CITY OF COMMERCE

Tina Baca Del Rio
Mayor

June 1, 2010

LB Nye, Chief, TMDL and Standards Unit
Los Angeles Regional Water Quality Control Board
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

Attention: Mr. Man Voong

Re: Comments on the Los Angeles River Bacteria TMDL

Dear Dr. Nye and Mr. Voong:

On behalf of the City of Commerce, the City supports environmental programs to improve water quality. We support working with the Regional Water Board to implement cost-effective programs that will result in tangible improvements in the water quality of the Los Angeles River (River). However, we are finding it increasingly difficult to provide funding to attempt to meet even the existing adopted TMDLs, particularly given that our revenues continue to decline due to the severe economic recession. The Bacteria TMDL will further erode existing City services and create new unfunded mandates. Our City should not be forced to fund efforts to comply with a TMDL that is not driven by actual uses of the River and may not be needed. This is especially the case in the Lower Los Angeles River which our City discharges into.

One of our primary concerns is that the TMDL is being proposed to compel **"aggressive"** action to **"restore"** the entire River, including Reaches One and Two, to enable people to swim in this mostly concrete-lined flood control channel, much of which is fenced to restrict access. The Regional Water Board's estimated price tag for this goal of restoring the concrete-lined and restricted Los Angeles River for human contact recreation is ***$5.4 billion.*** Further, we are very concerned that the proposed TMDL has been based on a series of unsound assumptions and is unachievable.

The Bacteria TMDL contains an ineffective and ambiguous implementation plan, and its enormous costs far outweigh any perceived tangible public benefit. The estimated cost alone should alert stakeholders to the critical need to re-examine the designated uses upon which the proposed TMDL is based in order to develop appropriate water quality standards for the River, especially for the Lower Los Angeles River. As an alternative to the Regional Water Board's TMDL, we support the Lower Los Angeles River Water Conservation Alternative being proposed by Cities in Reaches One and Two. Our community requests that the Regional Water Board review and adopt the Lower Los Angeles River Water Conservation Alternative in lieu of the staff-proposed "one size fits all" TMDL. We believe this alternative will result in reduced environmental impacts and have broader public acceptance in Reaches One and Two.

Issues with Public Review of the TMDL

The Regional Board released the draft TMDL on April 21st and public comments are due on June 4th. The TMDL consists of a *92-page staff* report (not including attachments), a 27-page resolution with the TMDL compliance schedule and a supplemental environmental document (SED) that is *124-pages in length* (not including attachments). There are several hundred pages of materials compiled by the City of Los Angeles for the dry-weather TMDL effort alone, known as CREST (Cleaner Rivers through Effective Stakeholder-led TMDLs). The public was afforded only six weeks to review this highly complex and lengthy TMDL, and to our dismay it varies significantly from the CREST-recommended approach.

Both the complexity and the volume of documents make it exceedingly difficult for our community to provide comprehensive comments within the limited review time. Adding to the difficulties, the Regional Water Board staff conducted a TMDL workshop on May 26th, leaving only seven working days thereafter to respond to the information obtained at that time. These unrealistic review times, for such extensive and complicated regulations, severely constrain public review and comment, particularly considering that our community is in the middle of a challenging FY2010-2011 budget preparation process and is attempting to address significant resource reductions during this same time period. Several cities have requested that the Board consider postponing the July public hearing to August and for Board members conduct a field trip in the intervening time to Reaches One

and Two of the Los Angeles River. These are reasonable requests that will facilitate improved policy discussion of the TMDL.

The timing for the adoption of the TMDL appears to be dictated by the TMDL Consent Decree for Los Angeles County; however, it is our understanding that neither the Regional Water Board nor the State Water Board are parties to this Consent Decree. Also, under the Consent Decree, the TMDL need not be approved by EPA until March 22, 2012, which is over 22 months away. Further, we believe that the request to move the public hearing from Ventura County to Los Angeles County is entirely appropriate in order to encourage, rather than discourage, informed public comment. The Regional Water Board has conducted all prior hearings involving Los Angeles River TMDLs in Los Angeles County. To hold the hearing on this TMDL in Ventura County will result in limiting public participation – whether or not that is the Board's intention. The proposed TMDL is a very significant and complex TMDL that will have severe impacts on our communities. The voices of our communities deserve to be heard.

