CITY OF SIGNAL HILL

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June 4, 2010

LB Nye, Chief, TMDL and Standards Unit
Los Angeles Regional Water Quality Control Board
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

Attention: Mr. Man Voong (Delivery Via – E-Mail)

Re: Comments on the Los Angeles River Bacteria TMDL

Dear Dr. Nye and Mr. Voong:

The City of Signal Hill submits the following comments on the Los Angeles River Bacteria TMDL ("TMDL"). Our community supports environmental programs, including programs that improve water quality, and desires to work with the Regional Board to implement cost-effective programs that will result in tangible improvements in the water quality of the Los Angeles River ("River"). However we are finding it increasingly difficult to provide funding to attempt to meet even the existing adopted TMDLs as they are starting to come on-line, much less the proposed Bacteria TMDL requirements, particularly given that our revenues continue to decline due to the severe economic recession we are all facing. Without a genuine consideration for the need for the TMDL, in light of the actual uses of the River and the need for common sense modifications to the TMDL thereafter (if the TMDL is determined necessary), the TMDL's new programs will further severely erode existing City services and create new unfunded mandates.

One of our primary concerns is that the TMDL is being proposed to compel **"aggressive"** action to **"restore"** the River so as to enable people to swim in this mostly concrete-lined flood control channel, a good part of which is fenced to restrict access. The Regional Board's price tag for this goal of restoring the concrete-lined and

restricted Los Angeles River for human contact recreation***: $5.4 billion.*** We are also very concerned that even with this price tag, that the proposed TMDL is entirely unachievable and has been based on a series of unsound assumptions, that it contains an ineffective and ambiguous implementation plan, and that its enormous costs far outweigh any perceived tangible public benefit.

The Regional Board's $5.4 billion cost estimate, by itself, should be a call to all stakeholders to re-examine the various designated uses upon which the proposed TMDL is based, in order to develop an appropriate Bacteria TMDL for the River. As an alternative to the Regional Board's TMDL, we support the Lower Los Angeles River Water Conservation Plan (WCP) alternative to the TMDL which is being proposed by Cities in Reaches One and Two (the Lower Los Angeles River and tributaries). Our community requests that the Regional Board review and adopt the WCP Alternative for Reaches One and Two, in lieu of the staff proposed "one size fits all" TMDL. We believe this alternative will result in reduced environmental impacts and have broader public acceptance in Reaches One and Two.

Issues with Public Review of the TMDL

The Regional Board released the draft TMDL on April 21st and public comments are due on June 4th. The TMDL consists of a 92-page staff report (not including attachments), a 27-page resolution with the TMDL compliance schedule and a supplemental environmental document (SED) that is 124-pages in length (not including attachments). There are several hundred pages of materials compiled by the City of Los Angeles for the dry-weather TMDL effort alone, known as CREST (Cleaner Rivers through Effective Stakeholder-led TMDLs). The public was afforded only six weeks to review this highly complex and lengthy TMDL, and to our dismay it varies significantly from the CREST-recommended approach.

Both the complexity and the large volume of documents make it exceedingly difficult for our community to provide comprehensive comments at this time within the limited review time provided. Adding to the difficulties, the Regional Board staff conducted a workshop on the TMDL on May 26th, giving us only seven working days thereafter to respond to the information obtained at that time. The CREST science team then introduced additional compliance concepts which cannot be reasonably reviewed in less than one week. These unrealistic review times, for such an extensive and complicated regulation, severely constrain public comment, particularly considering that our

community is in the middle of a very challenging FY2010-2011 budget preparation process and is attempting to address significant resource reductions during this very same time period. Several cities have requested that the Board consider postponing the July public hearings to August and that you schedule a field trip to Reaches One and Two of the Los Angeles River (River). These are reasonable requests and will facilitate improved policy discussion of the TMDL.

The timing on the adoption of the TMDL appears to be dictated by the TMDL Consent Decree for Los Angeles County, albeit it is our understanding that neither the Regional Board; nor the State Board, are parties to this Consent Decree. Also, under the Consent Decree, the TMDL need not be approved by EPA until March 22, 2012, which is over 22 months away. The proposed TMDL is a very significant and complex TMDL that will have severe impacts on our communities. We may be submitting additional comments at the public hearing due to the hardships created by the Regional Board's truncated review period and last minute briefing.

TMDL Stakeholder Process Broken

The cities participated in good faith in the CREST process for the development of the dry-weather TMDL. I was personally invited by the City of Los Angeles to participate and represent the watershed's city managers on the dry-weather TMDL Steering Committee. I attended dozens of Steering Committee meetings over the past two-years at a considerable resource commitment to the City of Signal Hill. The Steering Committee has devoted many hundreds of hours to reviewing and commenting on documents prepared by the CREST scientific and engineering team. The Regional Board staff participated as well.

Our concern is simple. The CREST stakeholders were not given a reasonable opportunity to decide upon and present a TMDL recommendation, and the Regional Board's TMDL differs in important ways from the direction that the CREST process was taking. The Regional Board staff released the recommended TMDL on April 20, 2010. The CREST team had scheduled a meeting of the city managers in the watershed on April 21, 2010, in order to brief the city managers on the issues, obtain their input and formulate recommendations. This briefing was planned months in advance by the Steering Committee.

