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COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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IN REPLY PLEASE

REFER TO FILE: **WM-9**

Mr. Samuel Unger, P.E., 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:

COMMENT LETTER – BALLONA CREEK METALS AND BALLONA CREEK ESTUARY TOXIC POLLUTANTS TOTAL MAXIMUM DAILY LOADS REVISIONS

The County of Los Angeles and the Los Angeles County Flood Control District appreciate the opportunity to provide comments on the draft amendments to Chapter 7 of the Basin Plan to revise Ballona Creek Metals and Ballona Creek Toxic Pollutants Total Maximum Daily Loads. Enclosed are our comments for your review and consideration.

If you have any questions, please contact me at (626) 458-4300 or ghildeb@dpw.lacounty.gov or your staff may contact Ms. Angela George at (626) 458-4325 or ageorge@dpw.lacounty.gov.

Very truly yours,

GAIL FARBER
Director of Public Works

A handwritten signature in black ink, appearing to read "Angela George", is written over the printed name of the Assistant Deputy Director.

A handwritten signature in black ink, appearing to read "Gary Hildebrand", is written over the printed name of the Assistant Deputy Director.
GARY HILDEBRAND
Assistant Deputy Director
Watershed Management Division

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Enc.

cc: Chief Executive Office (Dorothea Park)
County Counsel (Judith Fries)

**COMMENTS OF THE COUNTY OF LOS ANGELES
AND LOS ANGELES COUNTY FLOOD CONTROL DISTRICT ON
DRAFT RECONSIDERATION OF TOTAL MAXIMUM DAILY LOADS FOR BALLONA
CREEK METALS AND BALLONA CREEK ESTUARY TOXIC POLLUTANTS**

The County of Los Angeles and Los Angeles County Flood Control District appreciate the opportunity to comment on the proposed changes as part of the reconsideration of the Ballona Creek Metals and Ballona Creek Estuary Toxic Pollutants Total Maximum Daily Loads (TMDLs). In January 2013, the County of Los Angeles, along with the City of Los Angeles and other responsible agencies, submitted “white papers” recommending a number of changes to these two TMDLs based on new information and data collected since the promulgation of the TMDLs. We appreciate Regional Board staff’s consideration of the white papers in revising the TMDLs. Below are our additional comments in response to the proposed changes.

COMMENTS SPECIFIC TO THE BALLONA CREEK METALS TMDL

1. Final compliance date should align with implementation timeline for Senate Bill 346

As indicated in Appendix D of the draft Staff Report, water quality monitoring data shows that, in the Ballona Creek watershed, copper is the only metal that exceeds during dry weather and has the most number of exceedances during wet weather.

Since the adoption of the original TMDL in 2007, Senate Bill 346 (SB 346) was signed into law in 2010, which requires a reduction in copper content in brake pads to five percent (by weight) by 2021 and to 0.5 percent by 2025. This law is expected to significantly reduce copper loading over time in California’s urbanized watersheds, including the Ballona Creek watershed; it represents the most cost-effective way to achieve the TMDL’s copper limits. Other TMDLs developed by Regional Board staff have recognized the role of SB 346 in copper reduction, specifically the Los Cerritos Channel and San Gabriel River Metals TMDLs adopted by the Regional Board in June 2013. The Staff Report for those TMDLs states:

“Stakeholders have proposed an implementation schedule generally consistent with the implementation of SB 346 ... Thus, based on ... the potential phase out of copper ... in the watershed due to pollution prevention, the 13-year implementation schedule is reasonable and as short as practicable”

The resulting TMDL implementation schedule for the Los Cerritos Channel and San Gabriel River Metals TMDLs is shown below:

| Final Compliance Schedule | |
|---------------------------|------|
| Dry weather | 2023 |
| Wet weather | 2026 |

However, the final compliance dates for dry weather and wet weather in the tentative Basin Plan Amendment (BPA) for the Ballona Creek Metals TMDL currently do not reflect the implementation timeline of SB 346, but instead remain unchanged at January 11, 2016, and January 11, 2021, respectively. The final compliance dates for the Ballona Creek Metals TMDL should be modified to align with the implementation timeline for SB 346, specifically 2023 for dry weather and 2026 for wet weather.

