



April 27, 2015

Mr. Samuel Unger, Executive Officer  
Los Angeles Regional Water Quality Control Board  
320 West Fourth Street, Suite 200  
Los Angeles, CA 90013

Via email: [Samuel.Unger@waterboards.ca.gov](mailto:Samuel.Unger@waterboards.ca.gov), [Renee.Purdy@waterboards.ca.gov](mailto:Renee.Purdy@waterboards.ca.gov),  
[Ivar.Ridgeway@waterboards.ca.gov](mailto:Ivar.Ridgeway@waterboards.ca.gov), [Chris.Lopez@waterboards.ca.gov](mailto:Chris.Lopez@waterboards.ca.gov), [losangeles@waterboards.ca.gov](mailto:losangeles@waterboards.ca.gov)

**Re: Comments on Tentative Time Schedule Order for Los Angeles County Municipal Separate Storm Sewer System (MS4) Permit (Order No. R4-2012-0175; NPDES Permit No. CAS004001) – Ballona Watershed Bacteria TMDL in Dry Weather**

Dear Mr. Unger,

On behalf of Heal the Bay and Los Angeles Waterkeeper, non-profit environmental organizations dedicated to protecting and restoring our rivers, creeks and coastal waters, we appreciate the opportunity to submit the following comments on the Tentative Time Schedule Order (TSO) No. R4-2015-XXXX requiring the City of Los Angeles, the County of Los Angeles, the Los Angeles County Flood Control District, the City of Beverly Hills, the City of Culver City, the City of Inglewood, and the City of West Hollywood<sup>1</sup> to comply with the requirements prescribed in the Los Angeles County Municipal Separate Storm Sewer System (MS4) Permit (Order No. R4-2012-0175; NPDES Permit No. CAS004001) implementing the Ballona Creek Watershed Bacteria Total Maximum Daily Load (TMDL) limitations (hereinafter "Tentative Ballona Creek TSO").

As parties to the 1999 Consent Decree with the United States Environmental Protection Agency which established the schedule for adoption of TMDLs for the Los Angeles Region, our organizations have worked on the development, adoption and implementation of the Ballona Creek Bacteria TMDL ("Bacteria TMDL") for more than 15 years. Just as with all TMDLs included in the 1999 Consent Decree, our goal for the Bacteria TMDL has been not only to establish the TMDL, but to also implement it as quickly as possible in order to ensure all point and non-point sources discharging into Ballona Creek and Estuary meet TMDL requirements and come into compliance with water quality standards. The Tentative Ballona Creek TSO will not achieve this goal and will in fact unjustifiably prolong the degradation of Ballona Creek and Estuary exposing the public to the well-known harms associated with fecal bacteria pollution. As discussed below, Heal the Bay and Los Angeles Waterkeeper do not support the TSO and ask the Regional Board to deny the TSO applications.

**I. Introduction, TMDL Requirements, and General Concerns**

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<sup>1</sup> "Ballona Creek Jurisdictional Group" includes all except Los Angeles County and Los Angeles County Flood Control District



The Bacteria TMDL became effective on April 27, 2007.<sup>2</sup> Pursuant to the TMDL, in 2009 the Ballona Creek Jurisdictional Group and the County of Los Angeles submitted to the Los Angeles Regional Water Quality Control Board (“Regional Board”) lengthy Draft Implementation Plans covering the entire Ballona Creek Watershed.<sup>2</sup> The Draft Implementation Plan submitted by the cities outlined many of the same BMPs that are now proposed in the Tentative TSO.<sup>3,4</sup> The County of Los Angeles Draft Implementation Plan only identified non-structural programmatic BMPs to address dry weather compliance.<sup>2</sup> Both Draft Implementation Plans identify and outline interim and final compliance deadlines to attain dry weather waste load allocations (“WLAs”) by April 27, 2013, as mandated by the Bacteria TMDL. Following Draft Implementation Plan submission, the Bacteria TMDL was revised, increasing in some cases the number of allowable exceedance days; these revisions became effective on July 2, 2014.<sup>2</sup> Although the Implementation Plans identify the needed steps to bring MS4 Permittees into compliance with final dry weather WLAs, TMDL monitoring data collected from 2009-2014 shows a general trend toward increased exceedances of bacteria limits.<sup>5</sup> Unsurprisingly, Permittees have failed to meet the TMDL dry weather WLAs expressed as allowable exceedance days by the April 27, 2013 deadline and now request a TSO.

