



Public Works
Department

City of Arts & Innovation

Public Comment
R8 SHEL TMDL
Deadline: 11/27/17 by 12 noon



November 27, 2017

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
PO Box 100
Sacramento, CA 95812-2000

RE: COMMENT LETTER – SANTA ANA REGION REVISED COMPLIANCE SCHEDULE FOR SHEL TMDL FOR NEWPORT BAY AND OTHER WATER QUALITY STANDARDS BASIN PLAN AMENDMENTS

Dear Ms. Townsend:

Thank you for the opportunity to review and comment on the proposed Basin Plan amendments for the Santa Ana region. The City of Riverside has carefully reviewed the subject amendments, including the related staff report, and have the following comments.

The Santa Ana Regional Water Quality Control Board proposes to add Hole Lake Creek to Table 3-1 of the Basin Plan. The staff report correctly describes Hole Lake Creek as a stream that "flows just to the west of Van Buren Boulevard from Arlington Avenue and empties into the Santa Ana Rivers adjacent to the Van Buren Bridge."¹ However, Figure 12 appears to depict a much longer stream segment than that described in the text.² Consequently, there is considerable confusion as to exactly where the proposed beneficial uses will apply.

The staff report states that: "Hole Lake Creek contains pools of perennial water and well-established riparian areas."³ This is an accurate description of Hole Lake Creek from Arlington Avenue to the confluence with Reach 3 of the Santa Ana River. Above Arlington Avenue the culvert is a concrete-lined flood control channel with no "well-established riparian area" (see Fig. 1 in this comment letter). Figure 12 in the staff report fails to accurately depict this critical distinction made in the text of the same staff report. Therefore, we understood the Regional Board's approved action for Hole Lake Creek to apply only to the natural stream channel extending from Arlington Avenue to the Santa Ana River.

¹ Santa Ana Regional Water Quality Control Board. Staff Report for Item #11. June 16, 2017; see pg. 30 of 52.

² Santa Ana Regional Water Quality Control Board. Staff Report for Item #11. June 16, 2017; see pg. 29 of 52.

³ Santa Ana Regional Water Quality Control Board. Staff Report for Item #11. June 16, 2017; see pg. 30 of 52.

The flood control channel was built to convey storm water from the City of Riverside to Hole Lake Creek and, thence, to Reach 3 of the Santa Ana River. Discharges from the concrete-lined channel are governed by a MS4 permit issued by the Regional Board.⁴ In order to implement this permit properly, it is essential to know where MS4 conveyances discharge to waters of the U.S.⁵ Compliance with the permit is determined at "outfall."⁶ Figure 12 in the staff report incorrectly implies that the concrete-lined flood control channel is part of Hole Lake Creek despite the accompanying text to the contrary. This, in turn, creates considerable confusion regarding the appropriate point-of-compliance for this waterbody under the MS4 permit.

The City and County of Riverside are evaluating several different projects designed to achieve compliance with the bacteria TMDL established for Reach 3 of the Santa Ana River. One of the most promising alternatives is to intercept and divert dry weather flows from concrete flood control channels above the outfall to waters of the U.S. Any uncertainty about where the MS4 ends and the stream begins will, at best, significantly delay our implementation efforts. At worst, it may preclude such projects altogether.

If the MS4 conveyance is designated a water of the U.S., then all discharges to that conveyance must comply with applicable water quality standards including bacteria. We will be forced to install dozens of smaller treatment or diversion structures throughout the length of conveyance rather than one interceptor at the bottom of the concrete-lined channel above the outfall to Hole Lake Creek. We do not believe that this is what the Regional Board intended.

In order to avoid any possible confusion we recommend that a footnote be added to Table 3-1 describing Hole Lake Creek as the natural unlined channel extending from Arlington Avenue to the confluence with Reach 3 of the Santa Ana River. This would be a non-substantive change that is entirely consistent with the plain text of the accompanying staff report. It is also consistent with long-standing state and federal policy that draws a sharp distinction between a man-made MS4 conveyance and a water of the U.S.⁷ It is essential that this footnote be added to the Basin Plan itself in order to resolve the unintended inconsistency created by Figure 12 in the staff report. Alternatively, the SWRCB can revise its own adoption resolution to make this same point in a legally-binding manner.

If the State Board is unable to discern the Regional Board's true intent from the available record, then we recommend that the proposed designation of Hole Lake Creek be remanded to the Regional Board to resolve the apparent inconsistencies. If it opts to remand, then the State Board should also provide guidance on the questions of: 1) whether a concrete-line flood control conveyance can also simultaneously be considered a "water of the U.S." and 2) how to establish appropriate points-of-compliance for discharges and outfalls governed by the MS4 permit.

⁴ NPDES No. CAS 618033; adopted as Order No. R8-2010-0033 (January 29, 2010).

⁵ Los Angeles County Flood Control District v. Natural Resources Defense Council, Inc., et al. 133 S.Ct. 710 (2013)

⁶ See 40 CFR §122.26(b)(9)

⁷ See 40 CFR §122.26(b)(8)

Questions regarding this matter can be directed to Michael Roberts at (951) 351-6310 or mdroberts@riversideca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Steuer", is enclosed within a hand-drawn oval. The signature is fluid and cursive.

Mark Steuer
Deputy Public Works Director/City Engineer
City of Riverside

Figure 1: Hole Lake Creek (natural, unlined section below Arlington Ave.)

