



PUBLIC WORKS
DEPARTMENT

CITY OF BURBANK
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June 4, 2010

Mr. Sam Unger, Acting Executive Officer
California Regional Water Quality Control Board
Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Attention: Mr. Man Voong

Dear Mr. Unger:

**COMMENTS ON THE PROPOSED BACTERIA TOTAL MAXIMUM DAILY LOAD FOR
LOS ANGELES RIVER AND ITS TRIBUTARIES**

Thank you for the opportunity to comment on the proposed Amendment to the Water Quality Control Plan for the Los Angeles Region (Basin Plan) to incorporate Total Maximum Daily Load for Bacteria for Los Angeles River and its tributaries (Bacteria TMDL). The following are our comments:

Issues with Final In-Stream Compliance

The City of Burbank (City) will need to work with the Los Angeles County Flood Control District (County) to achieve compliance, regardless of the compliance approach, since approximately 1,400 County catch basin facilities within the City drain into the Burbank Western Channel or the Los Angeles River. Recently, the County sent a letter indicating it will require cities to submit a flood permit application and assume all operational and maintenance responsibility for water quality devices in County-owned facilities. Should the County decide to delay or refuse our flood permit or otherwise not work cooperatively with the City, we would not be able to achieve the Bacteria TMDL compliance in-stream requirements.

Additionally, since the load reduction strategy (LRS) is designed to have responsible parties achieve final compliance with in-stream limits, there is no existing mechanism to distinguish the "good actors" from the "bad actors." Under this scenario, the City would get penalized for others' discharges even if we completely removed our bacteria loadings from discharges into the Burbank Western Channel or the Los Angeles River.

The Bacteria TMDL must not require in-stream compliance limits, as it has the potential to 1) discourage responsible parties from working together (i.e., no requirements to distinguish the "good actors" from the "bad actors"), which is the whole drive behind the LRS approach, 2) prevent responsible parties from having a means to demonstrate compliance (i.e., mass based approach with compliance measured at each responsible party's outfalls), 3) prevent the action based compliance approach developed by the Cleaner Rivers through Effective Stakeholder-led TMDLs (CREST) team, and 4) terminate any incentive for reducing discharge quantities into the impaired waterbodies thru infiltration and low impact development [i.e., the Municipal Separate Storm Sewer System (MS4) permit only allows stormwater

runoff to enter MS4 system, yet Regional Board staff at the May 26 CREST workshop stated that a reduction in discharges into the impaired waterbodies may actually work against responsible parties since the dilution factor is minimized].

Issues with Dry-Weather Compliance Approaches

Although individual responsible parties may choose to develop and implement alternative implementation strategies for dry weather implementation, responsible parties are essentially given the option to achieve Bacteria TMDL dry-weather compliance thru the LRS, to work in sub-groups, or to work individually. The LRS allows responsible parties to consider a two-phase, iterative compliance approach, whereas not being a part of the LRS group only allows a one-phase approach for compliance. The Implementation schedule is not clear if the Bacteria TMDL would allow 25 years for implementation if a responsible party was to pursue its own compliance approach, nor what the milestones or deadlines would be for a sub-group or individual, 1-phase approach. Thus, the schedule in Attachment A to Resolution No. R10-XXX (Basin Plan Amendment) must be revised to address these issues.

Furthermore, as indicated in the March 30, 2010 California Environmental Quality Act (CEQA) letter written by the Chair of the Los Angeles River Watershed Management Committee, several issues remain unresolved in the Supplemental Environmental Document (SED), such as public-owned treatment works (POTW) dry weather diversion capacity, or the amount of land and its acquisition necessary to infiltrate and the potential for liquefaction. If the issues in that letter remain unresolved, implementation requirements and deadlines described in the Bacteria TMDL may need to be considered infeasible due to the lack of consideration to the environmental impacts.

Finally, the study conducted by the CREST team estimated a cost of \$5.4 billion to achieve dry weather compliance thru the LRS approach, with the City's annual share being \$5.9 million per year over 25 years. This cost estimate does not include other factors such as land acquisition, permit(s) application/approval and associated fees, other system retrofits (i.e., relocating other utilities), and operation and maintenance. Further, these costs are separate from wet-weather compliance costs. The City's general fund is not in a position to meet the CREST estimated costs nor the additional costs.

Inappropriateness of REC-1 Use Designations and Necessary Corrections

More than 60 percent of the watershed is highly urbanized, and most parts of the Los Angeles River and its tributaries are heavily engineered (concrete-lined and/or straightened) to provide flood protection. The County restricts public access to these engineered channels for safety reasons. In the Basin Plan, these engineered channels are denoted as "access prohibited by Los Angeles County DPW". Thus, most of these channels are fenced, with no public contact with the water therein. Further, most of these channels are dry or effluent dominated during most of the year. REC-1 use in these engineered channels has never been attained in the past and is not likely to be attained in the future. Therefore, requiring attainment of REC-1 use in these channels is inappropriate, and has no value to the public as access to the heavily engineered channels is prohibited, illegal and considered trespassing.

