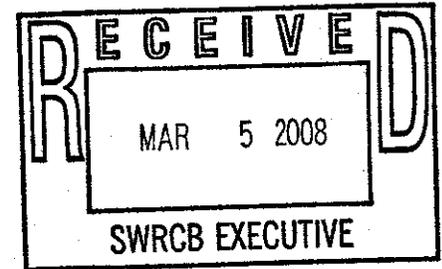


March 5, 2008

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



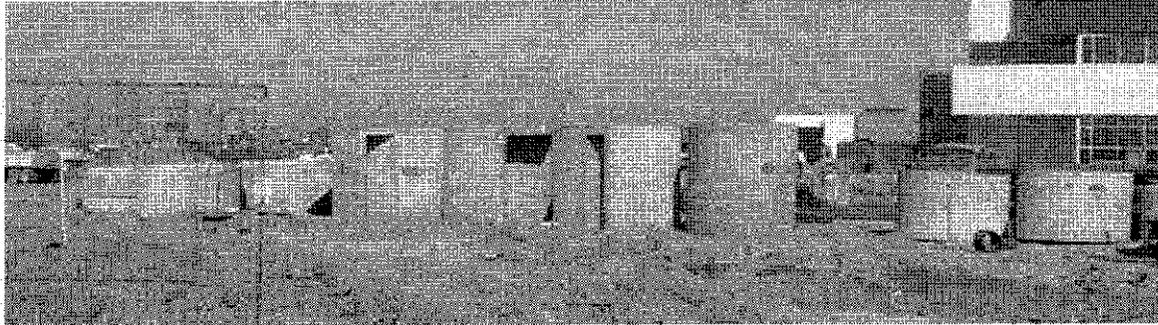
Subject: City of Downey Comments on the 2007 Los Angeles River Trash TMDL

Dear Ms. Townsend and Members of the Board:

The City of Downey appreciates this opportunity to provide comments on the 2007 Los Angeles River Trash TMDL. We recommend that the State Board return the TMDL to the Los Angeles Regional Board and encourage both the Regional Board and the Los Angeles River Watershed Cities to meet, develop, agree upon, and then implement, a more reasoned and paced program of BMPs installation to address this serious issue.

Before voicing our concerns, we would like to praise some Regional Board actions. Unlike the invalidated 2001 TMDL, which essentially identified one prohibitively expensive and difficult to engineer BMP (Hydrodynamic Separators or Continuous Deflection Systems), the Board has worked with several stakeholders (County of Los Angeles, Cities of Los Angeles, Signal Hill, Glendale, Pasadena, Burbank and La Canada Flintridge, which also deserve acknowledgement) to certify several more reasoned BMPs as meeting the full capture definition. The Board had posted the certification process had these devices on its old website (we are currently trying to locate this page on the new website). Some Regional Board staff, and Regional Board Member Lutz in particular, were willing to consider an alternate BMP installation prioritization method, proposed by the Coalition for Practical Regulation (CPR) and based on the Keep Downey Beautiful Program, that would have achieved or exceeded the goals of this TMDL. Unfortunately, this proposal was inserted into the TMDL as an alternative implementation strategy.

The City of Downey also would like to reiterate our commitment to reducing the discharge of trash to the Rio Hondo, San Gabriel and Los Angeles Rivers. We continue to have weekly parkway and biweekly alley vacuum sweeping, with enforcement of no parking restrictions. We have greatly re-emphasized our publication vending machine permitting program, eliminating dozens of bandit racks that were often a source of trash to the Municipal Separate Storm Sewer System (MS4). We continue to annually maintain (clean out) those catch basins which we know to be owned by the City (ownership of others remain a continuing interagency dispute), and the worst offenders are maintained more often. City Code Enforcement, Building and Safety Inspectors and Public Work staff all coordinate our enforcement efforts to control problematic locations.



Just this week, the City received the components (see photo above) for a 120 CFS Contech® CDS unit to be installed upstream of our Discovery Sports Complex Retention/Detention System. Our Keep Downey Beautiful Coordinator schedules monthly environmental/watershed assemblies through the Downey Unified School District and coordinates monthly City sponsored trash cleanups, as well as coordinating with the annual Heal the Bay Coastal Cleanup Program as inland site. The cleanliness of our City and success of trash control efforts can be compared by noting that despite having hundreds of county owned catch basins in the City of Downey, not one of the over one thousand high-priority (A & B) for trash control catch basins identified by Los Angeles County Department of Public Works are in our City!

