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COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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November 9, 2009

IN REPLY PLEASE
REFER TO FILE:

WM-9

Ms. Tracy Egoscue, Executive Officer
California Regional Water Quality
Control Board – Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles, CA 90013-2343

Attention Mr Ivar Ridgeway

Dear Ms. Egoscue:

**COMMENTS OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT
ON THE PROPOSED MODIFICATION TO THE LOS ANGELES COUNTY
MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMIT TO
INCORPORATE PROVISIONS RELATING TO THE LOS ANGELES RIVER
WATERSHED TRASH TOTAL MAXIMUM DAILY LOAD**

Thank you for this opportunity to submit written comments on the proposed modification to the Los Angeles County Municipal Separate Storm Sewer System Permit to incorporate the Los Angeles River Trash Total Maximum Daily Load. Our comments and request to submit evidence are enclosed.

If you have any questions, please contact me or your staff may contact Mr Hector Bordas at (626) 458-5947 or hbordas@dpw.lacounty.gov

Very truly yours,

GAIL FARBER
Director of Public Works

GARY HILDEBRAND
Assistant Deputy Director
Watershed Management Division

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Enc.

COMMENTS OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT ON THE PROPOSED MODIFICATION TO THE LOS ANGELES COUNTY MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMIT TO INCORPORATE WASTE LOAD ALLOCATIONS FOR TRASH PURSUANT TO THE LOS ANGELES RIVER WATERSHED TRASH TMDL; REQUEST TO SUBMIT EVIDENCE

I. COMMENTS ON THE PROPOSED MODIFICATION TO THE LOS ANGELES COUNTY MUNICIPAL STORMWATER PERMIT

Thank you for this opportunity to submit written comments on the proposed modification to the Los Angeles County Municipal Separate Storm System Permit (Permit) to incorporate the Los Angeles River Trash Total Maximum Daily Load (Trash TMDL). The Los Angeles County Flood Control District (District) has been and continues to be fully supportive of the Trash TMDL's goals. Prior to the adoption of the Trash TMDL, the District had already been implementing proactive measures to reduce trash.

The District submits the following three comments on the proposed Permit amendment in order to improve its implementation and make it consistent with legal requirements:

(1) A provision should be added to Part 7, Appendix 7-1, of the proposed Permit amendment to make Appendix 7-1 consistent with Table 7.2.3 of the Basin Plan and the Settlement Agreement entered into in 2003 between the Los Angeles Regional Board, the State Water Resources Control Board, the City of Los Angeles, the County of Los Angeles (County), the District, the Santa Monica Baykeeper, and Heal The Bay.

(2) Part 7.1.B(4) of the proposed Permit amendment should be deleted because it is unnecessary and to make clear that the District is not responsible for the conduct of permittees over which it has no control; and

(3) Part 7.1.A and Appendix 7-1 of the proposed Permit amendment should be modified to be made consistent with the recommendations of the State Board's panel of experts on the use of numeric effluent limits in municipal stormwater permit and EPA's guidance on the inclusion of TMDLs into stormwater water permits.

A. Proposed Appendix 7-1 Should be Modified to Reflect Table 7.2.3 of the Basin Plan and the Settlement Agreement entered into Between the Regional Board, State Board, and Various Parties

On January 25, 2001, the Regional Board adopted the original Trash TMDL for the Los Angeles River watershed. This TMDL, as approved by the

State Board, was challenged by the City of Los Angeles ("City"), the County and the District. On September 18, 2003, the Regional Board, State Board, City, County, District, Santa Monica Baykeeper, and Heal the Bay entered into a Settlement Agreement resolving these challenges. A copy of the Settlement Agreement is included with this letter; the District requests that this agreement be admitted into evidence and made a part of the Administrative Record.

The Settlement Agreement requires the Regional Board to review and reconsider the final trash waste load allocations once a reduction of 50% of the baseline waste load allocation has been achieved. (Attachment A, page 23.) The Regional Board subsequently incorporated this provision of the Settlement Agreement into the Basin Plan as footnote 2 to Basin Plan Table 7.2.3.

The Regional Board has acknowledged this obligation in its proposed new Finding 50, but the requirement itself has not been included in proposed Part 7 of the Permit. Unless this requirement is included in Part 7, the Permit will be inconsistent with the Basin Plan and the Settlement Agreement. To correct this omission, proposed Appendix 7-1 should be revised to include on Tables 1a and 1b the same footnote that is in the Basin Plan. This footnote says "[T]he Regional Board will review and reconsider the final Waste Load Allocations once a reduction of 50% has been achieved and sustained in the watershed."

For the convenience of the Regional Board, a copy of proposed Appendix 7-1 with this footnote added is included with these comments.