By releasing the Regional Board TMDL one day in advance of the city manager's briefing, the CREST process of stakeholder involvement was seriously broken. The Regional Board staff also released a wet-weather TMDL the same day, while the CREST stakeholders had spent years working only on the dry-weather TMDL. It is unfortunate that the stakeholder process of reaching consensus was not respected when it most mattered. It is also unfortunate that the Regional Board's briefing on May 26th created more confusion and additional information for the cities to review, with no extension of the June 4th public comment deadline. This is an unrealistic comment period and we believe it severely limits the public input on this important TMDL.

Problems with Numeric Limits Proposed in the TMDL

Our community drains into Reach One of the River, which is the lower portion of the River, a fully concrete lined flood control channel, approximately 400 feet in width. The TMDL is based on the River and its tributaries meeting the REC-1 (body contact) standard called out in the Region's Basin Plan. Body contact uses include swimming.

The TMDL requires that the River meet numeric bacteria standards for both dry-weather and wet-weather conditions. Several credible independent scientific studies have demonstrated that the current standards are violated in pristine, natural conditions. We believe that it will be difficult, if not impossible, to meet the current bacteria standards for dry-weather flows in the River, and that even if they are met, that the bacteria objective itself in the River will still not be met. (Please see the letter submitted by Dr. Susan Paulsen of Flow Science for our scientific concerns.) In addition, there is no known method for compliance with the wet-weather TMDL. (The wet-weather issues are more fully detailed in a separate section of this letter below.)

The REC-1 beneficial use designation in the lower sections of the River is neither appropriate nor technically feasible. These Reaches and tributaries are fenced and public access restricted, due to dangerous conditions in both the low-flow channel during dry-weather conditions and in the River as a whole during rain storms. The River was extensively modified by the Army Corps of Engineers beginning in 1935 for flood control purposes, and additional substantial improvements were made to the Channel as late as 2002. These improvements are discussed in more detail in the Legal and CEQA concerns in this letter.

We believe that these Federal and Los Angeles County Flood Control District improvements will make it impractical, expensive and impossible to meet the REC-1 standard. Such very extensive modifications to the River for flood control purposes are one reason the City is proposing that the Board re-evaluate the designated uses of the River. People do not and cannot safely recreate in the River in Reaches One and Two. Further, achieving the proposed numeric limits for both dry and wet-weather conditions, as called for in the staff recommended TMDL, is not reasonable and is prohibitively expensive.

In addition, the measures proposed to achieve the TMDL for wet-weather, *e.g.,* the same diversion techniques to be used for dry-weather flow, could be dangerous as it may expose surrounding neighborhoods to undue risks of flooding. The Cities are thus instead proposing a Best Management Practices (BMP) alternative, known as the Lower Los Angeles River Water Conservation Plan (WCP) Alternative, which is more fully described below. The Cities recognize that swimming actually occurs at downstream beaches (i.e. in Long Beach), and that these areas require water quality protection. The WCP Alternative also addresses these concerns.

Lack of a Comprehensive LA River Master Plan

There are several references in the Board's staff report to the LA River Master Plan as one of the documents "compelling" the Regional Board to take **"aggressive action to protect and restore this river."** (See Page 1 of the TMDL staff report). First, we are not aware of any comprehensive master plan to "protect and restore" the River. The City of Los Angeles adopted a Los Angeles River Revitalization Plan, but the plan is limited only to the River areas in the City of Los Angeles. This plan was estimated to cost the City of Los Angeles over $2 billion to implement, is currently unfunded and was primarily a "greening" of the River along its banks, not a plan for swimming or other recreation in the River.

Second and more important, there is no adopted master plan for the River south of the City of Los Angeles. The City of Signal Hill has never been contacted by the Army Corps of Engineers or the Los Angeles County Flood Control District to consider adopting a River master plan. What plan is the Regional Board staff referring to for Reach One, how much will it cost Signal Hill to implement a River master plan, which federal or state agency is funding the plan and the improvements, and what is the timetable?

Cost Estimate Assumptions – Dry Weather TMDL

Based on CREST studies, the TMDL assumes that 20% of the dry-weather outfalls will require diversion to the sewer system for the River to meet water quality standards. The scientific review by Dr. Paulsen sheds reasonable doubt that the 20% diversion plan will work. The Regional Board has also included a subsequent iteration of controls, diverting more of the outfalls until compliance is achieved.

There are a total of 3,700 outfalls into the Los Angeles River. The CREST team surveyed the dry-weather outfalls (those flowing during dry season), documenting 280 flowing drains in the mainstream of the River and 330 in the tributaries. The TMDL assumes that the cities would install 122 diversions over a 25-year period, for a total of 56 outfalls (20% diversion). It should be noted that the relying on a reasonable construction inflation factor and cost of providing financing (3% annually), results in a total costs of $1.1 billion and not the $588 million estimate included in the TMDL.

Beyond the issue of the 3% annual inflation factor, the Regional Board's costs are underestimated in other areas. The Board's estimated costs do not include reasonable costs of constructing force mains to reach the sewer system, connection fees and annual sewer fees, as well as property acquisition to construct the facilities if found necessary. It appears that the Regional Board relied solely on the CREST cost estimates.

