to receiving waters in order to provide useful compliance information.

V. Miscellaneous Comments

- In-Channel Sources—Two studies conducted by CREST (Tier 2 & BSI studies) both focus only on Reaches 2 & 4—how can one assume the other reaches are similar? (**Page 28 of the staff report**). It is our understanding from staff that BSI studies will be conducted during the LRS process. For clarity, the Regional Board needs to add language to the Basin Plan Amendment specifying that extensive BSI studies shall be conducted in *all* reaches.
- **Table 6-2 on page 40 of the staff report** shows the single sample *E. coli* Exceedance Probability for both dry and wet weather based on a Southern California Coastal Water Research Program (SCCWRP) study. Data was not available in the staff report or in the published SCCWRP study. The proposed exceedance frequencies, the backbone of the TMDL, can’t be evaluated without



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any available data, including monitoring location information. We request that the Regional Board provide more information on the study and analysis.

- According to the staff report under dry-weather implementation, downstream-based approaches including in-stream projects, treating and discharging/reusing, and diversion and infiltration, would be created immediately upstream from compliance points. It fails to mention that bacteria TMDL targets need to be met throughout the river, and installing structural controls directly upstream of a compliance monitoring point, would be a misrepresentation of overall water quality results within that reach (unless a full UAA for that in-stream treatment segment is performed and approved by the Regional Board). Please clarify this within the staff report and Draft TMDL.

VI. Conclusion

In summary, Heal the Bay urges the Regional Board to consider the comments above in order to ensure that water quality standards are met and public health is not compromised for years to come. Specifically, it is critical that compliance should not take longer than 10 years for dry weather and 18 years for wet weather; Long Beach cannot afford to wait 20 years for improved water quality. Additional time should only be allowed if a comprehensive LID approach is taken. In order to achieve compliance more quickly, implementation should occur simultaneously for all reaches and LRS should be developed in the first few years after TMDL adoption. Also it is critical that interim limits be concentration or exceedance-based, as microbial loadings won't lead to water quality standards attainment and are not protective of public health. Lastly in order to ensure compliance, the monitoring program must be strengthened to include more locations in each reach and outfall monitoring to provide greater compliance assurance.

Thank you for the opportunity to comment. Please contact us if you have any questions at 310-451-1500.

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