



City of Downey

FUTURE UNLIMITED

June 4, 2010

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

Attn. Man Voong

Subject: Comment Letter – Los Angeles River Bacterial TMDL

Dear Chair Lutz and Regional Board Members:

The City of Downey appreciates this opportunity to provide comments on the subject Los Angeles Basin Plan Amendment and express our gratitude to the Board for holding this extraordinarily important hearing within the Los Angeles River Watershed.

We would like to reiterate our support for the letters provided by Mr. Richard Montevideo of Rutan and Tucker regarding legal issues and conflicts, Dr. Susan Paulson of Flow Science Inc. regarding scientific and technical deficiencies, and Mr. John Hunter as Chair of Los Angeles River Watershed Management Committee regarding the resource challenges currently being encountered by the watershed cities.

Allow the CREST Process to Conclude: The City of Downey has actively participated in the City of Los Angeles Cleaner Rivers through Effective Stakeholder TMDLs (CREST). We appreciate the participation and support of the regulatory agencies and watershed stakeholders, especially the City of Los Angeles. We have repeatedly voiced our concerns and tried to contribute to moving the process forward in resolving challenges. The technical consultants deserve accolades for their scientific ingenuity, risk prioritizing methodology, and attempting to “thread the needle” between competing regulatory objectives. Perhaps, if it were not for the time constraints imposed on the Board by the consent decree agreed to by the U.S. EPA, CREST would have ultimately succeeded. Having asserted this, municipalities are instead confronted by a multi billion dollar TMDL that inadequately addresses the issues of wet-weather runoff and lack of state and local resources by “kicking the can down the road”. With less than half of the City in the watershed, this TMDL could consume nearly 4% of annual General Fund. This goal-setting approach is precisely what has led us to the precipice where agencies with shared water quality objectives are unable to rationally communicate and develop a predictable and assured path to compliance. We encourage the Board to allow the CREST team to continue to negotiate and attempt to resolve the many remaining hurdles that confront our respective agencies.

Modify the SED to Conform with Programmatic EIR Objectives: As was repeatedly and forcefully conveyed to Board staff at the March 10, 2010 CEQA Scoping Workshop for this TMDL and in our comment letter of March 17, 2010, this draft TMDL is essentially a multi-billion dollar government Capital Improvement Program that if adopted will impose serious environmental impacts and likely prohibit local agencies from meeting other environmental objectives (e.g. green house gas emissions). The current Supplemental Environmental Document (SED) is a shameful mockery of the state legislature's intent under CEQA. It purports impacts equivalent to a modest pump station, rather than the construction of dozen of diversions that will significantly impact various aspect of natural and urban environment for decades to come. The SED should comprehensively address watershed and regional issues, so that local project scale environmental documents can be limited to the specifics of the project. By shirking this responsibility, the state is also simultaneously delegating to local agencies the herculean task of resolving the conflicting goals and objectives of the legislature and constituents in adopting goal setting regulation and constitutional amendments.

Refer this TMDL to the US EPA: In an apparent acknowledgement of the scientific and regulatory challenge to proclaiming that indicator bacteria, freely replicating in rivers and deposited by wildlife, are a pollutant, the U.S. EPA notified local agencies in Mid April 2010, that many coliform impairments would be eliminated from the consent decree. It is unfortunate that in many respects, the state has been left "holding the (consent decree) bag", while the US EPA properly prioritizes its resources on more serious environmental challenges. We hope that by returning this chimera to its maker, that both our agencies can resume a dialogue that focuses our extremely limited resources on the most significant environment challenges, such as improving water quality at beaches that are commonly used for full body contact recreation.

Allow Recent Sanitary Sewer Spill Control Programs to Take Effect: The state recently extended requirements to better operate and maintain local sanitary sewers. A similar effort was recently proposed by the U.S. EPA although its requirements have not taken final form. Recently, many of the watershed cities have responded to the Board and more seriously report and track these spills. The City of Downey City Council recently adopted a Sanitary Sewer Management Plan (SSMP) and raised water rates to support development of a more effective spill control program. We believe the draft TMDL under estimates or simple does not understand that pressurized (surcharged) sewer mains cross and flow under the Los Angeles River and Tributaries and unless discharges are clearly discernible, they can easily go undetected as urban runoff flows downstream. The state should focus its limited resources in verifying that local agencies have instituted the SSMP program including developing new technologies or methods to identify and assess where sewage spills are occurring in the river itself.

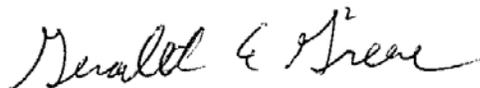
Expand the Natural Source Exclusion Exemption: Our understanding is that the natural source exclusion is based on studies made of relatively steep narrow canyon discharges. As shown in the attached photos, the Los Angeles River and its tributaries are often comparable to mud flats where hundreds of birds congregate and defecate. The TMDL should more accurately reflect the continuing impact of this natural source.

Support for Tributary or End of Reach Actions: One of the important CREST contributions was asserting the cost effectiveness of instituting “end of tributary” diversion projects to protect water quality. As an example, despite draining a catchment of about 120 square miles, nearly a fifth of the urban watershed, during dry-weather the Rio Hondo discharge is either indiscernible or around 0.1 CFS, the equivalent of two garden hoses. Clearly, asserting that dozens of discharge points should be intercepted would be a calamitous waste of resources and indefensible from an environmental impact standpoint. We encourage the Board to consider the value of negotiating with the municipal Permittees to address only these discharges during the upcoming permit cycle. Given the substantial hurdles that exist, this would be a significant accomplishment and lay the ground work for increased agency cooperation.

Provide Wet-weather Runoff Reduction Incentives: The Regional Board, State Board and U.S. EPA continue to advocate for wet-weather runoff reduction through increased incorporation of green technologies and Low Impact Development (LID) in the urban development and redevelopment process. Unfortunately this TMDL misses the opportunity to incentivize this by providing a “safe harbor” provision or load reduction credit to those agencies that can successfully assert or demonstrate the volume of water or pollutant load removed. Despite the assertions of many individuals and based on the experience from permitting over a thousand infiltration systems, LID is not a painless process for local agencies to implement. Until LID is incentivized by the regulatory agencies, municipal staff will continue to avoid the conflict and lose the opportunity to institute the Board’s objectives, every time a building permit is signed.

In closing, the City of Downey appreciates this opportunity to comment on the proposed Los Angeles River Bacteria TMDL and while we share the Regional Board’s concern for water quality protection and improvement, this TMDL best represents a shotgun blast, when a thoughtful scalpel cut is warranted. Resources should be directed at water bodies where swimming is encouraged, not prohibited. We commend the substantial scientific and technical accomplishments of the CREST effort, but regret that it was cut short due to a consent decree deadline that the U. S. EPA is no longer following in similar water bodies. If you should have any questions regarding this matter, please feel free to call me at 562-904-7112 or email me at ggreene@downeyca.org.

Sincerely,



Gerald Greene, DEnv, PE, QEP
Principal Civil Engineer, Water Resources Control Specialist



Figure 1. Gulls spread over the Los Angeles River at Firestone Boulevard on March 12, 2009.



Figure 2. Gulls over the Rio Hondo Channel at Stewart and Gray Road on March 12, 2009.