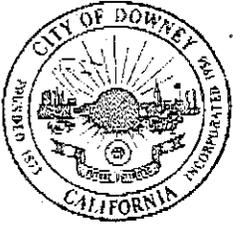


11/15/06 Bd Mtg Item _____
 San Gabriel River TMDL
 Deadline: 10/27/06 12pm



City of Downey

FUTURE UNLIMITED

October 27, 2006

Honorable Tam Doduc, Board Chair
 State Water Resources Control Board
 1001 I Street
 Sacramento, CA 95814

Attn: Song Her, Clerk to the Board

**Subject: Comment Letter Regarding the San Gabriel River Metals
 TMDL**

Chair Doduc:

The City of Downey would like to submit the following comments regarding the San Gabriel River Metals TMDL. While we agree with the Board's water quality goals, regulations must be based on sound science and implemented in a practical, achievable and cost-effective manner. The sources of many runoff-borne metals, are beyond the regulatory control of local government and the iterative approaches required to remove them are either expensive or do not achieve California Toxics Rule (CTR) standards. This letter supplements the information provided to the Los Angeles Regional Water Quality Control Board (LARWQCB), by the Coalition for Practical Regulation (CPR) speaker group and its special counsel Richard Montevideo, around June 19, 2006.

Orange and Los Angeles County Cities Should be Regulated in a Similar Manner

The San Gabriel River watershed is shared by two regional water boards, three NPDES MS4 Permits, and includes 27 cities in Los Angeles and 13 cities in Orange Counties. The Los Angeles Regional Board, which took the lead in preparing this TMDL, failed to address fundamental equity issues impacting implementation, waste-load allocations, and cost sharing of the TMDL's requirements. The LARWQCB Chair explicitly stated that Los Angeles County cities should be accountable for atmospheric deposition of metals from brush fires or China, while the Santa Ana Regional Board exempts Orange County cities from sources beyond their control. The Orange County MS4 Permit states:

"16. The permittees may lack legal jurisdiction over storm water discharges into their systems from some State and Federal facilities, utilities and special districts, Native American tribal lands, waste water management agencies and other



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permitted by the Regional Board. The Regional Board recognizes that the permittees should not be held responsible for such facilities and/or discharges. Similarly, certain activities that generate pollution present in storm water runoff may be beyond the ability of permittees to eliminate. Examples of these include the operation of internal combustion engines, atmospheric deposition, brake pad wear, tire wear and leaching of naturally occurring metals from local geography." (Emphasis added)

While the 2006 Downey ROWD requested a similar exemption to that in Orange County, the LARWQCB has not supported this initiative and we fear inequitable waste load allocations that ignore sources beyond our regulatory control. Furthermore, Los Angeles County cities must fund monitoring, implementation and scientific studies under the TMDL, while Orange County cities have no clear requirements. Unless these questions of equity and fairness across the Coyote Creek tributary are resolved under the State Board's authority, the conflict between the Regional Boards will remain in dispute.

Scientific and Engineering Concerns with the TMDL

We acknowledge the effort of the State Board to incorporate science and engineering into its policy decisions and Downey is amenable to implementing programs that are scientifically sound, practicable, and affordable. Unfortunately, this TMDL is based on inadequate science and shifts the responsibility for conducting needed studies on to local government by labeling them "voluntary". Local experts conservatively estimate the cost of these studies at \$5.9 million over the next five years, which typically rise based on input and comments from the EPA, Regional Board, NGOs, and peer review panels.

A review of the TMDL data reveals that all copper, lead and zinc exceedances in Reach 2 and 4 of 7 lead, 3 of 6 selenium, and 5 of 6 zinc exceedances in Coyote Creek occurred during that 1997-98 El Niño season, when over 31 inches of rain fell in Los Angeles. The State's Listing Policy states that "If the majority of samples were collected on a single day or during a single short-term natural event (e.g. a storm, flood, or wildfire), the data shall not be used as the primary data set supporting the listing decision," and "In general, samples should be available from two or more seasons or from two or more events when effects or water quality objective exceedances would be expected to be clearly manifested." The State Board should clarify that El Niños are short-term natural events and should not be used as the primary line of evidence for listing decisions.

The Regional Board's staff report cites recent studies (Sabin et al), revealing that 57% to 100% of the metals found in urban runoff at one study site were attributed to atmospheric deposition (e.g. copper brake pads, zinc in tires). We appreciate that the State Board suspended the metals loads requirements in the Los Angeles River Metals TMDL until 2011, met with the California Air Resources Board, and directed the Regional Board to resolve the atmospheric deposition issue prior to the 2012 TMDL reopener. However, a similar duration will be necessary for the extensive planning, design, financing and construction of structural Best Management Practices (BMPs) to deal with metals in urban runoff. The State Board should similarly suspend the reduction requirements in the San Gabriel River Metals TMDL until these joint State Board studies are completed.