While we acknowledge the efforts Permittees in the Ballona Creek Watershed have made up to this point to meet the requirements of the Bacteria TMDL, these efforts fall short of those outlined in the Ballona Creek Bacteria TMDL Draft Implementation Plans. The two major projects identified to treat 88 percent of the watershed for the Ballona Creek Jurisdictional Group were not constructed. Similarly, Los Angeles County’s efforts towards achieving compliance with the Bacteria TMDL have also been inexplicably slow and ineffective. In fact, Los Angeles County, who failed to propose any structural BMPs in their Draft Implementation Plan, is now, 8 years after the TMDL became effective, proposing for the first time in their TSO request a Dry-Weather Low Flow Reconnaissance Study which would outline possible structural BMPs.<sup>6</sup>

Moreover, a TSO is unjustified where, as here, Permittees have failed to secure the timely funding for projects included in their Implementation Plans despite being aware since 2006 or 2007 that they must comply with Bacteria TMDL waste load allocations by April 27, 2013. For example, the City of Los Angeles only applied for Clean Beach Initiative Funding for LTF-1, which would treat roughly 70 percent of the watershed, in August 2012 and funding commitments have still not been finalized.

Finally, the Tentative Ballona Creek TSO unjustifiably extends the deadline to comply with final dry weather TMDL WLAs by four-and-a-half years and allows exceedances in 92% of the samples in some cases.<sup>7</sup> This essentially ignores and accepts a continued risk of serious public health impacts from discharges of fecal indicator bacteria into Ballona Creek and Estuary and rewards the little progress that has been made over the last nine years since original TMDL adoption. Surely this outcome is not in the public interest and must not be allowed.

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<sup>2</sup> Tentative Ballona Creek TSO at 3.

<sup>3</sup> Total Maximum Daily Load for Bacterial Indicator Densities in Ballona Creek, Ballona Estuary, and Sepulveda Channel, Implementation Plan-Draft, City of Los Angeles et al. (November 30, 2009) at 5-2.

<sup>4</sup> They both rely on the implementation of two very similar, in one case flow treatment facilities to meet dry weather WLA.

<sup>5</sup> Tentative Ballona Creek TSO at 6-7.

<sup>6</sup> Los Angeles County and Los Angeles County Flood Control District TSO Request at 5-6.

<sup>7</sup> Tentative Ballona Creek TSO at 14-15.



We understand that TSOs can be a valuable tool for the shared goal of attainment of receiving water limitations; however, we believe that these should be used sparingly and in cases where it is clear that a good faith effort, including efforts to secure funding from all available sources and revise BMPs where monitoring data shows they are failing, has been made by Permittees. This, however, is not the case with the Tentative Ballona Creek TSO as outlined in more detail below.

**II. The Tentative TSO Is Unjustified Because the Permittees Have Not Demonstrated That They Have Engaged in Diligent Efforts to Achieve Compliance with the Ballona Creek Dry Weather Bacteria TMDL by the April 27, 2013 Deadline**

The 2009 Draft Implementation Plan submitted by the Ballona Creek Jurisdictional Group proposed the construction of two low flow treatment facilities (LFTF-1 and LFTF-2) as the primary strategy to achieve dry weather compliance.<sup>8</sup> Although the Plan states that wet weather structural BMPs and non-structural programmatic BMPs will help reduce bacteria discharges to the MS4, it acknowledges that these measures alone would not be sufficient to achieve compliance.<sup>9</sup> The Draft Implementation Plan submitted by the County of Los Angeles proposes targeted non-structural programmatic BMPs to address the sources of dry weather flows, with the major source identified as excessive residential irrigation.<sup>10</sup>

As outlined in the Tentative TSO, however, the majority of the efforts undertaken by some of the Permittees, including City of Beverly Hills, the County of Los Angeles and the Los Angeles County Flood Control District, appear to consist of measures that are not specifically directed at addressing bacteria source reductions, such as street sweeping, litter pick up and trash BMPs maintenance, and public education and outreach measures. In addition, programs proposed in the County Implementation Plan do not appear to have been implemented, such as those that address irrigation flows which were identified as a major source of dry weather flow bacteria pollution. Several Permittees identify implemented watershed control measures, which are used for justification of the TSO, that are 2012 Los Angeles County MS4 Permit requirements (e.g. Storm Water Management Program Minimum Control Measures); these programmatic BMPs should not be used to justify TMDL final compliance extensions because Permittees were aware that compliance with Bacteria TMDL WLAs was required long before the 2012 MS4 Permit was adopted. Further, no information is provided as to the effectiveness of the BMPs that were implemented in reducing bacteria loading and, in fact, monitoring data collected under the TMDL monitoring plan show these and other BMPs have not actually reduced the number of exceedance days.

Permittees themselves in cities' Draft Implementation Plan include implementation schedules for LFTF-1 and LFTF-2, yet it appears from review of the Tentative Ballona Creek TSO that these projects merely consist of concept reports, with no planning or design work completed. Both of these projects were supposed to be completed by the April 27, 2013 dry weather Bacteria TMDL final compliance deadline. The Tentative Ballona Creek TSO further states that LFTF-2 as described in the Implementation Plans was found to be infeasible, however it is unclear how long ago LFTF-2 was deemed infeasible and whether there would have been time to locate and implement an alternative project to replace LFTF-2.<sup>11</sup> In

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<sup>8</sup> Total Maximum Daily Load for Bacterial Indicator Densities in Ballona Creek, Ballona Estuary, and Sepulveda Channel, Implementation Plan-Draft, City of Los Angeles et al. (November 30, 2009) at 5-1.

