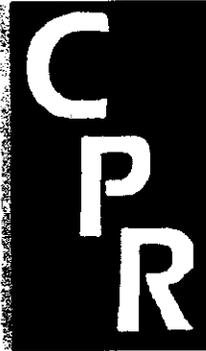


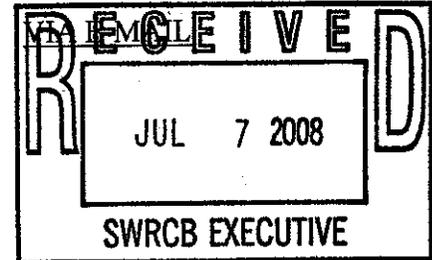
# COALITION FOR PRACTICAL REGULATION

"Cities Working on Practical Solutions"



July 7, 2008

Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814



**Subject: 7/15-16/08 BOARD MEETING (CHOLLAS CREEK METALS TMDL)**

Dear Chair Doduk and Members of the Board:

I am writing on behalf of the Coalition for Practical Regulation, an *ad hoc* group of more than 40 cities in Los Angeles County that have come together to address water quality issues. We thank the State Water Resources Control Board (State Water Board) for the opportunity to provide these comments regarding the Chollas Creek Metals TMDL. CPR does not usually comment on TMDLs issued by Regional Boards other than the Los Angeles Regional Water Board, but certain issues brought up by the Chollas Creek Metals TMDL resonate with issues CPR and its member cities have been involved with during the development, adoption, and approval of the Los Angeles River Metals TMDL. We will only comment on policy issues that were discussed during State Board approval of the Los Angeles River Metals TMDL.

### **Atmospheric Deposition and the Potential Impact of CWA Sections 13146 and 13247**

The Chollas Creek Metals TMDL adopted by the San Diego Regional Water Board in 2007 continues the unfortunate pattern of allocating responsibility for indirect atmospheric deposition of pollutants to the MS4 permittees merely because they have storm drain systems into which indirect deposition is washed during rainstorms. This ignores the complexity of the problem of atmospheric deposition and the overwhelming evidence that such deposition plays a significant role in water quality in urban watersheds.

Extensive information regarding the issue of atmospheric deposition and its impact on annual loadings of metals to waterbodies has become available over the past several years. During the development of the Los Angeles River Metals TMDL, the Southern California Coastal Water

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DIAMOND BAR  
DOWNEY  
GARDENA  
HAWAIIAN GARDENS  
INDUSTRY  
IRWINDALE  
LA CAÑADA FLINTRIDGE  
LA MIRADA  
LAKEWOOD  
LAWDALE  
MONTEREY PARK  
NORWALK  
PALOS VERDES ESTATES  
PARAMOUNT  
PICO RIVERA  
POMONA  
RANCHO PALOS VERDES  
ROSEMEAD  
SANTA FE SPRINGS  
SAN GABRIEL  
SIERRA MADRE  
SIGNAL HILL  
SOUTH EL MONTE  
SOUTH GATE  
SOUTH PASADENA  
VERNON  
WALNUT  
WEST COVINA  
WHITTIER

Research Project (SCCWRP) and UCLA conducted joint studies on the effects of indirect dry weather atmospheric deposition on the Los Angeles River Watershed. A 2004 joint SCCWRP/UCLA study entitled "Dry Atmospheric Deposition of Trace Metals in the Los Angeles Coastal Region" estimated that dry weather indirect deposition could be several thousand kilograms per year, and that estimates of copper, lead, and zinc deposited on the land were several times greater than the estimated loads of these metals in the Los Angeles River from non-atmospheric sources. The study estimated the dry weather indirect deposition of copper to be 16,000 kg/year, lead to be 12,000 kg/year, and zinc to be 80,000 kg/year. Although the SCCWRP/UCLA studies were prepared in relation to the Los Angeles area, the San Diego region shares the semi-arid characteristics of Los Angeles, and, presumably, the San Diego Regional Water Board could have concluded that similar findings would have resulted if comparable studies had been performed on creeks in urban San Diego area watersheds before adoption of the TMDL. A second SCCWRP/UCLA joint studies states:

"In semi-arid regions such as Southern California, pollutants may build-up on impervious surfaces during the extended dry season, and subsequently wash-off into nearby water-bodies once the wet season begins. Atmospheric deposition may be especially important as a source of pollutants to stormwater in these regions because significant quantities of trace metals and other pollutants are emitted into the atmosphere daily (SCAQMD, 2003), and the ultimate fate of the trace metals in particular is unknown."

The study goes on to conclude:

"This research demonstrates: (1) atmospheric deposition potentially accounted for 57-100% of the trace metal loads in annual stormwater discharges in this highly impervious catchment; and (2) dry deposition appears to be the dominant mechanism for transfer of atmospheric pollutants to surfaces in semi-arid Los Angeles. Because atmospheric deposition is potentially a large fraction of runoff load, further research into the processes of resuspension and sequestration of deposited materials, and washoff in stormwater runoff is warranted." (*Contribution of trace metals from atmospheric deposition to stormwater runoff in a small impervious urban catchment*, Sabin et al., 2005)

The issue of atmospheric deposition was of great concern to State Board members when the 2005 Los Angeles River Metals TMDL was submitted for approval at the October 20, 2005 State Water Board meeting and during the June 17, 2008 hearing on the re-adopted Los Angeles River Metals TMDL.