TMDL Stakeholder Process Broken

The City of Los Angeles entered into an MOU with the Regional Water Board and EPA in order to develop the science and engineering behind a dry-weather Bacteria TMDL, so as to obtain a better understanding of the dry-weather Bacteria TMDL costs for the River. This effort is known as CREST and has been an expensive, multi-year planning process, involving dozens of stakeholders.

The cities participated in good faith in the CREST process for the development of the dry-weather TMDL. We attended dozens of Technical and Steering Committee meetings over the past two-years. We have devoted many hundreds of hours to reviewing and commenting on documents prepared by the CREST scientific and engineering team. The Regional Board staff participated as well.

Our concern is simple. The CREST stakeholders were not given a reasonable opportunity to decide upon and present a TMDL recommendation, and the Regional Water Board's TMDL differs in important ways from the direction that the CREST process was taking. Regional Water Board staff released their recommended TMDL on April 20,

2010. The CREST team had scheduled a meeting of the city managers in the watershed on April 22, 2010, in order to brief them on the issues, obtain their input and formulate a recommendation. This briefing was planned months in advance by the Steering Committee.

By releasing the Regional Water Board TMDL two days in advance of the city managers' briefing, the CREST process of stakeholder involvement was broken. The Regional Water Board staff also released a wet-weather TMDL the same day, while the CREST stakeholders had spent years working in collaboration with Regional Water Board staff *only on the dry-weather TMDL*. It is unfortunate that the stakeholder process of reaching consensus was not respected when it most mattered.

Problems with Numeric Limits Proposed in the TMDL

Our community discharges to the lower portions of the Los Angeles River, a fully concrete lined flood control channel, approximately 400 feet in width. The TMDL is based on the River and its tributaries meeting the REC-1 (body contact) standard called out in the Region's Basin Plan. Body contact uses include swimming.

The TMDL requires that the River meet numeric bacteria standards for both dry-weather and wet-weather conditions. Several credible independent scientific studies have demonstrated that the current standards are violated in pristine, natural conditions. We believe that it will be difficult, if not impossible, to meet the current indicator bacteria standards for dry-weather flows in the River. Please see the letter submitted by Dr. Susan Paulsen of Flow Science for our scientific concerns. In addition, there is no known method for compliance with the wet-weather TMDL. The wet-weather issues are more fully detailed in a separate section of this letter below.

The REC-1 beneficial use designation in the lower sections of the River is neither appropriate nor technically feasible. These Reaches and their tributaries are fenced and public access is restricted, due to dangerous conditions in both the low-flow channel during dry-weather conditions and in the River as a whole during rainstorms. The River was extensively modified by the Army Corps of Engineers beginning in 1935 for flood control purposes, and additional substantial flood control improvements (over $216 million) were made to Reaches One and Two as late as 2002. These

Federal and Los Angeles County Flood Control District improvements will make it impractical, expensive and impossible to meet the REC-1 standard. These extensive modifications to the River for flood control purposes are one reason the City requests that the Regional Water Board re-evaluate the designated uses of the River. People do not and cannot safely participate in recreational activity in Reaches One and Two of the River. Further, achieving the proposed numeric limits for both dry and wet-weather conditions, as called for in the staff recommended TMDL, is not reasonable and would be prohibitively expensive.

In addition, use of the measures proposed to achieve the TMDL for wet-weather, *e.g.,* the same diversion techniques to be used for dry-weather flow, could be dangerous as it may expose surrounding neighborhoods to undue risks of flooding. The Cities are thus instead proposing a Best Management Practices (BMP) alternative, known as the Water Conservation Alternative, which is more fully described below. As detailed below, cities recognize that swimming actually occurs at downstream beaches such as in Long Beach and that these areas require water quality protection. The Lower Los Angeles River Water Conservation Alternative also addresses these concerns.