2. Dissolved targets are miscalculated and should be corrected

Metal targets and hardness exhibit a direct relationship, that is, metal targets increase when hardness increases. The revised dissolved targets indicated in the tentative BPA do not reflect this principle. For example, the revised wet-weather dissolved criteria for copper and lead are lower than the original criteria in spite of the increase in hardness value from 77 mg/L to 82 mg/L. Our calculations indicate that the dissolved dry- and wet-weather targets presented in the tentative BPA need correction as shown below.

| Metal | Dry-weather Dissolved Targets (µg/L) | | Wet-weather Dissolved Targets (µg/L) | |
|--------|--------------------------------------|-----------------------|--------------------------------------|-----------------------|
| | Targets in Tentative BPA | Our Calculated Values | Targets in Tentative BPA | Our Calculated Values |
| Copper | 24.68 | 29.03 | 9.45 | 11.15 |
| Lead | 10.11 | 10.83 | 42.96 | 52.00 |
| Zinc | 326.50 | 379.16 | 95.74 | 99.04 |

3. Dry-weather total recoverable targets should be calculated using the 50th percentile conversion factor consistent with the State Implementation Policy

The proposed dry-weather total recoverable metal concentration targets were calculated using the 90th percentile ratio of the dissolved metals value to total recoverable metals value (conversion factor). According to the Water Board's State Implementation Policy (SIP), chronic (or dry weather) criteria should be calculated using the 50th percentile (i.e., median) conversion factor. The 90th percentile is to be used only for acute (or wet weather) criteria. Page 14 of the SIP states:

"The translator shall be derived using the median of data for translation of chronic criteria and the 90th percentile of observed data for translation of acute criteria."

Therefore, we request that the dry-weather metals targets be re-calculated using the 50th percentile conversion factor, consistent with the SIP. The table below provides the dry-weather total recoverable metal concentration targets we calculated for dry

weather based on the 50th percentile conversion factors shown in Table 3-6 of the draft Staff Report and the dissolved targets we calculated and presented in Item 2 above.

| Metal | Our Calculated Dissolved Targets (µg/L) | Conversion Factor (50 th Percentile) | Our Calculated Total Recoverable Targets (µg/L) |
|--------|---|---|---|
| Copper | 29.03 | 0.508 | 57.14 |
| Lead | 10.83 | 0.201 | 53.88 |
| Zinc | 379.16 | 0.500 | 758.32 |

4. The TMDL should only list the beneficial uses applicable to Ballona Creek

It is our understanding that the Metals TMDL only applies to the freshwater portion of Ballona Creek. However, the Problem Statement section of the TMDL lists beneficial uses that are not applicable to Ballona Creek. According to the Basin Plan, Ballona Creek is designated for the following beneficial uses: WARM, WILD, LREC-1, and REC-2. The TMDL should be revised to reflect these beneficial uses only. Specifically, the following beneficial uses should be deleted: EST, MAR, RARE, MIGR, SPWN, COMM, and SHELL.

5. The targets for lead should be revised based on the Lead Recalculation Report recently completed by stakeholders in the Los Angeles River watershed

Earlier this year, stakeholders in the Los Angeles River watershed completed and shared with the Regional Board the Lead Recalculation Report to Support Implementation of the Los Angeles River and Tributaries Metals TMDL. The report incorporated comments from an independent scientific Technical Advisory Committee and Regional Board staff. The report indicates that since “the entire approved USEPA dataset was utilized [in the Lead Recalculation], the recalculation of the lead criteria results in a de facto recalculation of the national criteria.” Therefore, the findings presented in the Lead Recalculation Report are applicable to all water-bodies in southern California, including Ballona Creek. Accordingly, we request that the lead targets in Ballona Creek be revised based on the equations proposed in the Lead Recalculation Report, which are shown below.

$$\begin{aligned} &\text{Proposed Chronic Dissolved Target} \\ &= (1.46203 - \ln(\text{hardness})) * 0.145712 * e^{1.466 * \ln(\text{hardness}) - 3.649} \end{aligned}$$

$$\begin{aligned} &\text{Proposed Acute Dissolved Target} \\ &= (1.46203 - \ln(\text{hardness})) * 0.145712 * e^{1.466 * \ln(\text{hardness}) - 1.882} \end{aligned}$$

Based on the proposed equations above and the hardness values and conversion factors presented in the tentative BPA, the recalculated dissolved and total recoverable targets would be as shown below:

| | Hardness (mg/L CaCO ₃) | Dissolved Targets (µg/L) | Conversion Factor | Total Recoverable Targets (µg/L) |
|-------------|---------------------------------------|--------------------------------|----------------------|--|
| Dry weather | 396 | 98.78 ^a | 0.201 ^c | 491.44 |
| Wet weather | 82 | 79.81 ^b | 0.677 ^d | 117.89 |