During the October 20, 2005 State Water Board meeting regarding the Los Angeles River Metals TMDLs, Board Member Secundy indicated, "What we want to do is be able to go after the root cause of the problem." (Transcript of October 20, 2005 State Board Hearing, p. 19) Board Member Katz noted that they were there because the Air Board had not done its job. As the result of these concerns, the findings adopted by the State Board included specific directions that there be consultation among the water boards, the

California Air Resources Board (CARB) and the responsible jurisdictions concerning atmospheric deposition and also that if the Regional Board would not reconsider the Metals TMDL, **the State Board would do so on its own motion.**

Subsequently, the State Board and CARB held an historic joint meeting in February 2006 to address the relationship between atmospheric deposition and water quality. Unfortunately, no significant improvements have been made in addressing the issue of atmospheric deposition, and any attempt at a collaborative effort appears to have been abandoned or is moving very slowly.

Despite all of the available information, the San Diego Regional Water Board adopted a Chollas Creek Metals TMDL that does not appear to contain any mechanism to address indirect atmospheric deposition. The Chollas Creek Metals TMDL provides an opportunity for the State and Regional Water Boards to develop a TMDL that seriously addresses the sources of atmospheric pollutants that impair water quality.

California Water Code (CWC) Sections 13146 and 13247 contain provisions that could compel other agencies, such as the Air Boards, to assist the Water Boards. Section 13247, which is the section applicable to the Regional Water Boards, specifies,

“13247. State offices, departments, and boards, in carrying out activities which may affect water quality, shall comply with water quality control plans approved or adopted by the state board unless otherwise directed or authorized by statute, in which case they shall indicate to the regional boards in writing their authority for not complying with such plans.”

The State Water Board could and should work with Regional Boards to get language in the Basin Plans that would compel the assistance of the Air Boards and other agencies to address water quality impairments. The Chollas Creek TMDL provides an opportunity for the State Water Board to request that the San Diego Regional Water Board identify the agencies that have the appropriate regulatory authorities and adopt policy that would trigger Section 13247 of the California Water Code. Gaining the cooperation and assistance of the Air Boards and other agencies is the only way we will be able to begin to adequately address the issue of atmospheric deposition and its impact to water quality.

#### **Water Quality Attainment Strategy Alternative**

The San Francisco Bay Regional Water Board took an interesting approach to addressing water quality by developing and adopting a combination water quality attainment strategy (WQAS) and TMDL, the *SFRWQCB Water Quality Attainment Strategy and TMDL for Diazinon and Pesticide-Related Toxicity in Urban Creeks*. This strategy, which was incorporated as a Basin Plan Amendment in 2005, addresses true source control and helps ensure compliance with water quality objectives. It was adopted as “a Basin Plan Amendment...to establish a water quality attainment strategy that addresses pesticide-related toxicity in Bay Area urban creeks.” The Project Description section of the WQAS

and TMDL states: "The Water Board must develop a TMDL to address the urban creeks designated as impaired pursuant to Clean Water Act § 303(d)(1), and the water quality attainment strategy set forth in the proposed Basin Plan Amendment meets this requirement." (*Diazinon and Pesticide-Related Toxicity in Urban Creeks Water Quality Attainment Strategy and TMDL Proposed Basin Plan Amendment Staff Report*, California Regional Water Quality Control Board San Francisco Bay Region. November 9, 2005. p. 40) Further application of Water Quality Attainment Strategies was discussed during the April 15, 2008 Los Angeles Trash TMDL State Board hearing and the June 17, 2008 Los Angeles River Metals TMDL State Board hearing. The discussion at the June 17, 2008 hearing was specifically focused on identifying state offices, departments, and boards that could assist in controlling the sources of metals in atmospheric deposition.

Conversion of the Chollas Creek TMDL to a combination WQAS/TMDL by the San Diego Regional Board would facilitate the use of regulatory authorities by a range of agencies to address water quality impairments through true source control. In San Francisco, the cornerstone of the WQAS is pollution prevention. The strategy includes a program of immediate actions to control discharges, and a program of monitoring to determine progress toward meeting targets and effectiveness of earlier actions. Its strategic goals focus on proactive regulation, education and outreach, and research and monitoring. It calls for involvement of all entities responsible for discharges and emphasizes better coordination with agencies. Its implementation component was designed to utilize adaptive management to respond to new information as it becomes available. Implementation measures will be tracked regularly and the Regional Board will review the strategy approximately every five years.

If the ultimate goal of a TMDL is for water to meet applicable water quality objectives, all reasonable means of achieving that goal must be considered. Using the San Francisco Bay WQAS as a model for a WQAS for Metals in Chollas Creek would foster greater cooperation and coordination between regulators and the regulated community to address water quality impairments. The Chollas Creek Watershed is a small watershed and it would be relatively easy to convert the document from a TMDL to a combined WQAS/TMDL. The WQAS model is a feasible TMDL alternative meriting serious consideration by the Water Boards.

### **Conclusion and Recommendations**

CPR strongly recommends that the State Board seize the opportunity presented by the Chollas Creek TMDL to pursue the use of the authorities given to the Air Boards by the Clean Air Act to control at the source atmospheric pollutants that are causing water quality impairments in California.

Further, CPR recommends that the State Board remand the Chollas Creek TMDL back to the San Diego Regional Water Board with instructions that Regional Board staff convert the TMDL to a WQAS/TMDL similar to the *SFRWQCB Water Quality Attainment Strategy and TMDL for Diazinon and Pesticide-Related Toxicity in Urban Creeks* approved by the San Francisco Regional Water Board. If the State Board opts not to

Comments on Chollas Creek Metals TMDL

July 7, 2008

Page 5 of 5

remand the TMDL back to the Regional Board, it should at least adopt clauses similar to "Whereas" clauses 10, 11, and 12 and "Resolve" clause 2 of State Board Resolution 2008-046 approving the Los Angeles River Metals TMDL.

Thank you again for the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Farfaring", with a large, stylized flourish at the end.

Kenneth C. Farfaring  
City Manager, City of Signal Hill