However, the Los Angeles County Sanitation Districts report that they would serve as much as 50% of the planned diversions. For example, much of Reaches One and Two are served by the County Sanitation Districts and not the City of Los Angeles. The Regional Board's costs estimates were also based on the sewers being located within 300 lineal feet of the storm drain outfall, sewers having sufficient capacity, with no requirements for storage and upgrades. The Regional Board's cost estimates also did not include any provision for pretreatment to reduce concentrations of metals and toxics in the water to be diverted (See Final Report, Supplemental Characterization of Los Angeles County Storm Drains, LACSD, July 2007).

The County Sanitation Districts reported that it will be necessary for some diversions to include storage due to sewer capacity issues. The Districts also report that connection fees would be $122 million and the Cities would be responsible to pay an annual

surcharge of $3.1 million. The cost of diverting 610 outfalls would grow to $600 million in connection fees and $15 million in annual surcharges. The Sanitation District LAR Bacteria TMDL disclosed that in some cases their sewer system is up to 4,900 lineal feet from storm drain outfalls in the River. One sewer line would have to be constructed over the Long Beach Blue Line transit bridge. These costs were not reported in the Regional Board's estimates.

Unreasonable Local Government Implementation Costs - $5.4 Billion

Prior Regional Board members and non-governmental organizations (NGOs) have criticized the cities for over estimating the costs of the TMDL programs in Los Angeles County. The implementation costs of the TMDL program in Los Angeles County have been questioned since 2003, after the release of a November 2002 study by the University of Southern California examining the costs of the TMDL program *("An Economic Impact Evaluation of Proposed Storm Water Treatment for Los Angeles County,"* School of Engineering and School of Policy, Planning and Development, University of Southern California, November 2002). Determining the true costs of implementation is very important, especially considering the expectations of local governments that long term and chronic federal and State budget deficits will result in further shifting of water quality program costs to local government.

The USC study revealed that the costs to treat storm water in Los Angeles County could range from $43.7 billion to $283.9 billion, based on the size storm event required by the Regional Board to be treated. The costs of the current TMDL program are entirely in line with these earlier estimates. After reviewing the likely impact of the TMDL program on municipal budgets, the study's authors were concerned about the "regional water quality control boards' march toward uneconomic and unintended consequences." The USC study has become the new reality, primarily based on the unnecessary and improper request by the NGO's that the Board impose numeric limits on storm water, instead of continuing to utilize Best Management Practices (BMPs).

The City of Los Angeles entered into an MOU with the Regional Board and EPA in order to develop the science and engineering behind a dry-weather Bacteria TMDL, so as to obtain a better understanding of the dry-weather Bacteria TMDL costs for the River. This effort is known as CREST and has been an expensive, multi-year planning process, involving dozens of stakeholders. The CREST engineers estimated that dry-weather compliance costs alone, over a 31-year period, would be **$1.1 billion** (with a

3% inflation adjustment). The Regional Board estimated total compliance for both dry and wet-weather would cost local governments in the watershed some **$5.4 billion**. The Regional Board staff has recommended a 25-year compliance schedule for both wet and dry-weather implementation, which is six years shorter than the CREST request for dry-weather implementation alone. The accelerated schedule would cost local governments an average of $216 million annually (not adjusted for inflation) for the proposed TMDL.

Severe Municipal Budget Impacts from the TMDL

Our City has been working with the 40 watershed cities, Los Angeles County and Caltrans on implementing the Los Angeles River Metals TMDL. Local governments organized to fund the Coordinated Monitoring Plan and special scientific studies dictated by the TMDL in 2008. A watershed funding formula was adopted, in order to fairly assess all 42 local government entities for their costs. We relied on this agency approved Metals TMDL funding formula to gauge the likely budget impact of the Bacteria TMDL on existing public services and our community on the whole.

City of Signal Hill Cost Estimate
LA River Bacteria TMDL Implementation

Annual Budget Impact = $1,390,000
Percentage of City's General Fund = 8.21%

Under the Regional Board's TMDL cost estimates, our City's costs would be $1.39 million annually for the next 25-years in order to comply with the TMDL relying on the watershed funding formula. The watershed funding formula was adopted by the 40 watershed cities, Los Angeles County and Caltrans for funding of both required and voluntary components of the Los Angeles River Metals TMDL. The $1.39 million cost is equivalent to 8.21% of our entire General Fund budget. We are currently running a $1.96 million deficit (approximately 11.4% of our General Fund budget of $17.22 million. The City's General Fund revenues have dropped by $2.96 million, beginning in 2007 (the start of the current economic recession), from $18.32 million in FY2007-2008 to $15.36 million in FY2009-2010. The City has instituted a series of budget reductions in order to balance the budget, including 6% in budget cutbacks, which have resulted in a hiring freeze, across the board employee pay reductions of 3% and significant

reductions in City services. Additional city service reductions are expected for the FY2010-2011 budget.