Lack of a Comprehensive LA River Master Plan

There are several references in the Board's staff report to the Los Angeles River Master Plan as one of the documents "compelling" the Regional Board to take **"aggressive action to protect and restore this river"** as described in page 1 of the TMDL staff report. First, we are not aware of any comprehensive master plan to "protect and restore" the River. The City of Los Angeles adopted a Los Angeles River Revitalization Plan, but the plan is limited only to the River areas in the City of Los Angeles. This plan was estimated to cost the City of Los Angeles over $2 billion to implement, is currently unfunded, and was primarily a "greening" of the River along its banks.

Second and more importantly, ***there is no adopted master plan for the River south of the City of Los Angeles***. The Cities that drain into Reaches One and Two have not been contacted by the Army Corps of Engineers or the Los Angeles County Flood Control District to consider adopting a master plan. To what plan is the Regional Board staff referring

for these areas? How much will it cost to implement, which federal or state agency is funding the plan and the improvements, and what is the timetable?

Cost Estimate Assumptions – Dry Weather TMDL

Based on CREST studies, the TMDL assumes that 20% of the dry-weather outfalls will require diversion to the sewer system for the River to meet water quality standards. The scientific review by Dr. Paulsen sheds reasonable doubt that the 20% diversion plan will work. The Regional Water Board has also included a subsequent iteration of controls, diverting more of the outfalls until compliance is achieved.

There are 3,700 outfalls into the Los Angeles River. The CREST team surveyed the dry-weather outfalls (those flowing during dry season), documenting 280 flowing drains in the mainstream of the River and 330 in the tributaries. The TMDL assumes that the cities would install 122 diversions over a 25-year period, for a total of 56 outfalls (20% diversion). It should be noted that relying on a reasonable construction inflation factor (3% annually) results in total costs of $1.1 billion plus financing costs, and not the $588 million estimate included in the TMDL.

Beyond the issue of the 3% annual inflation factor, the Regional Water Board's costs are underestimated in other areas. The Board's estimated costs do not include reasonable costs of constructing force mains to reach the sewer system, energy costs, connection fees and annual sewer fees, as well as property acquisition to construct the facilities if necessary. It appears that the Regional Water Board relied solely on the CREST cost estimates, which were derived from City of Los Angeles Department of Sanitation projects.

However, the Los Angeles County Sanitation Districts report that they would serve as much as 50% of the planned diversions. For example, much of Reaches One and Two are served by the County Sanitation Districts and not the City of Los Angeles. The Regional Water Board's costs estimates were also based on the sewers being located within 300 lineal feet of the storm drain outfall, and sewers having sufficient capacity, with no requirements for storage and upgrades. The Regional Water Board's cost

estimates also did not include any provision for pretreatment to reduce concentrations of metals and toxics in the water to be diverted.

The County Sanitation Districts report that it will be necessary for some diversions to include storage due to sewer capacity issues. The Districts also report that connection fees would be $122 million and the cities would be responsible to pay an annual surcharge of $3.1 million. The cost of diverting 610 outfalls would grow to $600 million in connection fees and $15 million in annual surcharges. The Sanitation Districts disclosed that in some cases their sewer system is up to 4,900 lineal feet from storm drain outfalls in the River. One sewer line would have to be constructed over the Long Beach Blue Line transit bridge. These costs were not reported in the Regional Board's estimates.

Unreasonable Local Government Implementation Costs - $5.4 Billion

Prior Regional Water Board members and non-governmental organizations (NGOs) have criticized the cities for overestimating the costs of the TMDL programs in Los Angeles County. The implementation costs of the TMDL program in Los Angeles County have been questioned since 2003, after the release of a November 2002 study by the University of Southern California examining the costs of the TMDL program. Determining the true costs of implementation is very important, especially considering the expectations of local governments that long-term and chronic federal and State budget deficits will result in further shifting of water quality program costs to local government.

The USC study revealed that the costs to treat storm water in the County could range from $43.7 billion to $283.9 billion, based on the size of storm event required by the Regional Board to be treated. The costs of the current TMDL are entirely in line with these earlier estimates. After reviewing the likely impact of the TMDL program on municipal budgets, the study's authors were concerned about the "regional water quality control boards' march toward uneconomic and unintended consequences." The USC study has become the new reality, primarily based on the unnecessary and improper request by the NGO's that the Board impose numeric limits on stormwater instead of continuing to utilize Best Management Practices (BMPs).