As a potable water provider, the City of Downey is very concerned that the Regional Board intends to enforce CTR as strict, "never to be exceeded" limits, like the Santa Monica Bay Beaches bacteria limits recently inserted into our MS4 Permit. As written, a CTR based metals TMDL inserted into our permit is inappropriate and unworkable, since it would be orders of magnitude more restrictive than municipal drinking water standards. Studies demonstrate that current BMPs cannot consistently achieve the metals reductions required to CTR levels. The City of Downey strongly emphasizes infiltration, which should reduce discharges, but many areas of the watershed have clay soils, high ground water, or hillside developments, which are not conducive to infiltration BMPs. Only reverse-osmosis or micro-filtration technologies consistently meet CTR standards, but at extremely high capital, maintenance, runoff storage, and brine disposal costs.

Just over a year ago, the State Board convened an Expert Panel to consider the technical feasibility of establishing numeric limits in storm water permits and their report "*The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities*" found that "***It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban discharges***" (Page 8, Panel Report). It is premature to adopt a TMDL requiring 100% CTR compliance for dry-weather by 2015 and the Board should follow the Panel suggestion of setting Action Levels that allow "bad actor" catchments to be identified and BMPs to be designed, constructed, evaluated and certified. The panel found it "unreasonable" to expect that all storm events fall below a numeric (CTR) value.

*"In a similar circumstance, there are a number of storms each year that are sufficiently large in volume and/or intensity, to exceed the design capacity volume or flow rates of most BMPs." (Page 6, Panel Report).
"The Panel acknowledged that several to more times each year, the runoff volume or flow rate from a storm will exceed the design storm volume or rate capacity of the BMP. Storm water agencies should not be held accountable for pollutant removal from storm beyond the size for which a BMP is designed."*

The proposed TMDL does not specify a design storm size or duration on which to base BMP design, potentially forcing local agencies to over design their facilities to accommodate the most extreme "Act of God" rainfall events in intensity or duration. Although the Regional Board established a Wet Weather Task Force in February of 2005, the task force has not developed recommendations, while the TMDL continues to move forward. Again the Panel of experts found that BMP design and evaluation will take time and that it is premature to assign numeric limits during this period of uncertainty.

"It will take substantial research effort, including data gathering on well-designed BMPs, to develop design criteria for the removal of pollutants with confidence intervals that enable us to make reliable estimates of the median and variance of the effluent concentrations to be expected from the various BMP's. Until this is done, it will be very difficult to assign legally enforceable numerical effluent limitations to any particular BMP."

Concerns with CEQA, Economic and Housing Analyses

Based on the multibillion dollar Regional Board TMDL costs estimates alone, the City of Downey recommends preparation of a Master or Programmatic Environmental Impact Report (EIR). Ignoring recent decisions about environmental documentation, the impacts of constructing infiltration or sand filters in at least 60% of our community, as suggested in both the Los Angeles and San Gabriel River Metals TMDL, will be significant. A Master EIR is the appropriate "jump starting" mechanism for identifying the required project sites, treatment methods, land acquisition costs, diversion of public services (including safety), impacts on available (and affordable) housing, project alternatives, and addressing regional environmental impacts; allowing the subsequent "focused" EIRs to address local issues. Furthermore, since a Master EIR has a five-year effective duration, it behooves the local agencies to promptly initiate their focused EIRs, while they can be addressed within the scope of the original cumulative Master EIR document.

Failure to Consider Sections 13000 and 13241

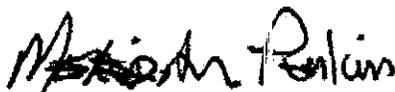
After imposing requirements that are more stringent than Federal Law, the Regional Board failed to estimate the economic, social and housing impacts of the TMDL as required by Section 13000 and 13241 of the Porter-Cologne Act. There is an obvious divergence between EPA forecasts of statewide annual CTR compliance costs of between \$35.5 million and \$61 million, to the \$1.9 billion Board estimate for one small watershed. The refusal of the Regional Board to review the economic, social and housing impacts of these TMDLs, during the Triennial Review or TMDL adoption processes, is unfair to local government and our mutual fiduciary responsibility to state and local residents.

Summary

The City of Downey requests that the State Board remand the San Gabriel River Metals TMDL to the Regional Board to correct the many deficiencies noted in this letter and await your final adoption of the 2006 303(d) list, which differs significantly from the TMDL. The foundation upon which the Metals TMDL is built is at best, inadequate. The Regional Board should conduct required technical studies, Porter-Cologne analyses, and prepare a Master EIR to accompany the TMDL. The City of Downey is contributing to improving water quality by having permitted over 600 infiltration systems with a combined runoff retention volume of 7 acre feet, but the State and Regional Boards need to undertake the necessary studies, to define the combined adverse impacts from the many proposed TMDLs and then prepare the necessary Master EIR to facilitate subsequent focused or specific project EIRs over the five years following its adoption.

Thanks you for your consideration of our comments.

Respectfully,



Meredith Perkins
Mayor, City of Downey