We have reviewed a series of likely service reductions in order to evaluate the municipal service impacts on our community of the Bacteria TMDL:

Scenario One

City Library (Close)	$329,235
Police Detective Services	$933,900
Police Community Outreach	$97,150
Total	***$1,360,406***

Scenario Two

City Library (Close)	$329,235
Community Services (Close)	$417,217
Recreation Program (Eliminate)	$563,758
Total	***$1,310,210***

Scenario Three

Eliminate All Street Maintenance	***$1,418,205***

The City also continues to be under severe budget strain based on raids from the State of California. The City's redevelopment agency was forced to pay $5.1 million to the State in May of this year as part of the State's attempt to balance their chronically short budget. The Agency has used its funds to perform closure of abandoned oils wells and clean-up soil contamination from brown field sites, which are programs that improve both surface water and ground water in our region. It is expected that the State will continue to raid local government funds well into the future, placing more City and Agency programs in funding jeopardy.

As one can see, the Bacteria TMDL requirements will further severely impact our budget and reduce the City's ability to deliver critical public services. It should also be noted that raising tax revenues for compliance with the TMDL program is subject to the voting requirements of Proposition 218. The California courts have consistently ruled

that stormwater fees are subject to a 2/3rds vote requirement (see Jarvis v. City of Salinas). There have been several failed legislative attempts in the last five years to address the Salinas and other rulings, lower the requirement to 55% in order to assist cities in passing new fees to fund the NPDES Permit and TMDL programs.

We believe that obtaining a 2/3rds voter approval in order to fund the Bacteria TMDL requirements in our community will be very difficult to achieve. Signal Hill proposed a 3% utility users tax to fund bond payments to construct a new police station in November of 2005. This bond measure failed and only obtained 43% of the vote. The most likely scenario of the adoption of the TMDL would be to increase our budget deficit and eliminate existing vital public services, in order to fund a mandated water program of dubious scientific and engineering merit, as well as no practical foundation.

It will also be difficult to pass regional storm water funding measures. The League of California Cities tracks local revenue ballot measures. The League has found that the 2/3rds voter approval requirement is an extremely high hurdle. Of local revenue measures in the June 2008 ballot, only 47% of special tax measures (2/3rds voter measures) passed, while 80% of general tax majority vote measures passed. City of Long Beach Measure I failed in 2007, garnering only 52.44% approval. This measure would have raised funds specifically for the repair and replacement of storm drains and wetlands restoration. The Long Beach measure was estimated to cost homeowners $10 per month. (Source Michael Coleman, California City Finance, Local Revenue Measures, November 2007, November 2008 and November 2009)

We do not see any public benefit to improving water quality to a level that would protect people swimming in the concrete-lined Reaches One and Two of the River, when swimming will continue to be dangerous and prohibited and when the consequences on our municipal services would be severe. We also believe that this TMDL is an unfunded mandate and reserve the right to file an application with the Commission on State Mandates for reimbursement of our expenses at the appropriate time.

<u>Watershed suffers from chronic high unemployment/ declining local revenues</u>

The Gateway Cities Council of Governments (GCCOG) studied the economic and social issues facing the Los Angeles River watershed in 2004, prior to the "Great Recession," which began in 2007. That study concluded that the Los Angeles River watershed was

unique even ten years ago in its high poverty rates, low education levels, housing overcrowding and other socio-economic issues. The study found that in 2000:

- 936,320 persons were living in poverty in the watershed
- 237,440 persons were unemployed in the watershed (a 5.5% unemployment rate). The unemployment rate in the watershed is now estimated at over 13%.
- The TMDL will reduce the funding available for programs that assist the poor and disadvantaged in the watershed as cities will be forced to divert funds to comply with the TMDL.

The Great Recession has severely impacted the nation, the State, the County of Los Angeles and the watershed's communities. Although the 2010 Census numbers are not yet available, data suggest that unemployment and other socio-economic conditions in the watershed have continued to worsen since the 2004 GCCOG study. Unemployment surged nationally as employers shed 4.7 million jobs in 2009, bringing the total number of jobs lost since the onset of the recession to 8.4 million. Economists believe that it will take more than a decade for employment to return to 2006 peak employment levels.

A recent report by the Office of Economics, California State University of Long Beach (May, 2010), reported that in 2009 the region's economy shed 460,000 jobs. (Economic Forecast, California State University Long Beach, May 13, 2010, Office of Economics, Drs. Joseph Magaddino and Lisa M. Grobar). The job losses in 2009 were on top of 138,000 jobs lost in 2008, raising the cumulative job losses in the region to almost 600,000. Cal State Long Beach Economists reported that "the region has not experienced such a devastating job loss since the early 1990's," which was previously thought to be the worst job losses since the Great Depression. (Page 3)

The report's authors note that:

> *"This recession is the longest and one of the steepest declines in the post World War II era. What made this recession different is that the economy has not faced a financial crisis of such magnitude since the Great Depression. The housing bubble, subprime interest loans, lax lending standards, and securitization of mortgages led to the near collapse of the financial markets, creating the first ever downturn in the global economy in the local era." (Page 7)*

"The biggest challenge is the rate of unemployment. As stated earlier, the recession generated a loss of 8.4 million jobs and an unemployment rate above the 10 percent mark. While we are in the early stages of employment growth, employment growth will not occur fast enough to quickly return unemployment to an acceptable level. The labor markets needs to generate 120,000 to 140,000 new jobs every month just to account for growth in the labor force, let alone generate the 8.4 million jobs for workers who have lost jobs. As a consequence, it will take another five years before the unemployment rate falls below 7 percent." (Page 8)

"In 2009, the Southern California region experienced a severe contraction in employment, following national economic trends. At both the national and regional level, it has truly been a "Great Recession." The region lost 6.5% of its employment base in 2009, amounting to almost half a million jobs. It is going to be a number of years before we can reasonably expect to regain all of the jobs lost last year." (Page 9)

These high job losses are borne out by the high unemployment rate in our community, which is 9.7% as if April of this year. These job losses also have a very direct connection with the decrease in State and local government revenues.