The above "prioritization" observation leads to our first comment about the TMDL adopted by the Regional Board. It treats all cities and catch basins equally. Of the 40 watershed cities, only 7 have more than a dozen high priority catch basins, and only 11 have any at all. **Twenty nine of the forty watershed cities, did not have a single high priority trash collecting catchbasin as assessed by LA County.** As indicated in our alternative implementation proposal, the City of Downey offered to focus on our worst 50% of catch basins, which, based on a study done by the Coalition for Environmental Protection Restoration and Development (CEPRD) would probably result in capturing well over 80% of the trash that might otherwise be discharged. At the conclusion of the TMDL implementation period, we expect that the City staff charged with maintaining these BMPs will be collecting mostly (typically 80-90%) assimilable biodegradable matter like leaves. Incongruously, the Regional Board adopted TMDL could most "cost-effectively" be implemented by doing our least trash generating catch basins first! While the City of Downey will, as always, do what we think is both cost effective and right for the environment, we encourage the State Board to remind this faulty TMDL back to the Regional Board to develop a logical resource-sensitive prioritization plan, such as that previously submitted by the CPR cities and based on the program used in Downey. This was previously shared with Regional Board staff, appeared to have received tentative support from Board member Lutz at the hearing. Our proposal was also summarized in the letter submitted by CPR and is among the attachments to the legal issue focused letter prepared by Mr. Montevideo of the firm of Rutan and Tucker.

We would like to reiterate our concern with the Herculean numeric target of "zero trash" in the River, which even the Regional Board appears ready to recognize as unachievable. Attachment A to Resolution No. 2007-012 states that "Nonpoint sources, i.e., direct deposition of trash by people or wind into the water body, is a de minimus source of trash

loading to the LA River.” An enforceable TMDL would link compliance to installation of certified BMPs. While professionals might disagree about the percentage of catch basins needing these devices and come to an eventual implementation agreement, the proposed “zero” standard serves mostly to seed dissention and breed contention.

We disagree with the Regional Board’s assertion that the Los Angeles River’s loading capacity is zero, since it has neither performed a thorough source analysis nor an assimilative capacity study. The Staff Report acknowledges that there was an absence of paper in the Calabasas Continuous Deflective Separation Unit (CDS) used to establish the default values for 2001 version of the TMDL and since the most significant result of this TMDL is removing leaves and paper from the river, we feel this is a fatal deficiency. This is not to say that all trash is degradable and the City of Downey continues to support statewide initiatives to eliminate the use of plastics (PE bags and Styrofoam) by stores and restaurants, further implement smoking (cigarette) controls, and recycling programs.

The TMDL adopted by the Regional Board, and even the formal adoption hearing, appears to have crafted to punish and intimidate municipalities exercising their legal rights to challenge a flawed TMDL. The adopted TMDL requires an accelerated 40% reduction in one year. This requirement appears to be based on a presumption that cities should have implemented the TMDL even though it had been set aside by the courts. At the August 9, 2007 hearing to adopt the Trash TMDL, the Los Angeles Regional Board did not grant the city’s request to defer adoption and allow us to work out a Catch Basin Pollution Prioritization Plan (CBPPP) agreement with staff and the soon to be appointed Executive Officer. Furthermore, they ignored our request to re-notice the Draft Substitute Environmental Document (SED) due to last-minute changes on which the public was not given a reasonable opportunity to review of chance to comment.

In many ways, the City of Downey has been a water quality leader among the Los Angeles River Watershed cities and we would like to have the opportunity to work with the Regional Board staff to create a workable Trash TMDL. Along with the CPR, we request that the State Water Board remand the TMDL back to the Los Angeles Regional Water Board with directions to work with cities to finalize a CBPPP alternative that Staff could support and to address other issues related to adoption and implementation of the TMDL. We also request that the State Board direct the Regional Board to re-notice the Draft SED to solve the problem created by substantial last-minute changes in the July 27 Revised Draft SED and the absence of the CBPPP alternative in that document.

The City of Downey appreciates the opportunity to provide these comments and continue to work with both the State and Regional Board staff to craft policies that can truly result in both better water quality and enforceable objectives.

Sincerely

Original Signed by

Gerald E. Greene, DEnv, PE, QEP
Principal Civil Engineer and Water Resources Control Specialist