<sup>9</sup> *Id.* at 5-31.

<sup>10</sup> Draft Multi-Pollutant TMDL Implementation for the Unincorporated County area of Ballona Creek, County of Los Angeles, (October 26, 2009) at 50.

<sup>11</sup> Tentative Ballona Creek TSO at 5.



addition, based on the analysis in the Implementation Plan, it is not clear that LFTF-2 would be absolutely necessary to meet the overall bacteria load reduction goals in the Watershed<sup>12</sup>, therefore the infeasibility of this project cannot serve to justify the delay in implementing the Ballona Bacteria TMDL and cannot serve as a basis for approving the Tentative Ballona Creek TSO.

The Tentative TSO states that one justification for its issuance is that the analysis in the City's 2009 Draft Implementation Plan needs to be refined to address bacteria limits in specific reaches of the Ballona Creek Watershed.<sup>11</sup> Given that the TMDL had specific WLAs for listed reaches, this cannot be justification for a TSO. The County's TSO request proposes a low flow reconnaissance study as well as structural controls, without a clear explanation as to why these measures were not proposed as part of the 2009 Draft Implementation Plan.<sup>6</sup> These proposals simply imply that the submitted Implementation Plans were not adequate and that the County and the Flood Control District have in fact failed to develop and take measures specifically designed to address bacteria dry weather pollution in Ballona Creek and meet Bacteria TMDL WLAs. Thus, the County has not made a diligent attempt to comply with the Ballona Bacteria TMDL by the April 27, 2013 deadline. Once again, this failure to comply cannot provide justification for the Tentative Ballona Creek TSO.

Finally, no information is provided about any efforts undertaken by Permittees to secure funding necessary to comply with the TMDL provisions and implement LFTF-1 or LFTF-2. Instead, Permittees simply state that they "lack ... sustainable funding source."<sup>13</sup> Without documents or information to substantiate it, this statement cannot provide the necessary justification for the TSO. Furthermore, it is unclear when Permittees first initiated efforts to fund LFTF-1 or LFTF-2; Clean Beach Initiative funding under Proposition 40, Proposition 50, and Proposition 84 was not requested for LFTF-1 until April 23, 2012, only one year before the final dry weather bacteria TMDL WLA was supposed to be met. Applying for funding one year prior to a TMDL final compliance date does not exemplify a good faith effort.

### **III. The Tentative TSO Is Unjustified Because It Requires Permittees to Implement BMPs That Were Already Included In the Implementation Plans.**

Perhaps the most important reason why the TSO is unjustified is the fact that its main directive to Permittees is to implement the LFTF-1. As already discussed, LFTF-1 was envisioned by the 2009 Ballona Creek Jurisdictional Group's Implementation Plan and no specific information is provided as to why this treatment system was not installed by the TMDL deadline. Again, failure to implement BMPs proposed by Permittees' themselves without any demonstration that good faith efforts were undertaken to comply with TMDL deadlines in light of monitoring data showing a clear trend toward increased exceedances cannot not serve as a basis to extend deadlines even further and deprive the public of the protections it is entitled to under the TMDL and the Clean Water Act.

### **IV. Low Flow Diversion to Sanitary Sewer Alternative**

The Tentative Ballona Creek TSO would allow the City of Los Angeles the option to divert in-stream flow in Ballona Creek to the sanitary sewer at or downstream of the proposed LFTF-1 location to serve as an

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<sup>12</sup> See Table 5-11 of the City of Los Angeles et al Implementation Plan-Draft; if reductions from LFTF-2 are removed, it appears that concentrations would still be below TMDL limits.

<sup>13</sup> See City of Los Angeles Request for TSO, page 7.



alternative control measure to comply with dry weather bacteria requirements.<sup>14</sup> It is unclear if any flow would be re-introduced downstream of this sanitary sewer diversion. Is the Tentative Ballona Creek TSO proposing to remove all dry weather flow? Would there be any flow left in Ballona Creek to support the its other beneficial uses? This approach is unclear, and in the absence of any details, we ask the Regional Board not to approve the TSO with this option.

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In conclusion, for all the reasons discussed above, the Tentative TSO is unjustified and we ask the Regional Board to reject it. At a minimum, the term of the Tentative TSO should be significantly shortened to two-and-a-half years. Allowing more time to Permittees to conduct belated source studies and implement BMPs that were identified six years ago is unwarranted and will set a precedent for other TMDL-based provisions in the 2012 LA MS4 Permit. The Regional Board must protect public health and ensure that TMDLs, which take a lot of time and effort to develop, will be implemented to protect the Los Angeles region's waterways. The way to accomplish this is by steadfastly maintaining TMDL deadlines.

Sincerely,

Tatiana Gaur  
Senior Attorney  
Los Angeles Waterkeeper

Rita Kampalath, Ph.D., P.E.  
Science and Policy Director  
Heal the Bay

Peter Shellenbarger  
Water Resources Manager  
Heal the Bay

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<sup>14</sup> Tentative Ballona Creek TSO at 11 and 16.