The Cal State Long Beach economists reported that the national recession has adversely impacted consumer spending. "The national recession has had dramatic impact on consumer behavior. Confronted with loss of wealth, rising unemployment and tight credit markets, households across the country have cut back on their consumption expenditures." (Page 5-6).

"One feature of the national recession has been a sharp pull back in consumer expenditures. This has had a devastating effect on the region's retail sector, which is the fourth-largest sector in the region.... The sharp decline in the retail sector has also translated into a freefall in taxable sales. We estimate that taxable sales plummeted by 17% last year." (Page 10)

Local governments depend heavily on sales tax revenues to fund general services, such as environmental programs. Less consumer expenditures translate directly into reductions in sales tax revenues. Last year our community's sales taxes dropped by 24%. It may take more than a decade for Signal Hill's revenues to return to 2007 levels.

The report also indicates that State and municipal governments face continued financial stress throughout this year and the next and that job losses will accelerate:

"The state's budget is under severe strain. Since tax revenues lag the economy, we are not likely to see much improvement in the current fiscal year; although, revenues should begin to grow beyond that point. This means that in the near term the state is going to be severely constrained in its spending by budgetary conditions. As a result, we expect job losses in state and local government sectors to worsen this year and extend through 2011." (Page 11)

Local governments in the region lost over 10,000 jobs in 2009. The Cal State Long Beach economists concluded that State and local governments will suffer more job losses in 2010 and 2011; "with large deficits in the State and many municipalities, expect deeper employment cuts and reductions in the level of services." (Page 6)

These severe local government job and revenue losses make funding to meet the TMDL schedule, monitoring plan and implementation plan extremely problematic. Local government resources will be required immediately to develop the coordinated monitoring plan, as well as to fund implementation plan development. Within a two-year period our community will be required to secure funding for the construction of capital improvements designed to meet the water quality objectives in the TMDL. This accelerated schedule creates an extreme hardship to our community, especially considering that we must implement both dry and wet-weather TMDL requirements at the same time, during a period of severe revenue losses and budget deficits.

Gateway Cities Council of Governments Socio-Economic Review

The Gateway Cities Council of Governments (GCCOG) has also reviewed the socio-economic impacts of the TMDL on local governments in the watershed. The GCCOG reviewed the socio-economic and housing conditions in the watershed in 2004, for the adoption of the Los Angeles River Metals TMDL (Metals TMDL). The GCCOG is currently administering the Metals TMDL funding plan, which included the installation of five separate auto sampling equipment this year, water quality sampling, laboratory analysis and reporting. The GCCOG is also moving forward to coordinate the special scientific studies envisioned under the Metals TMDL. These special scientific studies will cost the watershed's 42 local governments over $2.1 million.

The GCCOG's recently completed a socio-economic study of the Bacteria TMDL (June 3, 2010). This study found that the:

- The socio-economic conditions in the watershed have worsened significantly from 2004, due in a good part to the Recession of 2007- 2010. The GCCOG

- found that 237,440 persons were unemployed in the watershed in 2000 and there are currently 533,120 persons unemployed in the watershed. Twenty-three of the watershed's communities have April 2010 unemployment rates above 10% and 11 of the watersheds communities have unemployment rates of over 15%.
- The watershed's communities are finding it increasingly difficult to provide for basic municipal services, due to dramatic drops in sales tax and other local government revenues. Local sales taxes are in "free fall," with average decreases of 17%. A survey of the 21 of the watershed's communities revealed that municipal budgets are in severe deficits, with shortages of $51.4 million from 21 responding cities. The survey reveals that the TMDL as proposed by the Regional Board will increase municipal budget deficits by 8.4% annually.
- There is an uneven distribution of unemployment and poverty in the watershed. Sixteen cities draining into the Lower Los Angeles River (Reaches One and Two) suffer from the highest unemployment in the watershed. The Cities of Commerce and Compton have April 2010 unemployment rates of over 20%. There is a compelling socio-economic argument for the Regional Board to consider Reach specific TMDLs, implementation plans and schedules in order to mitigate the adverse economic impacts of the proposed TMDL on the economically disadvantaged communities that drain into the Lower Los Angeles River.

The Wet-Weather TMDL is Ambiguous

The wet-weather component of the TMDL is very ambiguous and entirely unachievable. Although the TMDL specifies that wet weather compliance can be achieved by "employing any viable implementation strategy," we are not aware of any measures that our City can implement that will achieve the wet-weather Waste Load Allocations (WLAs) called out in the TMDL. The volumes of water that are required to be diverted and/or treated in wet weather are simply too large. For the 2004-2005 water year and after application of the high flow suspension and the "natural sources exclusion," flow in the River at Wardlow Road is roughly 5 billion gallons of water per day, which is more than 10 times the design flow rate of the Hyperion Wastewater Treatment Plant, or enough water to fill the Rose Bowl 56 times in a single day.