Further, per Table 2-1 of the Basin Plan, access to all of the bacteria impaired segments of Los Angeles River and its tributaries is prohibited. We request that Tables 2-2 and 2-3 of the draft Staff Report be corrected to accurately reflect the designations in Table 2-1 of the Basin Plan. In particular, corrections are required for REC-1 uses for Bell Creek, Bull Creek, Verdugo Wash, Arroyo Seco, and Reaches 4 and 6 of the Los Angeles River.

Inappropriateness of Reach/Segment Designations and Implementation Schedule

On page 4 of the Basin Plan Amendment, reference is made to Segments A through E and the attributable Los Angeles River Reaches and tributaries. However, on page 5 of the Basin Plan Amendment, no reference is made to the individual segments for the *E. coli* Load (i.e., 274 MPN/Day for Los Angeles River Segment A). Furthermore, in Table 7-39.5 on page 10 of the Basin Plan Amendment, the City is listed for Segments B and C. The City should be listed for Segments C and D. Please make these appropriate revisions, including revisions in the Implementation Schedule on page 13 of the Basin Plan Amendment.

Further, the schedules for Segments C and D allow 11 years for the submittal of a LRS, but only four and a half years after the submittal of the LRS to complete the implementation of the LRS. Less time should be given to the submittal of the LRS in order to have more time to prepare, commence and complete the implementation of the approved LRS.

Point Source Final Compliance

As currently proposed, the final waste-load allocations (WLAs) for the point-source parties are prescribed based on bacteria targets within the receiving water. Per the study conducted by the CREST team for the Los Angeles River, such an approach would make point-source agencies liable for bacteria generated outside of point-sources. This is because a significant portion (more than 50 percent) of the bacteria loading to the Los Angeles River is unaccounted for and beyond the control of point-sources. This means that even if point-source discharges completely removed bacteria, the target in the receiving water would still not be attained. Therefore, requiring point-source agencies to comply in the receiving water would create a goal in which point-source agencies have no control over the sources that are unaccounted for. Accordingly, we request that the final WLAs for the point-source agencies be set at the end-of-pipe, and not in the receiving water. Further, we request that the unaccounted levels be dealt through a natural sources exclusion approach.

Inappropriate Use of Geometric Mean

The manner in which geometric mean is being calculated and applied for evaluating compliance in our region is of great concern. As appropriately recognized by the United States Environmental Protection Agency (EPA), the geometric mean should be used as a tool to determine the state or condition of a water-body over a longer period of time, and thus, to determine sites and/or reaches with chronic bacteria problems that need attention. Accordingly, EPA recognizes that the geometric mean be used for ensuring that appropriate actions are taken to protect and improve water quality, but not as a parameter for measuring compliance. Therefore, we request that compliance in the Bacteria TMDL be measured based on single-sample exceedances only.

In the 40 Code of Federal Regulations Part 131, EPA 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 [waterbody] is safe for swimming on a particular day.” Further, EPA states that “... it would be technically appropriate to apply the averaging period on a set basis such as monthly or recreational season.” These indicate that geometric mean is not meant to be used for assessing the condition of a water-body on a daily basis, but rather on a longer time period such as monthly, seasonal, or annual. However, the proposed Bacteria TMDL seems to use the rolling 30-day approach for calculating the geometric mean on a daily basis. The calculation of geometric mean on a daily basis lacks the essence of averaging over a time period and, thus, is inconsistent with EPA’s recommendation and contradicts the very basis it is meant to be used for. We recommend EPA’s position and that the geometric mean be calculated based on a monthly or seasonal time period.

Non-Point Source Monitoring and Implementation Responsibilities Should Be Incorporated

The Bacteria TMDL prescribes compliance monitoring to the responsible (point-source) parties. However, no such requirements were prescribed to non-point source dischargers even though the draft Bacteria TMDL already identified such responsible parties on Page 6 of the Basin Plan Amendment, which includes the US Forest service, California Department of Parks and Recreation, and National Parks Services. Although contributions from non-point sources are difficult to monitor, there is no justification to not prescribe equitable monitoring and implementation responsibilities in the Bacteria TMDL since non-point sources also contribute to the impairment of the Los Angeles River and tributaries. We request that specific monitoring and implementation requirements be included in the Bacteria TMDL for all non-point source parties. Such monitoring shall synchronize with the point-source efforts to properly determine the responsible party and sources causing exceedances in the Los Angeles River and tributaries, and thus dictate the necessary implementation actions by both the point and non-point source parties.

