



November 14, 2013

Mr. Samuel Unger, Executive Officer  
Los Angeles Regional Water Control Board  
320 West Fourth Street, Suite 200  
Los Angeles, CA 90013  
Via email: samuel.unger@waterboards.ca.gov; Man.Voong@waterboards.ca.gov

**Re: Proposed Amendments to the Los Angeles Regional Basin Plan to revise the Total Maximum Daily Loads for Ballona Creek Metals and Ballona Creek Toxic Pollutants**

Dear Mr. Unger,

On behalf of Heal the Bay and Los Angeles Waterkeeper, we submit the following comments to the Los Angeles Regional Water Quality Control Board (“Regional Board”) on the proposed amendments to the Los Angeles Regional Basin Plan to revise the Ballona Creek Metals total maximum daily load (“Draft Metals TMDL”) and Ballona Creek Estuary Toxic Pollutants total maximum daily load (“Draft Toxics TMDL”).

The Draft Toxics TMDL and Metals TMDL must be revised prior to adoption to address the deficiencies identified below.

**Proposed Alternative Compliance Mechanism**

Our biggest concern with the Draft Metals TMDL and Draft Toxics TMDL is the new alternative compliance mechanism proposed by Regional Board staff. Both Draft TMDLs allow dischargers to demonstrate compliance by providing “quantitative demonstrations that control measures and best management practices will achieve” WLAs and WQBELs consistent with implementation schedules for the TMDLs and subject to Executive Office approval. Draft Metals TMDL at p. 10, 11, 12; Draft Toxicity TMDL at p. 8, 9. This proposed alternative compliance is improper and unjustified and must be removed.

As stated on numerous occasions, both Heal the Bay and Waterkeeper are supportive of BMPs and storm water and non-storm water control measures as an important method for ensuring dischargers comply with WLAs, effluent limits and water quality standards. BMPs and other measures, however, cannot be used as a measure for compliance with water quality standards, effluent limits and TMDLs. Providing quantitative demonstrations of BMP effectiveness and/or installation of Regional Board-approved BMPs do not ensure that TMDL wasteload allocations and WQBELs are actually met to achieve compliance with water quality standards in the impaired waterbodies. Moreover, the Regional Board fails to provide any evidence to support its decision to allow the alternative compliance demonstration with Metals and Toxicity TMDLs, let alone explain how any of the quantitative demonstrations for BMPs or measures to be implemented in the future will be sufficient to achieve WLAs or WQBELs. The alternative compliance demonstration mechanism provided in the Draft TMDLs is therefore not



supported by the findings and the evidence and violate state law. See *Topanga Ass'n for a Scenic Cmty*, (1974) 11 Cal.3d 506, 515 (the administrative agency's analysis must "bridge the analytic gap between the raw evidence and [the] ultimate decision or order"); see also *Zuniga v. Los Angeles County Civil Serv. Comm'n* (2006) 137 Cal.App.4th 1255, 1258 (abuse of discretion is established when the administrative order or decision is not supported by the findings or the findings are not supported by the evidence).

For these reasons, the alternative compliance demonstrations must be deleted from the Draft TMDLs or, at a minimum, revised to require BMP monitoring to verify compliance with WLAs and WQBELs.

## **Proposed Amendments to Ballona Creek Metals TMDL**

### **Toxicity Inclusion in TMDL**

Ballona Creek is included on the Clean Water Act Section 303(d) list of impaired waterbodies for dissolved copper, dissolved lead, total selenium, dissolved zinc, and toxicity. Appropriately, the toxicity impairment was added to the Draft Metals TMDL (although it is unclear why this was not in the original TMDL). However, while other toxicity TMDLs in the Region, such as the Calleguas Creek Watershed Toxicity TMDL, include toxicity numeric targets, the Draft Metals TMDL does not provide a numeric target or wasteload allocation for toxicity. The Regional Board provides no justification for this decision. A toxicity numeric limit and WLA should be included in the Draft Metals TMDL. In addition, the Regional Board should require toxicity monitoring in the water column in order to track toxicity over time.

### **Compliance with Past Implementation Schedule Dates**

We have concerns regarding the change in compliance actions required by the already-passed compliance date, January 11, 2012, for MS4 and Caltrans Storm Water Permits in the Draft Metals TMDL. On page 17 of Attachment A, the compliance actions for the January 11, 2012 implementation date have been changed to include the following: "Alternatively, permittees shall attain a 50% reduction in dry-weather and 25% reduction in wet-weather in the difference between the current loadings and WLAs, as measured at the relevant existing MS4 permit monitoring location and/or at relevant MS4 monitoring stations identified in an approved coordinated monitoring plan." This type of revision in compliance actions is neither envisioned by the Ballona Metals TMDL<sup>1</sup> nor is it supported by the staff report. More importantly, it is completely improper for Permittees' compliance options to be changed once implementation schedule dates have passed. For this reason, any revisions to the required compliance actions should be removed.

