



May 7, 2012

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

Re: Comments on the proposed amendments to the *Water Quality Control Plan for the Los Angeles Region* to revise Total Maximum Daily Loads for Bacteria for (1) Santa Monica Bay Beaches; (2) Marina del Rey Harbor, Mothers' Beach, and Back Basins; (3) Los Angeles Harbor, Inner Cabrillo Beach, and Main Ship Channel; (4) Ballona Creek, Ballona Estuary, and Sepulveda Channel; and (5) Malibu Creek and Lagoon, and to amend Chapter 3 to modify the Implementation Provisions for Water Contact Recreation Bacteria Objectives ("Draft Amendments")

Dear Mr. Voong,

On behalf of Heal the Bay and Santa Monica Baykeeper ("Baykeeper") and the thousands of our members who swim, surf and play in the waterbodies affected by the proposed Draft Amendments, we submit the following comments to urge the Los Angeles Regional Water Quality Control Board ("Regional Board") to maintain strong public health protections against the well-documented harmful effects of waterborne bacteria.

As the plaintiffs in the 1998 Clean Water Act citizen action which led to the adoption of the Santa Monica Bay Beaches Bacteria TMDL and as key stakeholders in the development of the Santa Monica Bay Beaches Bacteria TMDL, which serves as a model for other Bacteria TMDLs in the Region, Heal the Bay and Baykeeper have a strong interest in ensuring that all Bacteria TMDLs provide maximum public health protection. Our groups have closely followed the development of each Bacteria TMDL, providing public comments during every step of their development and implementation. We firmly believe that the regulatory framework, the science and the data underlying the TMDLs all demonstrate the need to strengthen these TMDLs and the critical protections against human illnesses resulting from exposure to bacteria at our rivers and beaches. We urge the Board to do just that.¹

¹ We appreciate the opportunity to provide these comments. Our comments are limited to the scope of the reconsideration envisioned in the original Bacteria TMDL and the proposed changes to the Basin Plan Amendment, as indicated by strikethrough's and underlined format in the tentative documents:



The Regional Board should preserve a rolling 30-day geometric mean period

We urge the Regional Board to preserve a **rolling 30-day geometric mean period**, which is critical for tracking and identifying chronic water quality problems. This is extremely important for public health protection of beachgoers on a day to day basis. The Regional Board staff is proposing a longer six-week geometric mean period. A shorter geometric mean period is more technically sound because it allows for a more comprehensive analysis, which can better account for the beach water quality fluctuations that may be masked with a longer period. As demonstrated in the attached Table, using the six week geomean period results in lower protection.

According to EPA's 1986 Recreational Beach Water Quality Criteria, the current water quality monitoring recommendation is no less than five samples equally spaced over a 30-day period. California's Ocean Plan is identical to USEPA's geometric mean water quality monitoring guidelines. Additionally, the California Department of Health Services' *Draft Guidance for Salt and Freshwater Beaches* recommends a "...a 30-day sampling period in order to provide the minimum protective bacteriological standards for waters adjacent to public beaches and public water-contact sports areas." There is no justification for the Regional Board to provide a different calculation in the Draft Amendments.

While we support zero (0) exceedances of the geometric mean, we believe the proposed increase in the geometric mean period is unjustified as it will result in decrease in public health protections. Instead, the Regional Board should take the most protective approach and maintain the existing rolling 30-day geometric mean period, at the minimum.

The Regional Board should use a more appropriate reference beach such as Nicholas Beach

While we believe that a reference beach approach is an appropriate way to develop fecal Bacteria TMDLs, Leo Carrillo Beach is no longer an appropriate reference beach for bacteria TMDLs in the Los Angeles Region. Based on Heal the Bay's analysis of Beach Report Card data for the Region and the land uses and level of development in the Los Angeles Region watersheds, a more appropriate reference beach for our Region is Nicholas Beach, located at the bottom of the Nicholas Canyon watershed. Consequently, the Regional Board can no longer rely on Leo Carrillo Beach as the reference beach for our Region but should instead explore other, more appropriate reference beach locations such as Nicholas Beach in the Draft Amendments.

