



# City of Downey

**FUTURE UNLIMITED**

February 18, 2011

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**CITY MANAGER**

GERALD M. CATON

Ms. Thanhloan Nguyen  
Los Angeles Regional Water Quality Control Board  
TMDL Unit  
320 West Fourth Street, Suite 200  
Los Angeles, CA 90013

Re: Comments on Proposed Total Maximum Daily Loads for  
Dominguez Channel and Greater Los Angeles and Long  
Beach Waters Toxic Pollutants

Dear Ms. Nguyen:

This submittal is being made on behalf of the City of Downey in connection with the proposed adoption of the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants Total Maximum Daily Loads ("TMDLs"), which is presently scheduled for consideration by the Los Angeles Regional Water Quality Control Board at a public hearing on April 7, 2011. The City requests that you give due consideration to these comments and that they be included as a part of the Administrative Record for this item.

Although, the proposed TMDLs, as written, are extremely confusing, they seemingly would apply to virtually every city within Los Angeles County. Yet, we are not aware of any formal public workshops that have been conducted on the purpose and scope of these TMDLs, and our review of the TMDL documentation has raised a series of questions regarding its goals, as well as over the obligations to be imposed on the various municipalities as responsible parties under the TMDLs. For this reason, we would ask that the TMDL not be adopted at this time until the affected local governmental agencies have been given sufficient opportunity to not only fully consider the TMDLs and their impacts, but also to be in a position to have further dialogue with the Regional Board over their necessity and scope.

As such, at this time the City is hereby joining in the legal and technical comments that have been submitted on behalf of the City of Signal Hill, and further provide the following comments for the Regional Board's consideration:

(1) The primary purpose of the TMDLs appears to be to implement a cleanup of the contaminated sediment located in the Los Angeles and Long Beach Harbors. However, the City along with numerous other cities in Los Angeles County, has entered into a federal Consent Decree with the United States and the

State of California (including the Regional Board), which federal Consent Decree was first approved by the U.S. District Court in 1993, and was thereafter amended in 1999. This Consent Decree required the payment of \$45.7 million in funds and in-kind services from the settling local governmental agencies, which consideration was to be used, in part, to address the contaminated sediment within the Long Beach and Los Angeles Harbor areas. The TMDLs thus appear to be an improper attempt to further require the cities yet again pay to address these contaminated sediments. The TMDLs are inappropriate for this reason, and are inappropriate because TMDLs cannot lawfully be used as a mechanism to require the removal of contaminated sediment caused by prior releases of hazardous substances.

(2) The City is also very concerned with the significant number of ambiguities in the TMDLs, including what water bodies are to be dredged, and by who, and what requirements are being imposed on the Los Angeles and San Gabriel River cities. For example, the City is unclear as to what its obligations are or even why it has been included within these TMDLs. This is of particular concern to the City given the fact that there is already an existing metals TMDL for the Los Angeles and San Gabriel Rivers, and given that the non-metal pollutants that are referenced in the proposed TMDLs, according to the technical documents prepared on behalf of US EPA, are not believed to be migrating from the Los Angeles and San Gabriel Rivers in any quantities of concern. Accordingly, until this and the many other ambiguities (as identified in the technical and legal comments submitted on behalf of the City of Signal Hill) are addressed, the proposed TMDLs should not be adopted.

(3) In addition, the tentative Basin Plan Amendment for these TMDLs lists the Los Angeles River and San Gabriel River metals TMDL Cities as being the third category of responsible parties for achieving compliance with the proposed TMDLs. This category of responsible parties should be deleted, however, for the reasons set forth above, namely that there is no indication that these alleged responsible parties are contributing any significant pollutant loadings to the non-metal impairments, and given that metal TMDLs are already in place for both the Los Angeles and the San Gabriel Rivers.

(4) Furthermore, the Cities of Downey, Bellflower, Lakewood, Paramount and Signal Hill all appear to have been included under the second category of responsible parties for the "Greater Los Angeles and Long Beach Harbors" specifically because they presumably discharge into a nearshore watershed, i.e. apparently because they discharge into saline receiving waters. The TMDLs are unclear in this regard, however, and should not be adopted until there is some basis set forth in the TMDLs that explains the reasoning behind including these Category 2 responsible parties in the TMDLs. It is our presumption that these Category 2 cities were included as responsible parties based on the fact that they discharge into the Los Cerritos Channel, i.e., based on the assumption that they therefore discharge into a nearshore watershed. Yet, the

term "nearshore watershed" is defined in the TMDL documentation as being a watershed that discharges to saline receiving waters. Because the Los Cerritos Channel does not discharge to any saline receiving waters, and because these Cities do not otherwise discharge into saline receiving waters, none of these Cities should be included within the Category 2 - Greater Los Angeles and Long Harbor list of responsible parties.

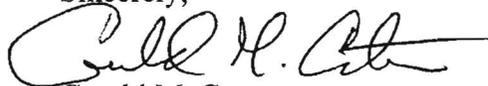
(5) The City also believes that these TMDLs are being adopted without the Regional Board having given any consideration to the various factors set forth under sections 13000 and 13241 of the California Porter-Cologne Act, and specifically without there being any consideration to whether the TMDLs are "reasonably" and "economically" achievable, particularly in light of the "environmental characteristics" of the waters in issue. For example, understanding that the environmental characteristics of the Los Angeles and Long Beach Harbors contain pollutants within sediments that must first be remediated before the waters can be considered in compliance with water quality standards, compliance with the Porter-Cologne Act requirements would very likely result in an entirely different set of TMDLs for these waters.

(6) The City is also very concerned about the scant evaluation of the various environmental impacts that will likely result from dredging of the Los Angeles and Long Beach Harbors, along with the lack of consideration given to any feasible alternatives to this project, as required by the California Environment Quality Act. The economic impacts of this project from the dredging portion alone of the TMDL are estimated at \$680 million. This cost is, in and of itself, significant and there does not appear to have been any real evaluation of the potentially significant environmental impacts caused by such a dredging operation, or nor of the likely benefits expected from conducting the dredging.

We ask that the Regional Board consider the above comments and those submitted on behalf of the City of Signal Hill in its evaluation of these TMDLs, and look forward to working with you on revisions to these TMDLs as necessary to address these and other comments that have been submitted.

Thank you for your consideration of these above.

Sincerely,



Gerald M. Caton  
City Manager  
City of Downey