The TMDL requires that the cities develop the science and engineering for the wet-weather TMDL during the next ten-year period. During this period of time, the cities will

also be required to design, fund and construct a dry-weather plan. The Regional Board staff TMDL report and the SED mention that as the cities implement the dry-weather TMDL, they will be working towards compliance with the wet-weather TMDL requirements. Yet, it is entirely unreasonable for the Regional Board to assume that by implementing Best Management Practices (BMPs) or diversions and treatment for dry-weather flows, a city will somehow be in compliance with the wet-weather WLAs. The dry-weather flows that are treated by sewer diversions and infiltration devices are a small fraction of the wet-weather flows expected during even small storm events, and large storm flows will easily overtop these facilities.

As the Board is aware, the CREST effort developed detailed science, engineering, monitoring, implementation and scheduling for a dry-weather TMDL. The CREST effort evolved over a two-year period of time and required hundreds of thousands of dollars of investment by the City of Los Angeles in Dry Weather TMDL development. At a minimum, a similar effort must be undertaken by the Regional Board before adopting the proposed TMDL for wet weather conditions. U.S EPA and the Regional Board should secure funding to complete the wet-weather science and engineering. Our community would participate in any committee that the Board would form to develop the science and implementation measures. In the meantime, our City will continue to implement existing programs which should help to some degree in diverting rain weather, such as including SUSMP controls on new development during the planning period.

Concerns with Exceedance Days

The draft TMDL includes interim waste load allocations (WLAs) in the form of allowable *E. coli* loadings from storm drains to a given river segment or tributary for MS4 permittees. However, the final WLAs are expressed in terms of an allowable number of exceedance days in the River itself, based upon a reference watershed approach. Further, with the "allowable exceedance days" approach of the TMDL, it is unclear how compliance with the TMDL (and the MS4 permits based on the TMDL) would be assessed.

As shown by CREST studies, *E. coli* concentrations exceeding standards in one segment of Reach 2 100% of the time, but these exceedances were mostly due to non-human sources. The CREST studies also showed that in Reach 2, tributaries and storm drains contribute only about 10% to 50% of the bacteria loading to the reach, and

the bacteria objective would be exceeded irrespective of the efforts of the Cities. Thus, compliance with interim WLAs (by reducing *E coli* loadings from storm drain pipes) is unlikely to result in compliance with final WLAs (which are measured in the River itself), because much of the bacteria loading is either natural or in-stream, and beyond the control of dischargers. Although no data is available for Reach 1, it has physical characteristics and bacteria sources as Reach 2, and the same situation is expected there.

The University of Southern California completed an extensive study reviewing 70 years of data in order to determine the historic rainfall patterns in Los Angeles County (An Economic Impact Evaluation of Proposed Storm Water Treatment for Los Angeles County, November 2002). The study examined data from 76 weather stations maintained by the Los Angeles County Department of Public Works. USC engineers reviewed over 1,484,090 station-days and found that 132,299 station days had rainfall.

The data illustrated that:

69% of the time, 24-hour rainfall was between 0 and 0.05"
16% of the time, daily rainfall was between 0.5" and 1.0 inch
7% of the time, daily rainfall was between 1.0 and 1.5 inches
8% of the time, daily rainfall was above 1.5 inches

USC researchers found that on average the Los Angeles area experiences about 32 days of rainfall per year. Typically 22 (70%) of these wet days result in 0 to 0.5" rain, 7 of these wet days result in 0.5" to 1.5 inches, 1.5 inches to 2.25 inches for 2 wet days and on one wet day per year more than 2.25 inches of rain will fall.

The Wet Weather portion of the TMDL Staff Report appears to rely on a high flow suspension (HFS) and exceedance days approach in the HSF waterbodies only. Treatment would not be required for 26 days of the year during rain events. The Tentative Basin plan Amendment than allows for 10 exceedance days per year where daily sampling is conducted for wet weather flows in Non-HFA waterbodies, and 15 eceedance dasy per year where daily sampling is conducted for wet weather flows in HFS water bodies, and only 2 exceedances per year for both, where weekly sampling is conducted for wet weather flows. We asked Flow Sciences to estimate the volume of water that would be need to be treated after the 15 highest flow days are eliminated, relying on flow data from the Los Angeles River for 2004-2005, which was a typical rain

year. The sixteenth-largest daily flow rate in the river (the volume that would need to be treated) was 7,740 cfs, or 5 billion gallons of water per day, which is about 10 times the design flow rate of the Hyperion Treatment Plan, or enough water in a single day to fill the Rose Bowl 56 times.

It was our understanding that the high-flow suspension approved by the Board was based on safety considerations and on the fact that for certain size storm events and for a period of time during and after the event, the River was not safe for recreational purposes. It is counter-intuitive to limit the exceedance days based on a hypothetical number for wet weather runoff. Further, it seems inappropriate to limit the HFS policy to only portions of the River. Moreover, given that it is very unlikely that the Cities will be able conduct daily sampling for bacteria at all monitoring stations throughout the watershed for 365 days, a limit of 2 exceedance days for bacteria where weekly sampling is conducted, is entirely unreasonable. The Regional Board's proposal will essentially hold the Cities will be held responsible for wet weather exceedance that are completely uncontrollable. Unfortunately rainfall cannot be controlled – when it rains it rains – and the allowable exceedances should be based on storm events that cannot be reasonably, economically or practically controlled.