As the Regional Board explained when it initially developed the reference beach approach for fecal bacteria TMDL's in the Los Angeles Region, Leo Carrillo Beach and the Arroyo Sequit watershed were selected as an "interim" reference system "until other reference sites ... are



evaluated and the necessary data collected to support the use of alternative reference sites”.² The criteria for selecting an appropriate reference system include: 1) availability of adequate historic shoreline monitoring data at the beach, 2) lowest level of development in the watershed draining to the beach, and 3) existence of fresh water outlet (i.e. creek) to the beach.³ The Regional Board’s decision to choose Leo Carrillo as an interim reference site was primarily driven by the limited availability of historical shoreline monitoring data but the Board unequivocally resolved to re-evaluate the use of Leo Carrillo Beach due to concerns with the development in close proximity to the beach.⁴

Shoreline monitoring data from the last 9 years has in fact confirmed the Regional Board’s concerns, demonstrating that Leo Carrillo Beach is not the appropriate reference site beach for fecal bacteria TMDLs in the Los Angeles Region. The data is unsurprising since Leo Carrillo Beach has significant development at the terminus of Arroyo Sequit Creek (the creek emptying at Leo Carrillo Beach), with septic systems located near the bottom of the creek and heavy use by campers of the areas in close proximity to the beach. Staff’s proposed Draft Amendments contain no assessment of the current condition and effectiveness of these old and heavily used septic systems. An analysis of the contributions of these systems to bacterial contamination in the lower watershed is long overdue and should be provided before the Regional Board can continue to rely on Leo Carrillo Beach as a reference site.

While the Regional Board staff report states that “...Leo Carrillo Beach ensures equal protection across Santa Monica Bay beaches,” a review of the Region’s beach water quality data for the last six years clearly shows that Nicholas Canyon is a more appropriate reference beach, with significantly less exceedances of the fecal bacteria indicator standards (see attached Tables 1 & 2). Furthermore, Nicholas Beach meets the rest of the reference beach selection criteria developed by the Regional Board. Nicholas Beach and the Nicholas Canyon watershed have a very low level of development, there is ample historical monitoring data and there is a freshwater outlet at the beach, Nicholas Creek. For all of these reasons, the Regional Board should use another reference beach alternative, such as Nicholas Beach.

The Regional Board should use a more representative data analysis period for Leo Carrillo Beach

While the best approach for the Draft Amendment is to select a new reference site such as Nicholas Beach, we urge the Regional Board, at the minimum, to select a more appropriate data analysis time period if Leo Carrillo Beach remains as a reference site. The Regional Board’s analysis of monitoring data (2004 to 2010) collected at “point zero” from Leo Carrillo Beach shows an exceedance increase during summer and winter dry weather periods. Thus, the Regional Board should include only the last five years of monitoring data (2006 to 2011) to

² Regional Board Resolution No. 2002-002

³ See id. 4, ¶ 22

⁴ See id.



remove any bias in the exceedance probability created due to the extreme wet weather conditions experienced in the 2005-2006 winter season. This bias is demonstrated in the attached Table 1.

The Regional Board should not implement sub-seasons in the Draft Amendment

It is inappropriate for the Regional Board to divide the geometric mean calculation period into sub-seasons for the Ballona Creek, Ballona Estuary and Sepulveda Channel Bacteria TMDL as proposed in the Draft Amendment. Calculating a static (non-rolling) geometric mean per sub-season would inhibit the ability to track chronic pollution problems, and is inconsistent with the rolling geometric means proposed in the Draft Amendment for Santa Monica Bay, Marina del Rey, LA Harbor and Cabrillo Beach, and Malibu Creek Watershed Bacteria TMDL's. Why did staff propose a different approach for this TMDL? Instead, this proposed approach would simply provide regulatory relief to dischargers and would be disastrous for public health protection. We urge the Regional Board to remove geometric mean sub-season periods and instead retain a rolling 30-day geometric mean for both wet and dry weather, in order to provide continuous public health protection.