The CREST engineers estimated that dry-weather compliance costs alone, over a 31-year period, would be **$1.1 billion** (with a 3% inflation adjustment). The Regional Board estimated total compliance for both dry and wet-weather would cost local governments in the watershed some **$5.4 billion**. The Regional Board staff has recommended a 25-year compliance schedule for both wet and dry-weather implementation, which is six years shorter than the CREST request for dry-weather implementation alone. The accelerated schedule would cost local governments an average of **$216 million** annually (not adjusted for inflation) for the proposed TMDL.

Severe Municipal Budget Impacts from the TMDL

Our City has been working with the other 39 watershed cities, Los Angeles County and Caltrans on implementing the Los Angeles River Metals TMDL. Local governments organized to fund the Coordinated Monitoring Plan and special scientific studies dictated by the TMDL in 2008. A watershed funding formula was adopted, in order to fairly assess all 42 government entities for their costs. We relied on the Metals TMDL funding formula to gauge the likely budget impact of the Bacteria TMDL on existing public services and our community on the whole.

Cost Estimate
LA River Bacteria TMDL Implementation

Annual Budget Impact = $2,885,510
Percentage of City's General Fund = 17.1%

Under the Regional Board's cost estimates, our City's costs would be $2,885,510 annually for the next 25-years. This is equivalent to 17.1% of our entire General Fund budget. We are currently running a $3.4 million deficit. We have made significant budget cuts, reduced staffing levels, instituted a hiring freeze, and area considering layoffs and eliminating essential programs and services such as safety services in order to address our budget shortage. The Bacteria TMDL requirements will further severely impact our budget and reduce the City's ability to deliver critical public services. We do not see any public benefit to improving water quality to a level that would protect people swimming in the concrete-lined Reaches One and Two of the River, when swimming will continue to be dangerous and prohibited. We also believe that this TMDL is an unfunded mandate

and reserve the right to file an application with the Commission on State Mandates for reimbursement of our expenses at the appropriate time.

Watershed Suffers from Chronic High Unemployment/Declining Local Revenues

The Gateway Cities Council of Governments (GCCOG) studied the economic and social issues facing the Los Angeles River watershed in 2004, prior to the "Great Recession," which began in 2007. That study concluded that the Los Angeles River Watershed was unique even ten years ago in its high unemployment, high poverty rates, low education levels, housing overcrowding and other socio-economic issues. The study found that in 2000:

- 936,320 persons were living in poverty in the watershed
- 237,440 persons were unemployed in the watershed (a 5.5% unemployment rate). The unemployment rate in the watershed is now estimated at 15%.
- The Metals TMDLs would reduce the funding available for programs that assist the poor and disadvantaged in the watershed as cities will be forced to divert funds to comply with the TMDL.

The Great Recession has severely impacted the nation, the State, the County of Los Angeles and the watershed communities. Data suggest that unemployment and other socio-economic conditions in the watershed have continued to worsen since the 2004 GCCOG study. Unemployment surged nationally as employers shed 4.7 million jobs in 2009, bringing the total number of jobs lost since the onset of the recession to 8.4 million. Economists believe that it will take more than a decade for employment to return to 2006 peak employment levels.

A recent report by the Office of Economics, California State University of Long Beach (May, 2010), reported that in 2009 the region's economy shed 460,000 jobs (Economic Forecast, California State University Long Beach, May 13, 2010, Office of Economics, Drs. Joseph Magaddino and Lisa M. Grobar). The job losses in 2009 were on top of 138,000 jobs lost in 2008, raising the cumulative job losses in the region to almost 600,000. Cal State Long Beach economists reported that "the region has not experienced such

a devastating job loss since the early 1990s," which was previously thought to be the worst period of job loss since the Great Depression (page 3).