Mandatory Penalties for Exceedances

We are also concerned that the structure of the TMDLs may result in the use of numeric effluent limits within the Municipal NPDES Permits, and that this approach will then lead to assessment of mandatory minimum penalties under Porter-Cologne Sections 13385(h) and 13385(i), or other penalties being imposed against the Cities. As the Board is aware, violations of the mandatory minimum penalty provisions fall into serious and on-going violations when waste discharge limits are exceeded. Mandatory penalties could potentially then be assessed for both wet and dry-weather violations of the exceedance days. Monthly fines for a single serious violation for a 30-day period would total $180,000.

With the Bacteria TMDL the Regional Board staff is proposing a compliance standard that not only exceeds federal requirements, but places the Cities in serious financial peril. The Cities should be allowed to translate the TMDL WLA into a narrative, non-numeric Water Quality Based Effluent Limit, consisting of BMPs that address the WLA. With this approach, the Cities would be required to implement BMPs and to step-up BMPs through the adaptive approach.

Lower Los Angeles River Water Conservation Plan (WCP) Alternative

The Cities request that the Regional Board consider the unique characteristics of Reaches One and Two when considering the Bacteria TMDL requirements. We have prepared an alternative for these two Reaches that respects the flood control purposes of the River improvements, while, at the same time, improving water quality through the implementation of water conservation methods and Best Management Practices (BMPs). I have included a copy of the "Lower Los Angeles River Water Conservation Plan (WCP)" with this letter. The alternative is more fully described in the document and identifies the problems, sets water quality objectives, includes source assessment, water conservation and flood control plans, a BMP based implementation strategy and timelines. The plan includes the construction of two water reclamation plants along the Rio Hondo River (a tributary to the main River). The Rio Hondo drains a very large area, including major portions of the San Gabriel Valley. The plan also includes participation in a regrowth study and in certain pilot programs, such as the anti-microbial filter study.

The upstream cities recognize the need to protect water quality at Long Beach beaches, where high levels of recreation occur. The City of Long Beach has conducted a breakwater study to identify water quality issues exacerbated by reduced water circulation in the Long Beach area due to the breakwater and harbor construction. The Army Corp of Engineers is currently conducting an $8 million study to evaluate modifications to or removal of sections of the breakwater, or construction of new breakwaters to reroute Los Angeles River flows away from the beaches (East San Pedro Bay Eco-Restoration Project). The Cities in Reaches 1 and 2 support these approaches. The Cities would also assist the City of Long Beach in the federal study of the Long Beach Breakwater. The Cities wish to make recreation safe at the beaches, where swimming is legal and encouraged, rather than to spend resources to attempt to meet the REC-1 water quality standards in the lower reaches of the river, where swimming is dangerous and illegal.

The wet weather approach would include an extension of the high flow suspension policy to other flood control channels serving Reaches One and Two, whether concrete-lined or otherwise and potentially an extension of the high flow suspension to storms with less than 0.5 inches of rain, if conditions in the channel are demonstrated to be unsafe for smaller storms. Cities would continue to implement the SUSMP controls for new development and redevelopment projects, while US EPA and the Regional Board

would fund the necessary studies of wet-weather conditions, along with reasonable implementation measures. We strongly believe that the Regional Board should ultimately be pursuing a comprehensive analysis of the designated "beneficial uses" of Reaches One and Two of the River, and potential revisions to water quality objectives to require control of "controllable water quality factors," ***before*** developing any Bacteria TMDL for the River, if one is then found to even be necessary for such Reaches.

Legal Concerns and CEQA Concerns

There are a series of legal and CEQA concerns, which are contained in two separate documents being submitted by Mr. Rich Montevideo on behalf of the cities (see Legal Comments and CEQA Comments). We will review two major concerns in this letter. The Regional Board appears to be imposing the TMDL with the intent to "restore" the swimming use to the River, when the River and its tributaries have been extensively modified over the last 70 years for flood control purposes, when swimming is dangerous, and when the public is prohibited for safety reasons from being in the River. In reality, the proposed Bacteria TMDL is directly at odds with the very purpose of the River's 70 years of development into a flood control channel. We believe that the Clean Water Act provides for an exception based on the unique history of manmade improvements to the River, especially in the Lower Los Angeles River.

