

Heal the Bay

1444 9th Street  
Santa Monica CA 90401

ph 310 451 1550  
fax 310 496 1902

info@healthebay.org  
www.healthebay.org

November 9, 2009

Ms. Tracy Egoscue  
Los Angeles Regional Water Quality Control Board  
320 W. 4<sup>th</sup> Street, Suite 200  
Los Angeles, CA 90013

VIA EMAIL: la\_trash@waterboards.ca.gov; tegoscue@waterboards.ca.gov

**Re: Proposed Reopener of Waste Discharge Requirements for the County of Los Angeles Municipal Storm Water Discharge Permit to Incorporate Provisions of the Los Angeles River Watershed Trash Total Maximum Daily Load (“Reopener”)**

Dear Ms. Egoscue,

On behalf of Heal the Bay and our over 13,000 members, thank you for the opportunity to comment on the proposed reopener to the Los Angeles County Municipal Stormwater (“L.A. MS4”) permit to incorporate the Los Angeles River Watershed Trash Total Maximum Daily Load (“L.A. River Trash TMDL”). Federal law mandates that the Los Angeles Regional Water Quality Control Board (“Regional Board”) integrate TMDLs into NPDES permits. Thus, in general, we support staff’s proposal for the Reopener. However, it is critical that staff expand the scope of this Reopener to include additional TMDLs that are in effect such as the Ballona Creek Trash TMDL.

As discussed in the public notice (No. 09-117), “[t]he validity of the Trash TMDL is not an issue before the Regional Board in this proceeding.” Thus we will limit our comments below to the merits of the Reopener and only incorporate by reference Heal the Bay’s August 21, 2006 comment letter to the Regional Board which describes our strong support of the L.A. River Trash TMDL.<sup>1</sup>

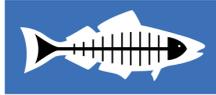
**I. The Regional Board’s Proposal Is Required By Law.**

Federal law clearly commands that the Regional Board integrate the L.A. River Trash TMDL into the effluent limitations of appropriate NPDES permits. Specifically, Federal regulations require that:

Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA pursuant to 40 CFR 130.7. (40 CFR § 122.44(d)(4)(vii)(B).)

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<sup>1</sup> Heal the Bay requests that the Heal the Bay’s August 21, 2006 be included in the administrative record for this matter. This evidence is relevant to demonstrate the impact of trash in the environment and provide details on the history of the LA River Trash TMDL adoption.



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In fact, the Regional Board has, in other ongoing proceedings, stated that the Environmental Protection Agency has underscored that “NPDES permit conditions must be consistent with the assumptions and requirements of available WLAs.” Correspondence from Executive Officer Jonathan Bishop to Elizabeth Miller Jennings (June 15, 2006) (citing “Establishing Total Maximum Daily Loads (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs,” USEPA, 2002.) Federal law leaves no room for the Regional Board to *not* assure that the Los Angeles County MS4 Permit contains limitations consistent with already established WLAs, and the underlying L.A. River Trash TMDL. Thus, the effluent limits set by the L.A. MS4 permit must be consistent with the L.A. River Trash TMDL’s wasteload allocations.

## II. Staff’s Proposal is Consistent with Regional Board and State Board Actions and USEPA Guidance.

As you are aware, The Los Angeles Regional Board integrated TMDL limits for the Santa Monica Bay Beaches Bacteria Dry-Weather TMDL and Marina del Rey Harbor Mother’s Beach and Back Basins Bacteria TMDL into the L.A. MS4 permit in 2006 and 2007, respectively. In fact, the State Water Resources Control Board adopted an Order on August 4, 2009 that denied the County of Los Angeles’s claims against this Regional Board action to include the Santa Monica Bay Beaches Bacteria Dry-Weather TMDL in the L.A. MS4 permit (see Order No. WQ 2009-0008). In addition, the recently adopted Ventura County MS4 included all TMDLs in effect in Ventura County and their corresponding wasteload allocations and implementation schedules. Other regional water boards have also followed suit. For example, the recently adopted *Waste Discharge Requirements for the County of Orange, Orange County Flood Control District and The Incorporated Cities of Orange County within the Santa Ana Region Areawide Urban Storm Water Runoff Orange County* (Order No. R8-2009-0030)<sup>2</sup> by the Santa Ana Regional Board incorporates numeric TMDL wasteload allocations into the permit. Hence, there is nothing new or unique about incorporating the L.A. River Trash TMDL into the L.A. MS4 permit and this process has been upheld by the State Board.