The report's authors note that:

> *"This recession is the longest and one of the steepest declines in the post World War II era. What made this recession different is that the economy has not faced a financial crisis of such magnitude since the Great Depression. The housing bubble, subprime interest loans, lax lending standards, and securitization of mortgages led to the near collapse of the financial markets, creating the first ever downturn in the global economy in the local era" (page 7).*
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> *"The biggest challenge is the rate of unemployment. As stated earlier, the recession generated a loss of 8.4 million jobs and an unemployment rate above the 10 percent mark. While we are in the early stages of employment growth, employment growth will not occur fast enough to quickly return unemployment to an acceptable level. The labor markets need to generate 120,000 to 140,000 new jobs every month just to account for growth in the labor force, let alone generate jobs for the 8.4 million workers who have lost jobs. As a consequence, it will take another five years before the unemployment rate falls below 7 percent" (page 8).*
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> *"In 2009, the Southern California region experienced a severe contraction in employment, following national economic trends. At both the national and regional level, it has truly been a "Great Recession." The region lost 6.5% of its employment base in 2009, amounting to almost half a million jobs. It is going to be a number of years before we can reasonably expect to regain all of the jobs lost last year" (page 9).*

These high job losses are borne out by the **high unemployment rate in our community**, which is **22.2%** as of April of this year. These job losses also have a very direct connection with the decrease in State and local government revenues.

The Cal State Long Beach economists reported that the national recession has resulted in a dramatic impact on consumer spending. "The national

recession has had dramatic impact on consumer behavior. Confronted with loss of wealth, rising unemployment and tight credit markets, households across the country have cut back on their consumption expenditures" (page 5-6).

> *"One feature of the national recession has been a sharp pull back in consumer expenditures. This has had a devastating effect on the region's retail sector, which is the fourth-largest sector in the region…. The sharp decline in the retail sector has also translated into a freefall in taxable sales. We estimate that taxable sales plummeted by 17% last year" (page 10).*

Local governments depend heavily on sales tax revenues to fund general services, such as environmental programs. Fewer consumer expenditures translate directly into reduction in sales tax revenues. Last year, one of our community's primary revenue producers lost $1,571,840 million. It may take more than a decade for our local government revenues to return to 2007 levels.

The Cal State Long Beach report also indicates that State and municipal governments face continued financial stress throughout this year and the next and that job losses will accelerate:

> *"The state's budget is under severe strain. Since tax revenues lag the economy, we are not likely to see much improvement in the current fiscal year; although, revenues should begin to grow beyond that point. This means that in the near term the state is going to be severely constrained in its spending by budgetary conditions. As a result, we expect job losses in state and local government sectors to worsen this year and extend through 2011" (page 11).*

Local governments in the region lost over 10,000 jobs in 2009. The Cal State Long Beach economists concluded that State and local governments will suffer more job losses in 2010 and 2011; "with large deficits in the State and many municipalities, expect deeper employment cuts and reductions in the level of services" (page 6).

These severe local government job and revenue losses make funding to meet the TMDL schedule, monitoring plan and implementation plan

extremely problematic. Local government resources will be required immediately to develop the coordinated monitoring plan, as well as to fund implementation plan development. Within a two-year period, our community will be required to secure funding for the construction of capital improvements designed to meet the water quality objectives in the TMDL. This accelerated schedule creates an extreme hardship to our community, especially considering that we must implement both dry and wet-weather TMDL requirements at the same time, during a period of severe revenue losses and budget deficits. Our city is also struggling to fund the new requirements of the Los Angeles River Metals TMDL, including monitoring and implementation planning.

The Wet-Weather TMDL is Ambiguous

The wet-weather component of the TMDL is ambiguous and entirely unachievable. Although the TMDL specifies that wet weather compliance can be achieved by "employing any viable implementation strategy," we are not aware of any measures that our city can implement that will achieve the wet-weather Waste Load Allocations (WLAs) specified in the TMDL. The volumes of water that are required to be diverted and/or treated in wet weather are simply too large. For the 2004-2005 water year and after, application of the high flow suspension and the "natural sources exclusion" (as proposed in the staff TMDL), flow in the River at Wardlow Road is roughly 5 billion gallons of water per day, which is more than 10 times the design flow rate of the Hyperion Wastewater Treatment Plant, or enough water in a single day to fill the Rose Bowl 40 times.