Need for Special Studies/Re-Openers

At the May 26 CREST Bacteria TMDL workshop, the Regional Board stated that no re-openers or special studies are considered for this TMDL as “there is no link to the decisions in the TMDL.” However, sources other than the point sources are likely contributing bacteria. These need to be considered and studied. Thus, it is imperative that the Bacteria TMDL add a source identification optional special study and include a re-opener in the schedule.

Request for Wet Weather Phased Implementation Option

The wet weather implementation involves very difficult challenges with respect to dealing with urban sources of bacteria. The draft Bacteria TMDL allows for a two-phase approach using the CREST proposed LRS for dry weather, but no such allowance is offered for wet weather implementation. We request that a phased implementation option be extended to the wet weather component of the Bacteria TMDL as well. Further, due to the need for more time to better understand and design implementation measures for wet weather, the final compliance date for wet weather should be longer than the schedule provided for dry weather.

Adjustment of Interim Mass-Based WLA Time Scale

As indicated on page 5 of the Basin Plan Amendment, the interim WLA for the dry weather is assigned on a daily basis. Setting it on a daily basis is no different from a concentration-based WLA. It is more appropriate to calculate the mass on a longer time scale to capture the day-to-day fluctuation of bacteria concentrations. Thus, we request that the mass-based allocation be specified on a monthly or annual basis.

Refine Dry Weather Allowable Number of Exceedances

The Bacteria TMDL prescribes 5 days of allowable single sample exceedance days for dry weather. As described in the CREST Technical Report, this is true only when sites with elevated bacteria concentrations, which the study calls them “minimally impacted” sites, are removed from the analysis. With the inclusion of minimally impacted sites in the analysis, the single sample exceedance days at the reference site is 21, which is significantly different from the proposed 5 days. The exclusion of sites that exhibited high bacteria levels from the dataset used to calculate the exceedance days at the reference site is not appropriate. Therefore, we request that the dry weather single sample allowable number of exceedance days presented on page 4 of the Basin Plan Amendment be set to 21 days for daily sampling or 3 weeks for weekly sampling. Additionally, it is not clear if the allowable single sample exceedance days for dry weather are per cycle or per season/annually. We request added language to clearly define the period of dry weather for allowable single sample exceedances.

LAX Rainfall Data is not Representative

For defining dry and wet weather events and for determining the associated load allocations and WLAs, the proposed Bacteria TMDL has used the rainfall data recorded at the Los Angeles International Airport (LAX). It is implied that the same station would be used later as a reference for compliance assessment purposes. Though the data at LAX covers longer time period and is of good quality, its application to the entire watershed is not appropriate. Therefore, it is imperative to have two reference rainfall stations to capture the existing hydrologic and climatic variability within the watershed.

Compliance Evaluation Should Take into Account The Year-to-Year Variability of Rainfall in The Region

The selection of the 90th percentile storm year (in terms of number of wet days) as a reference year for the determination of allowable exceedance days implies that 10 percent of the time it is highly likely that the number of wet days is larger than the reference year. That means even if Best Management Practices (BMPs) are designed for the 90th percentile storm year, it is evident that 10 percent of the time these BMPs would not attain the TMDL target as there would be more number of exceedances than allowed. In order to account for such extreme climatological conditions, it would be more appropriate to assess final compliance such that compliance in a given year would be met if either the number of exceedance days in that year or the average number of exceedance days over X years (X being annual rainfall periodicity for the region) is less than or equal to the allowable exceedance days for the site. This would dampen the effect of a very extreme rain year and would provide a reasonable annual assessment of compliance with the target milestones.

The Margin of Safety is Excessively High

A margin of safety (MOS) is required to account for the uncertainty associated with the analysis made in establishing the linkage between the pollutant loading and the impacts on the receiving waterbody. To our knowledge, the MOS shall be in the order of 10 percent or less of the loading capacity of the waterbody. In Table 7-1 of the draft Staff Report, the MOS is considered to be as high as 80% of the loading capacity. Such an excessively large MOS is unjustified. Thus, we request that the MOS be limited to no more than 10 percent of the loading capacities for the various impaired reaches.

Redefine Wet Weather

In the proposed Bacteria TMDL the wet weather is defined as "days with rainfall of 0.1 inch or more plus the three days following the rain event". Due to the high urbanization and the associated impervious cover in the Los Angeles River Watershed, rainfall of less than 0.1 inch will trigger stormwater runoff. In such a case, the event is no longer of dry weather urban non-stormwater runoff. We recommend that wet weather be defined instead as "... days with rainfall plus three days following the rain event."

Thank you for this opportunity to comment on the Bacteria TMDL. We look forward to working with your staff on developing solutions to address the bacteria impairments. Please contact me if you have any questions at (818) 238-3940 or drynn@ci.burbank.ca.us

Sincerely,

A handwritten signature in blue ink, appearing to read 'DRYNN', with the initials 'FER' written below it.

Daniel J. Rynn, P.E.
Principal Civil Engineer
City of Burbank
Public Works Department