The Regional Board should not use the 90th percentile storm year to determine exceedance rates

The proposed Draft Amendment uses the number of wet weather days during the 90th percentile storm year to determine the number of days of allowable number of exceedances. Because the 90th percentile rain event year is used to determine the number of allowable exceedances, during 90% of all years analyzed, the actual number of exceedances at the reference location will be less than the allowable number of exceedances. Thus, in 90% of the years the TMDL does not truly account only for natural conditions. Heal the Bay has expressed its concern over this methodology in our comment letters regarding both the dry and wet bacteria TMDL's for Santa Monica Bay Beaches. Instead, we suggest that the Regional Board use the median or 50th percentile storm year.

Miscellaneous

- As you know, the TMDL allows for additional compliance time when an integrated approach to wet weather TMDLs is pursued. We supported this concept, as it is extremely important to look at water issues comprehensively. Most dischargers appear to be taking this added time as a "given." What evaluation has been done by the Regional Board to ensure that this extra time is truly merited and progress to this end is occurring? We have seen no confirmation to date. As part of this reopener process, we



strongly urge the Regional Board to set strong criteria for being eligible for this extra time and to evaluate what has occurred to date.

- The notice mentions an amendment to Chapter 3. What does this entail? We do not see any such proposed changes in the documents distributed.
- We are encouraged that the Regional Board decided not to use “ghost data”⁵ when determining the geometric mean. These data may misrepresent actual water quality and fluctuations, thereby giving the public a false sense of security or misrepresentation of poor water quality conditions.

In summary, Heal the Bay and Baykeeper strongly urge the Regional Board to ensure that water quality standards are met and public health is not compromised for years to come. The Bacteria TMDLs reconsiderations should not be used to relax water quality protection at the expense of beachgoers and our vitally important tourist economy. To that end, the proposed Draft Amendments should be revised to preserve the rolling 30-day geometric mean to accurately account for water quality fluctuations and better protect the public from bacteria pollution. Furthermore the proposed static seasonal geometric mean should be removed from the Ballona TMDL. Finally, the Regional Board should not longer use Leo Carrillo Beach as the most appropriate reference beach for our Region but should instead rely on Nicholas Beach or another more appropriate location.

Thank you for the opportunity to comment.

Sincerely,

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⁵ A monitoring location’s data extrapolated to unmonitored days.

**Total Exceedances (Geometric Mean and Single Sample) by Percent Comparison between
Leo Carrillo Beach and Nicholas Canyon**

Site	SampleCount	Time Period
		Summer Dry (April - Oct)
Leo Carrillo (11/1/2004 - 10/31/2010)	187	16.6%
Leo Carrillo (04/01/2007 - 10/31/2011)	158	7.6%
Nicholas Canyon (11/1/2004 - 10/31/2010)	171	1.8%
		Winter Dry (Nov - Mar)
Leo Carrillo (11/1/2004 - 10/31/2010)	96	20.8%
Leo Carrillo (04/01/2007 - 10/31/2011)	86	19.8%
Nicholas Canyon (11/1/2004 - 10/31/2010)	90	12.2%

TABLE 1

Comparing different Geomean calculations for Enterococcus using Regional Board Leo Carrillo data for different seasonal periods					
Site	Time Period	Sample Count	GM count	GMx Count	GMx%
Leo Carrillo	Summer Dry (Standard 30-day geomean calculation with >4 samples)	187	167	28	16.8%
Leo Carrillo	Summer Dry (Six week (42-day) geomean calculation with >4 samples)	210	198	27	13.6%
Nicholas Canyon	Summer Dry (Standard 30-day geomean calculation with >4 samples)	171	139	0	0%
Leo Carrillo	Winter Dry (Standard 30-day geomean calculation with >4 samples)	96	34	12	35.3%
Leo Carrillo	Winter Dry (Six week (42-day) geomean calculation with >4 samples)	102	53	10	18.9%
Nicholas Canyon	Winter Dry (Standard 30-day geomean calculation with >4 samples)	90	23	1	4.3%

Table 2