The TMDL requires that the cities develop the science and engineering for the wet-weather TMDL during the next ten-year period. During this period of time, the cities will also be required to design, fund and construct a dry-weather plan. The Regional Water Board staff TMDL report and the SED mention that as the cities implement the dry-weather TMDL, they will be working towards compliance with the wet-weather TMDL requirements. Yet, it is entirely unreasonable for the Regional Water Board to assume that by implementing Best Management Practices (BMPs) or diversions and treatment for dry-weather flows, a city could achieve compliance with the wet-weather WLAs. The dry-weather flows that are treated by sewer diversions and infiltration devices are a small fraction of the wet-weather

flows expected during even small storm events, and large storm flows will easily overtop these facilities.

As the Board is aware, the CREST effort developed detailed science, engineering, monitoring, implementation and scheduling for a dry-weather TMDL. The CREST effort evolved over a two-year period of time and required hundreds of thousands of dollars of investment by the City of Los Angeles in Dry Weather TMDL development. At a minimum, a similar effort must be undertaken by the Regional Water Board before adopting a TMDL for wet-weather conditions. USEPA and the Regional Water Board should secure funding to complete the wet-weather science and engineering. Our community would participate in any committee that the Board would form to develop the science and implementation measures. In the meantime, our City will continue to implement existing programs, which should help to some degree in diverting wet-weather flows, such as including SUSMP controls on new development during the planning period.

Concerns with Exceedance Days

The draft TMDL includes interim waste load allocations (WLAs) in the form of allowable *E. coli* loadings from storm drains to a given River segment or tributary for MS4 permittees. However, the final WLAs are expressed in terms of an allowable number of exceedance days in the River itself, based upon a reference watershed approach. Further, with the "allowable exceedance days" approach of the TMDL, it is unclear how compliance with the TMDL (and the MS4 permits based on the TMDL) would be assessed.

As shown by CREST studies, *E. coli* concentrations exceeding standards in one segment of Reach 2 100% of the time, but these exceedances were mostly due to non-human sources. The CREST studies also showed that in Reach 2, tributaries and storm drains contribute only about 10% to 50% of the bacteria loading to the reach, and the final WLAs would be exceeded. Thus, compliance with interim WLAs by reducing *E coli* loadings from storm drain pipes is unlikely to result in compliance with final WLAs, which are measured in the River itself, because much of the bacteria loading is either natural or in-stream, and beyond the control of dischargers. Although no data is available for Reach 1, it has physical characteristics and bacteria sources as Reach 2, and the same situation is expected there.

Water Conservation Alternative

The Cities request that the Regional Board consider the unique characteristics of Reaches One and Two when considering the Bacteria TMDL requirements. We have prepared an alternative for these two Reaches that respects the flood control purposes of the River improvements, while, at the same time, improving water quality through the implementation of water conservation methods and Best Management Practices (BMPs). The alternative is more fully described in the plan submitted by John Hunter & Associates. It is divided into a Dry Weather and Wet Weather Action Plans. Water conservation should be recognized as a year-round effort, including during the rainy season.

The Dry Weather Plan includes the construction of two water reclamation plants along the Rio Hondo River (a tributary to the main River). The Rio Hondo drains a very large area, including major portions of the San Gabriel Valley. The plan also includes participation in a regrowth study and in certain pilot programs, such as a Catch Basin Sponge Study. The cities would assist the City of Long Beach in the federal study of the Long Beach Breakwater.

The wet-weather approach in the Cities' Alternative would include an extension of the high flow suspension policy to other flood control channels serving Reaches One and Two, whether concrete-lined or otherwise, and potentially an extension of the high flow suspension to storms with less than 0.5 inches of rain, if conditions in the channel were demonstrated to be unsafe for smaller storms. Cities would continue to implement the SUSMP controls for new development and redevelopment projects, while USEPA and the Regional Board would fund the necessary studies of wet-weather conditions, along with reasonable implementation measures. We strongly believe that the Regional Board should ultimately be pursuing a comprehensive analysis of the designated "beneficial uses" of Reaches One and Two of the River and potential revisions to water quality objectives to require control of "controllable water quality factors" ***before*** developing any Bacteria TMDL for the River. This would help determine if the designated uses are even necessary for such Reaches.