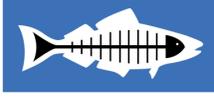
In addition, the proposed Reopener is consistent with USEPA policy. In a letter to the State Water Resources Control Board from Alexis Strauss, Director of USEPA Region 9 Water Division, Ms. Strauss states that:

“...the permitting authority also has the discretion to express permit conditions for municipal stormwater dischargers as numeric limits where appropriate....It would be consistent with EPA’s regulations and the recommendations in this guidance [Based Establishing TMDL Wasteload Allocations for Storm Water Sources and NPDES Permit Requirements Based on those WLAs] for a permitting agency to decide it is appropriate to use numeric limits.”<sup>3</sup>

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<sup>2</sup> Heal the Bay requests that Order No. R8-2009-0030 be included in the administrative record for this matter. This evidence is relevant to demonstrate that other regional water boards have incorporated TMDL wasteload allocations expressed as numeric effluent limits in MS4 permits.

<sup>3</sup> Heal the Bay requests that the USEPA letter be included in the administrative record for this matter. This evidence is relevant to demonstrate that USEPA has agreed that WLAs expressed as numeric limits are appropriate for MS4 permits.



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Integration of the L.A. River Trash TMDL at this time makes all the more sense because California's focus on the reduction of marine debris. On November 20, 2008 the California Ocean Protection Council adopted an *Implementation Strategy for the California Ocean Protection Council Resolution to Reduce and Prevent Ocean Litter*.<sup>4</sup> This landmark Strategy lays out ambitious actions for eliminating harmful trash from entering the Pacific Ocean statewide. As the OPC has recognized, the growing amount of trash in our oceans is choking marine life, crippling regional economies and diminishing quality of life along California shorelines. Stormwater runoff carries trash and other pollutants directly to local streams, such as the Los Angeles River, and eventually to the ocean unfiltered and untreated.

### **III. The Regional Board Should Broaden the Scope of the Reopener to Include Additional TMDLs.**

As acknowledged by Regional Board staff in various workshops and hearings, the renewal of the long overdue L.A. MS4 will likely be a multiple year process. Thus it is even more critical that the proposed Reopener include all applicable TMDLs that are in effect in Los Angeles County. At a minimum all TMDLs with compliance points that have passed or that are upcoming in the next two years, should be included in this reopener. It is unclear why the proposed scope of the reopener is so narrow. As the Ballona Creek Trash TMDL is nearly identical to the L.A. River Trash TMDL, why did the Regional Board not at least propose to include this TMDL in the Reopener as well? This seems like a logical extension of the Reopener and would require little staff resources.

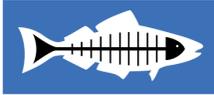
Also of note, the plethora of water quality issues in the Malibu Creek Watershed has dominated the discussion at several Board hearings over the past year. In order to improve water quality in this area, enforceable TMDLs are critical. Heal the Bay believes that if nutrient WLAs were in the L.A. MS4 permit, then the Malibu Creek watershed TMDLs would finally be enforceable. This is a critical tool in catalyzing any significant progress towards water quality standards attainment in the watershed. Also, the TMDL was developed and approved by USEPA over 6 years ago, so inclusion of the WLAs in the permit should have occurred a long time ago. Thus, the Regional Board should also include the Malibu Nutrients and Bacteria TMDLs in the Reopener. We have included example language for several additional TMDLs in Attachment A.

### **IV. The Regional Board Should Clarify that Compton Creek and other Tributaries are Covered by the L.A. River Trash TMDL.**

At the July 16, 2009 Regional Board hearing on the 2008 303(d) List in response to public and Board inquiry, staff noted that the Compton Creek Trash impairment listing would be addressed under the L.A. River Trash TMDL. The Reopener states that “[f]or purposes of this Permit, attainment of the effluent limitations shall be conclusively presumed for any drainage area to the Los Angeles River (or its tributaries) where certified full capture systems treat all drainage from the area....” Part 7, Section 1. B.3. However, this statement is only included under the “full capture device” section and does not specify the tributaries. The factsheet specifies individual tributaries in a footnote (“Tributaries to the Los Angeles River include but are not limited to Pacoima Wash, Tujunga Wash, Burbank Western Channel, Verdugo Wash, Arroyo Seco, the Rio Hondo, and Compton Creek) but

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<sup>4</sup> Heal the Bay requests that the OPC's *Implementation Strategy for the California Ocean Protection Council Resolution to Reduce and Prevent Ocean Litter* be included in the administrative record for this matter. This evidence is relevant to demonstrate that trash reduction is a state priority.



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this information is not contained in the permit. Factsheet at 1. Staff should specify in the overarching Reopener language that Compton Creek and other tributaries are included in the scope of the L.A. River TMDL so that there is no ambiguity.

#### **V. Many of the Cities that May Oppose Incorporation of this TMDL Have Received Millions of Dollars of Federal Stimulus Money from the State to Reduce Trash in the Los Angeles River.**

The “Gateway IWRM Authority”<sup>5</sup> recently was awarded \$10 million from the State Water Resources Control Board Clean Water State Revolving Fund as part of the American Recovery and Reinvestment Act.<sup>6</sup> As explained in the grant award document, these funds were specifically given to assist the cities in their compliance with the Los Angeles River Trash TMDL by supporting acquisition of full capture devices for literally thousands of catch basins in the watershed. In fact in a presentation made by Desi Alvarez, Director of Public Works of the City of Downey, to the Regional Board at the November 5, 2009 hearing, Mr. Alvarez discussed this funding and stated that all 16 cities that had received the funding were on track for 100% compliance by the TMDL compliance deadline. Some of those same municipal recipients have long opposed the trash TMDL and continue to do so. The Regional Board should not be dissuaded by these cities’ arguments about cost or feasibility when these cities have acknowledged feasibility in their grant request to the State Board and have accepted taxpayer funds to address the problem specifically in the Los Angeles River Watershed.