As recently as 2002, the U.S. Army Corps of Engineers completed a 15-year project, costing $216 million, designed to raise the height of 21 miles of levees along the River, by building up the earthen levee embankments, constructing parapet walls on top of the levees, armoring the backside of some of the levees and modifying some of the bridges. The purpose of this massive improvement project was to eliminate the flood insurance mandates imposed by the Federal Emergency Management Agency on thousands of properties adjacent to levee, when studies indicated that the River had the potential of flooding substantial areas. Less than eight years after the completion of this major project, the Regional Board is now ***"compelling"*** the cities to ***"take aggressive action to ....restore the river."***

The Basin Plan contains a very important "foot note" ("Access prohibited by Los Angeles County DPW), listing large portions of the River not presently appropriate for the REC-1 and REC-2 uses, where the River is fenced for safety purposes. The REC-1 and REC-2 uses were not in existence or even practical in 1975, when the Clean Water

Act was adopted. We believe that the Regional Board can demonstrate under the Clean Water Act that:

- *"Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use;"*
- *"Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place;"*
- *Dams, diversions or other types of hydrological modifications preclude the attainment of the use;" and*
- *Controls more stringent than those required by sections 301(b) and 306 of the act would result in substantial and widespread economic and social impact."*

We are concerned from the CEQA standpoint that the Regional Board has only considered one alternative to the TMDL in the supplemental environment document (the adoption of the TMDL by U.S. EPA). This is far from a reasonable review of alternatives to the project. For example, there is no consideration of the Water Conservation Alternative as proposed by the cities for Reaches One and Two.

One of the main purposes of CEQA is to give decision makers (in this case the Regional Board) a range of reasonable alternatives to consider, such that the Board can fully comprehend and lessen the impacts of the TMDL on the environment, including reducing or eliminating the impacts of the TMDL on local government services, such as public safety, public works, maintenance programs and other services.

The Limits of Storm-Water Treatment

The USC report explained in 2002 that Bacteria was listed as a major problem on the region's rivers by the Regional Board and would ***"most likely have to be controlled by the use of chlorination, the way sewage is now treated in the region's nine wastewater plants. We estimate that the capital costs for facilities to provide this level of treatment to storm-water flows 364 days per year would approach $30 billion."***

The report concluded that the current regulatory scheme of TMDLs and NPDES permits would require that storm water be cleaned prior to release into federal waterways. This would mean that existing flood retention facilities, like the Sepulveda Basin, could not be

used to store untreated storm water, triggering the need to assembly land for storm water retention areas. The land assembly costs were estimated at another $50 billion.

The study forecast tremendous economic stress on the region's communities if more practical solutions were not found. At the time, the study was widely criticized by then Regional Board members and environmental organizations. However, with this one TMDL only, for this one waterbody, we are starting to realize the inherently high costs and problems created by the TMDLs and NPDES permit process being advocated by the Regional Board staff and the environmental organizations, contrary to federal and state regulations.

The University of Southern California study concluded in 2002 that the likely outcome of present course of the TMDL and NPDES programs would be massive expenditures of local government revenues, if the programs were based on the imposition of numeric limits, in lieu of a reasonable and affordable BMP approach.

> ***"This would be massively expensive, and local regulators know it. They contend that they have never intended to require advanced treatment of storm water, and that cities can meet water quality standards by taking inexpensive steps. We conclude the opposite."***

Conclusion

Signal Hill and the local governments in the Los Angeles River watershed are facing a series of unique challenges. Unemployment is at record levels, resulting in an unprecedented three-year drop in local government revenues, in turn causing severe budgetary stress to our community and others. Watershed communities are implementing budget cutbacks, hiring freezes, layoffs and program reductions. Regional economists believe that it will take the better part of this decade for jobs and revenues to recover. The TMDL will be an unfunded mandate, as local governments could be forced by the Regional Board to expend scare public resources on complying with impossible to reach water quality standards and would be forced to reduce critical municipal services.

Southern California is also facing severe water shortages for the foreseeable future. These include uncertainty and litigation over water transfers through the Sacramento Delta, less imported water from the Colorado River and the playing out of historic

drought patterns in California. The current drought in California began in 2007 and despite an above average rainfall and snowpack this year, reservoirs are still below levels necessary to eliminate water shortages. It is incumbent upon the Regional Board to work with the Cities to conserve and reuse urban runoff. The TMDL program presents a unique opportunity for the Regional Board to partner with the Cities to develop water conservation programs that will also benefit surface water quality.

We stand ready to work with the Regional Board as you adopt of the Lower Los Angeles Water Conservation Plan (WCP). The alternative plan is well suited for Reaches One and Two, since the REC-1 and REC-2 uses are not practicable in these Reaches. Also, the dry-weather flows can be more effectively reused with the plan's BMPs, with fewer adverse environmental impacts.

We urge the Regional Board to hold a workshop in Reaches One and Two in order to see first-hand the issues that the cities are attempting to address and to discuss the Water Conservation Alternative.

Sincerely,

Kenneth C. Farfsing
City Manager

cc: Mayor and City Council
City Attorney
Public Works Director
Mr. Richard Montevideo, Special Counsel

LA River Bacteria TMDL
June 4, 2010

Attachment:

1) **"The limits of storm-water treatment"**, Long Beach Press Telegram, Dr. James E. Moore, Dr. Peter Gordon, Dr. Harry Richardson, Dr. John Kuprenas and Dr. Jiin-Jen Lee, University of Southern California, April 27, 2003.

2) Lower Los Angeles River Water Conservation Plan (WCP), June 1, 2010

3) LAR Bacteria TMDL Implementation Plan Watershed Cost Estimate May 11, 2010

4) Estimated Copper WER/Lead Recalculation Cost Allocations for 40 TMDL Identified Cities, LA County and Caltrans

5) Local Revenue Measures November 2007, November 2008 and November 2009, California City Finance, Michael Coleman