^a Dry weather dissolved target = Proposed Chronic Dissolved Target

^b Wet weather dissolved target = Proposed Acute Dissolved Target

^c 50th percentile conversion factor

^d 90th percentile conversion factor

COMMENTS SPECIFIC TO THE BALLONA CREEK ESTUARY TOXICS TMDL

1. The loading capacities and waste load allocations should be calculated using the total sediment discharge to the Ballona Creek estuary

Ballona Creek estuary's loading capacities were calculated using the average annual sediment deposition rate of fine sediment particles in the estuary, with the assumption that only fine-grained particles carry the pollutants (2005 Ballona Creek Toxics TMDL Staff Report, page 32). This assumption is not supported by current science. A study¹ conducted by Southern California Coastal Water Research Project concluded that although most stormwater metals are associated with particles less than 6 µm, the association shifts to larger particles with larger storms, indicating that pollutants are associated with all sediment particles.

Moreover, the calculation of TMDL allocations based on a sediment deposition rate in the estuary, rather than on what is being discharged from the watershed, creates implementation and compliance challenges for MS4 agencies. The determination of jurisdictional contributions and the design of associated implementation actions and compliance evaluation would depend on total sediment discharged, not just fine or deposited sediment. Dischargers rely heavily on modeling tools for implementation planning; typically, these tools help select Best Management Practices by estimating the load reduction based on total discharges rather than what settles.

For the reasons stated above, the TMDL loading capacities and wasteload allocations should be set based on the total sediment discharged from the watershed. This way the TMDL would be consistent with other Toxics TMDLs in the region, including Colorado Lagoon Toxics TMDL, Machado Lake Toxics TMDL, Marina del Rey Toxics TMDL, and Santa Monica Bay Toxics TMDL.

¹ Brown et al. Metals and bacteria partitioning to various size particles in Ballona Creek stormwater runoff. 2013. Environmental Toxicology and Chemistry 32:320-328.

Based on information presented in the 2005 Final Staff Report, the total sediment discharge into the estuary from Ballona Creek is about 44,615 cubic meters per year. With the bulk sediment density of 1.42 metric tons per cubic meter, the total mass of sediment discharge would be 63,350 metric tons per year. Given that, the allowable allocations for each pollutant would then be as presented in the table below.

| Metals | Sediment Discharged (mt/year) | TMDL Target (mg/kg) | Loading Capacity/Allowable Loading Based on Discharged Sediment (kg/yr) |
|------------|-------------------------------|---------------------|---|
| Cadmium | 63,350 | 1.2 | 76.0 |
| Copper | | 34 | 2,154 |
| Lead | | 46.7 | 2,959 |
| Silver | | 1 | 63.4 |
| Zinc | | 150 | 9,503 |
| Organics | | TMDL Target (µg/kg) | Loading Capacity/Allowable Loading Based on Discharged Sediment (g/yr) |
| Total DDT | | 1.58 | 100 |
| Total PCB | | 22.7 | 1,438 |
| Total PAHs | | 4,022 | 254,807 |
| Chlordane | | 0.5 | 31.7 |

2. Imposing fish tissue-based targets is not justified

The tentative BPA incorporates fish tissue targets despite a lack of evidence that fish tissue is impaired. As noted in Appendix D of the draft Staff Report, existing data do not show fish tissue impairment in the Ballona Creek estuary. In the absence of fish impairment, it is not appropriate to incorporate fish tissue-based targets in the TMDL. Additionally, the fish tissue-based sediment targets included in the tentative BPA were adopted from site-specific studies conducted in San Francisco Bay, which is not reflective of the conditions in the Ballona Creek estuary. Finally, the State is working on Phase II of the Sediment Quality Objectives, which will establish appropriate sediment targets associated with fish tissue. Therefore, the TMDL should not include fish tissue-based sediment targets until after Phase II (indirect effects criteria) is adopted by the State. Further, any fish tissue monitoring should be conducted every two years instead of annually, consistent with the Los Angeles and Long Beach Harbors Toxics TMDL.

COMMENTS APPLICABLE TO BOTH METALS AND TOXICS TMDLS

1. Monitoring requirements for selenium and PAHs should be removed or reduced

The tentative BPAs for the Metals and Toxics TMDLs remove selenium and PAHs due to the findings of non-impairment. However, the TMDLs still require responsible agencies to continue to monitor these pollutants at the same frequency as the other pollutants listed in the TMDLs. In light of the findings of non-impairment, dischargers should not be required to continue to monitor for selenium and PAHs as part of the TMDLs. Instead, an assessment of selenium and PAHs levels can be addressed through monitoring being conducted at the mass emission station as part of the MS4 Permit. If monitoring for these two pollutants must remain as part of the TMDLs, the frequency of monitoring should be reduced to allow resources to be directed to higher priority areas.