## **Ballona Creek Estuary Toxic Pollutants TMDL**

### **Margin of Safety is Not Sufficient**

The Draft Toxics TMDL states that "the addition of numeric targets for indirect effects and multiple compliance options listed in the implementation section for sediments serve as an implicit margin of safety". Pursuant to Section 303(d) of the Clean Water Act, TMDLs must include a margin of safety to reflect uncertainties regarding discharges, water quality, and capturing critical conditions. The inclusion

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<sup>1</sup> The Ballona Metals TMDL specifically stated that reconsiderations of the TMDL were to focus on the implementation schedule and the WLAs. Ballona Creek Metals TMDL at Table 7-12.2.



of less stringent numeric targets, compared to the current TMDL, and multiple compliance options for sediment, including demonstrating compliance through quantitative demonstration that BMPs and control measure will achieve WLAs and WQBELs, does not serve as an implicit margin of safety. In fact, these will likely result in greater impairment of the waterway. Thus, the Draft Toxics TMDL should include an explicit margin of safety.

### **Compliance with Sediment Waste Load Allocations**

The Draft Toxics TMDL states MS4 and Caltrans Storm Water Permittees can demonstrate compliance with TMDL sediment waste load allocations for Chlordane, total DDT, and total PCBs via one of four different ways:

- a. Sediment numeric targets are met in bed sediments.
- b. Fish tissue targets are met in species resident to Ballona Creek Estuary.
- c. Final sediment allocations, as presented above, are met.
- d. Demonstrate that the sediment quality condition protective of fish tissue is achieved per the Statewide Enclosed Bays and Estuaries Plan, as amended to address contaminants in resident finfish and wildlife.

We believe that TMDL language should be modified to require that “a” and “b” and “c” must be met in order to be deemed in compliance. The goal of the TMDL is for all beneficial uses to be protected, not just one. If you only have one compliance endpoint, it is uncertain if all beneficial uses will be met. In addition, fish tissue concentration for Chlordane, total DDT, and total PCBs can vary depending on size and age of fish as well as season. Furthermore, fish migration in the estuary can influence constituent concentrations. Because of fish tissue concentration variability, we ask that the Draft Toxics TMDL specify as to how fish tissue sampling should be conducted.

### **TMDL Effectiveness Monitoring Schedule**

The Draft Toxic TMDL specifies that sediment quality effectiveness monitoring for direct effects (sediment triad sampling) be performed once every five years beginning in 2008. This frequency is not often enough to monitor sediment quality, and instead, we suggest monitoring be conducted twice every five years. Of note, the draft Coordinated Compliance, Monitoring, and Reporting Plan for Greater Los Angeles and Long Beach Harbor Waters requires sediment triad sampling be conducted twice every five (5) years. We ask the Regional Board to change the Draft Toxics TMDL sediment quality evaluation to twice every five years in order to best represent sediment conditions impacting water quality.

Sediment chemistry and toxicity samples are required to be collected annually to evaluate trends in general sediment quality constituents and listed TMDL constituents. We suggest sediment chemistry and toxicity effectiveness monitoring be done semi-annually to be consistent with other TMDL Toxics effectiveness monitoring programs (i.e. Marina Del Ray) in the region.

### **Miscellaneous**

The Draft Metals TMDL and Draft Toxics TMDL allow permit writers to translate concentration based waste load allocations for minor and general non-storm water NPDES permits into effluent limits by applying procedures outlined in Section 1.4 of the State Water Resources Control Board’s Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California



(2005) or **applying other appropriate methodologies authorized under federal regulation**. The language, “applying other appropriate methodologies authorized under federal regulation” is ambiguous and we ask the Regional Board to specify other appropriate methodologies. We suggest these methodologies be specified in a footnote.

Thank you for this opportunity to provide comment on the draft total maximum daily loads for Ballona Creek Metals and Ballona Creek Estuary Toxic Pollutants. We ask that you consider the aforementioned concerns. If you have any questions, please contact us at (310) 451-1500, Heal the Bay, or (310) 394-6162, Los Angeles Waterkeeper.

Sincerely,

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