Legal Concerns and CEQA Concerns

There are a series of legal and CEQA concerns, which are contained in two separate documents being submitted by Mr. Richard Montevideo on behalf of the Cities (see Legal Comments and CEQA Comments). We will only review two of those major concerns in this letter. The Regional Water Board appears to be imposing the TMDL with the intent to "restore" the swimming use to the River, when the River and its tributaries have been extensively modified over the last 70 years for flood control purposes in wet weather when swimming is dangerous and when the public is prohibited for safety reasons from being in the River. In reality, the proposed Bacteria TMDL is directly at odds with the very purpose of the River's 70 years of development into a flood control channel. We believe that the Clean Water Act provides for an exception based on the unique history of manmade improvements to the River, especially in the Lower Los Angeles River.

As recently as 2002, the U.S. Army Corps of Engineers completed a 15-year project, at a cost of $216 million, designed to raise the height of 21 miles of levees along the River, by building up the earthen levee embankments, constructing parapet walls on top of the levees, armoring the backside of some of the levees and modifying some of the bridges. The purpose of this massive improvement project was to eliminate the flood insurance mandates imposed by the Federal Emergency Management Agency on thousands of properties adjacent to the levee, when studies indicated that the River had the potential of flooding substantial areas. Less than eight years after the completion of this major project, the Regional Board is now ***"compelling"*** the cities to ***"take aggressive action to ....restore the river."***

The Basin Plan contains a very important "footnote" -- "Access prohibited by Los Angeles County DPW" -- listing large portions of the River not presently appropriate for the REC-1 and REC-2 uses, where the River is fenced for safety purposes. The REC-1 and REC-2 uses were not in existence or even practical in 1975, when the Clean Water Act was adopted. We believe that the Regional Board can demonstrate under the Clean Water Act that:

- *"Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use;"*

- *"Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place;"*
- *Dams, diversions or other types of hydrological modifications preclude the attainment of the use;" and*
- *Controls more stringent than those required by sections 301(b) and 306 of the act would result in substantial and widespread economic and social impact."*

We are concerned from the CEQA standpoint that the Regional Water Board has only considered one alternative to the TMDL in the supplemental environment document (the adoption of the TMDL by USEPA). This is far from a reasonable review of alternatives to the project. For example, there is no consideration of the Water Conservation Alternative as proposed by the cities for Reaches One and Two.

One of the main purposes of CEQA is to give decision makers, in this case the Regional Water Board, a range of reasonable alternatives to consider, such that the Board can fully comprehend and lessen the adverse impacts of the TMDL on the environment, including reducing or eliminating the impacts of the TMDL on local government services, such as public safety, public works, maintenance programs and other services.

Conclusion

Our community and the other local governments in the Los Angeles River Watershed are facing a series of unique challenges. Unemployment is at record levels, resulting in an unprecedented three-year drop in local government revenues, in turn causing severe budgetary stress to our community and others. Watershed communities are implementing budget cutbacks, hiring freezes, layoffs and program reductions. Regional economists believe that it will take the better part of this decade for jobs and revenues to recover locally. The TMDL will be an unfunded mandate, as local governments could be forced by the Regional Water Board to expend scarce public resources on complying with impossible to reach water quality standards and reduce existing municipal services.

Southern California is also facing severe water shortages for the foreseeable future. These include uncertainty and litigation over water

transfers through the Sacramento Delta, less imported water from the Colorado River and the re-emergence of historic drought patterns in California. The current drought in California began in 2007 and despite an above average rainfall and snowpack this year, reservoirs are still below levels necessary to eliminate water shortages. It is incumbent upon the Regional Board to work with the cities to conserve and reuse urban runoff. The TMDL program presents a unique opportunity for the Regional Board to partner with the cities to develop water conservation programs that will also benefit surface water quality.

Our City stands ready to work with the Regional Water Board when you adopt the Water Conservation Alternative to the Los Angeles River Bacteria TMDL. The alternative plan is well suited for Reaches One and Two since the REC-1 and REC-2 uses are not practicable in these Reaches. Also, the dry-weather flows can be more effectively reused with the plan's BMPs, with fewer adverse environmental impacts.

We urge the Regional Board to hold a workshop in Reaches One and Two in order to see first-hand the issues that the cities are attempting to address and to discuss the Water Conservation Alternative. We may be submitting additional comments at the public hearing due to the hardships created by the Regional Board's truncated review period and last minute briefing.

Sincerely,

Tina Baca Del Rio
Mayor

cc: City Council
City Administrator