2. Future TMDL re-opener dates should be added

With the continuous evolution of the science behind stormwater management and new data collected through the TMDL monitoring programs, it is important to evaluate the TMDLs periodically. We request that a future TMDL re-opener date for 2019 be included in the implementation schedule of both TMDLs.

3. Reference to “jointly responsible” should be deleted as it is inconsistent with the Clean Water Act

Both the tentative BPAs for the Ballona Creek Metals TMDL and the Ballona Creek Estuary Toxics TMDL provide that the MS4 permittees are “jointly responsible” for meeting the mass-based waste load allocations assigned to the MS4 permittees (tentative BPA for the Ballona Creek Metals TMDL, page 11; tentative BPA for the the Ballona Creek Estuary Toxics TMDL, page 8). There is no basis under the Clean Water Act for making MS4 permittees “jointly responsible” and this reference should be deleted.

A TMDL is a requirement imposed by the federal Clean Water Act and therefore it is limited to what is authorized by the Clean Water Act. The Clean Water Act limits a waste load allocation to one point source, not a combination of point sources. 40 C.F.R. § 130.2(h) defines “waste load allocation (WLA)” to mean “The portion of a receiving water’s loading capacity that is allocated to **one** of its existing or future point sources of pollution. WLAs constitute a type of water quality-based effluent limitation.” This regulation does not define waste load allocations in terms of a set of point sources or “joint” discharges. Instead, under this definition, each point source has its own separate waste load allocation; that point source is responsible only for its own allocation.

The fact that each point source is responsible only for its own allocation, and not the allocation given to others, derives from the provisions of the Clean Water Act itself. There is no provision for imposing joint responsibility under the Clean Water Act. Under the Act, a party is responsible only for its own discharges or those over which it has control. *Jones v. E.R. Snell Contractor, Inc.*, 333 F.Supp.2d 1344, 1348 (N.D. Ga. 2004); *United States v. Sargent County Water Dist.*, 876 F.Supp. 1081, 1088 (D.N.D. 1992). See also *United States v. Michigan*, 781 F. Supp. 1230, 1234 (E.D. Mich. 1991) (“There is nothing in federal law that requires the Counties to accept responsibility for discharges that ... are appropriately within the province, jurisdiction and responsibility of local municipalities.”).

The Clean Water Act regulations applicable to MS4 permits specifically provide that co-permittees under an MS4 permit are only required to “comply with permit conditions relating to discharges from the municipal separate storm sewers *for which they are operators.*” 40 C.F.R. § 122.26(a)(3)(vi) (emphasis supplied).

Similarly, under the Porter-Cologne Act, Water Code § 13000 et seq., waste discharge requirements (“WDR”) are issued to the person or entity that is “discharging.” Water Code § 13260(a)(1) provides that “any person discharging waste, or proposing to discharge waste” shall file a report of waste discharge. After hearing, the Regional Board issues waste discharge requirements to “the **person** making or proposing the discharge.” Water Code § 13263(f) (emphasis supplied). Enforcement is directed towards “any person who violates any cease and desist order, cleanup and abatement order . . . or . . . waste discharge requirement.” Water Code § 13350(a). See also Water Code § 13300 (the regional board may require the **discharger** to submit for approval a detailed time schedule of specific actions)(emphasis supplied); Water Code § 13301 (cease and desist order directed at “those persons not complying with the requirements or discharge prohibitions”). Under the Porter-Cologne Act, a discharger is not responsible for discharges of pollutants over which it has no authority or control.

Should the Regional Board decline to delete the reference to “jointly responsible,” then the Regional Board should clarify that no one permittee is individually required to ensure that co-mingled stormwater meets the applicable WLAs. This can be accomplished by adding in the MS4 and Caltrans section on page 11 of the tentative BPA for the Ballona Creek Metals TMDL the following sentence at the end of the first paragraph:

No permittee shall be individually required to ensure that co-mingled stormwater meets the applicable MS4 WLAs unless such permittee is shown to be solely responsible for the exceedances.

A similar sentence should be added in the MS4 and Caltrans section on page 8 of the tentative BPA for the the Ballona Creek Estuary Toxics TMDL.