Heal the Bay requests that the information from the Gateway grant request as well as the State Water Board’s allocation of funds to those cities be included in the administrative record for this matter. This evidence is relevant to the cities’ ability to comply with the TMDL as incorporated into the stormwater permit and to the State Water Board’s support for their efforts to comply.

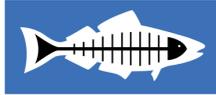
#### **VI. The Regional Board Should Modify the Proposed Reopener Language.**

In general, the Regional Board should streamline the proposed Reopener language in Part 7. The proposed Reopener language includes a detailed discussion of compliance determination and Monitoring and Reporting Requirements. Reopener at Part 7, 1.B.-C. While this is important information, the Regional Board should describe these elements in a document outside of the L.A. County MS4 or incorporate the information by reference. Including this detailed information within the permit overly complicates the requirements. If the Regional Board were to take this same detailed approach for all TMDLs in effect in Los Angeles County (which, as stated earlier, should be included within the proposed MS4 Reopener), there would be potentially a hundred or more pages added to an already lengthy and complex permit. Instead, the Regional Board should simply include numeric WLAs as effluent limits and required implementation actions and milestones in Part 7. We suggest following the approach taken in the recently adopted Ventura County MS4. As an example,

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<sup>5</sup> Participants in the grant request included Bell, Bell Gardens, Commerce, Compton, Cudahy, Downey, Huntington Park, Long Beach, Lynwood, Maywood, Montebello, Paramount, Pico Rivera, South Gate, and Vernon. *See* Los Angeles Gateway Region Storm Drain Catch Basin Retrofit Project (attached hereto with portions available at [https://faast.waterboards.ca.gov/attachments/proposal\\_16004/attachment\\_45824.PDF](https://faast.waterboards.ca.gov/attachments/proposal_16004/attachment_45824.PDF), PIN# 16004

<sup>6</sup> *See* Clean Water State Revolving Fund American Recovery and Reinvestment Act Status Report as of Oct 30, 2009 (attached hereto and available at [http://www.waterboards.ca.gov/water\\_issues/programs/grants\\_loans/srf/docs/economic\\_recovery/stimulus\\_report.pdf](http://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/docs/economic_recovery/stimulus_report.pdf))



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we have proposed alternate language for several TMDLs (See Attachment A). This alternate approach will allow for all TMDLs that are in effect to be more easily incorporated in the MS4.

At a minimum, the Regional Water Board should make the following clarifications to Part 7:

**Section 1.B.1.(b).1.** The proposed Reopener discusses interim and final compliance determination for partial capture devices and institutional controls. However, it appears that this section allows for final compliance with the use of only partial capture devices. (“Trash discharges from areas serviced solely by partial capture devices may be estimated based on demonstrated performance of the device(s) in the jurisdictional area.”) On its face, this would obviously not make sense given the definition of a partial (not full) capture device. The Regional Board should clarify this section.

**Section 1.B.1.(a).3.** The proposed Reopener appropriately describes that the entire L.A. River system must be addressed for compliance purposes (“For purposes of this Permit, attainment of the effluent limitations shall be conclusively presumed for any drainage area to the Los Angeles River (or its tributaries) where certified full capture systems treat all drainage from the area....”). This is consistent with the adopted Basin Plan Amendment. However, this is only described in the section on “Full Capture Systems”. This should be included as an overarching concept for the Reopener. Also as described above, the specific tributaries should be included.

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In sum, we strongly support staff moving forward with modifications to the L.A. MS4 permit to incorporate the Los Angeles River Watershed Trash Total Maximum Daily Load. This action is consistent with the law and previous Regional Board and State Board action. Also this route is clearly described in the adopted L.A. River Trash TMDL: “This TMDL will be implemented through stormwater permits and via the authority vested in the Executive Officer by section 13267 of the Porter-Cologne Water Quality Control Act: (Water Code section 13000 et seq.).” However, we urge staff to expand the scope to ensure that all adopted TMDLs are enforceable, which in turn will lead to improved water quality in Region 4.

As a designated “party” to the hearing, we request 30 minutes to speak at the December 10, 2009 hearing on the Reopener. We also request the opportunity to cross-examine any witnesses of other designated parties. Depending on the number of witnesses, we estimate the need for an additional 15-30 minutes for cross-examination.

Sincerely,

Kirsten James  
Water Quality Director

Mark Gold, D. Env  
President