B. Because the District Cannot Lawfully be Made Liable for Actions of Other Permittees Over Which it Has No Control, Proposed Part 7.1.B(4) Should be Deleted

Proposed Parts 7.1.A and B of the Permit address each permittee's compliance with the trash waste load allocations allocated to it. Part 7.B(1) provides that permittees may comply with the allocations using any lawful means. Parts 7.B(2), (3) and (4) address the consequences of a permittee's failure to comply with its waste load allocations.

Part 7.1.B(4) appears to impose liability on the District for another permittee's compliance with the Permit where a permittee's stormwater flows into portions of the MS4 that are "under the authority of" the District. Apparently, the Regional Board is under the impression that certain permittees could be prevented from complying with their obligations under the Trash TMDL because of the District's ownership of portions of the MS4.

There is no factual basis for this erroneous conclusion, for two reasons. First, each permittee has its own, separate obligation to comply with the Trash TMDL and there is no instance in which a permittee could not comply with its waste load allocations by utilizing its own facilities and authority exclusively. In

other words, there are no circumstances under which a permittee would be required to install devices or institutional controls within the District's property in order to comply with the Trash TMDL.

Secondly, if a permittee chooses to install devices in the District's portion of the MS4, there is a procedure for obtaining a permit from the District to modify the District's facilities.

Therefore, there is no factual basis for concluding that the District has control over any other permittee's ability to comply with the Trash TMDL. Consequently, there is no need for proposed Paragraph 7.1.B(4) and no justification for holding the District jointly liable with a permittee simply because the District has authority over portions of the MS4.

Further, there is no legal basis for joint and several liability under either the California Water Code or the Clean Water Act. Because the District could not prevent another permittee from complying with the Permit, the Regional Board cannot as a matter of law hold the District jointly and severally liable with a permittee for permit violations. Under the Water Code, the Regional Board issues waste discharge requirements to "the person making or proposing the discharge." Water Code § 13263(f). Enforcement is directed towards "any person who violates any cease and desist order or cleanup and abatement order . . . or . . . waste discharge requirement" Water Code § 13350(a). In similar fashion, the Clean Water Act directs its prohibitions solely against the "person" who violates the requirements of the Act. 33 U.S.C. § 1319. A party is responsible only for its own discharges or those over which it has control. *Jones v. E.R. Shell Contractor, Inc.*, 333 F.Supp.2nd 1344, 1348 (N.D. Ga. 2004); *United States v. Sargent County Water Dist.*, 876 F.Supp. 1081, 1088 (D.N.D. 1992). Thus, there is no provision for joint and several liability under either the California Water Code or the Clean Water Act.

Proposed Part 7.1.B(4) therefore should be deleted as unnecessary and contrary to law. It is unlawful and an abuse of discretion to imply that the District would be jointly liable with another permittee, especially where the District has no control over the permittee's actions. Accordingly, the District requests that Part 7.1.B(4) be deleted.

C. The Trash TMDL Waste Load Allocations Should Be Incorporated into the Permit as Municipal Action Levels, Not Effluent Limitations

Proposed Appendix 7-1 calculates the trash waste load allocations for each permittee per storm year and refers to them as effluent limitations, although the Basin Plan does not establish effluent limitations as part of the Trash TMDL. Therefore, to be consistent with the Basin Plan, the caption for Tables 1a and 1b should be revised to read: "Los Angeles River Watershed Trash Municipal Action

Levels Per Storm Year", and references in proposed Part 7 to effluent limitations should be similarly revised.

If this change is not made, the proposed Permit amendment will be contrary to both the report by the State Board's panel of experts on the incorporation of numeric effluent limits in stormwater permits and EPA's guidance on incorporating TMDL waste load allocations into storm sewer permits.

The State Board convened a panel of experts for the very purpose of addressing the feasibility of including numeric effluent limits in stormwater permits. In June, 2006, that panel issued its report, entitled "The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities." In that report, the State Board's panel of experts concluded that, "It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban discharges." The panel of experts instead suggested a different course, with "action levels" used to identify discharges that need additional attention. Report, p. 8.

The experts' conclusions and recommendations are applicable here. There is nothing unique about the storms in Southern California or the presence of trash in stormwater runoff that makes trash significantly different than any other pollutant that is the subject of the expert panel's report. As recognized by the experts, storms can be variable and the ability to collect the trash could vary with those conditions. Because of the variability associated with storms and the difficulty in engineering solutions, the panel recommended the use of municipal action levels.

Use of municipal action levels can be as effective in assuring compliance with the waste load allocations as numeric effluent limits. If a permittee does not comply with the waste load allocations, the Regional Board can seek enforcement of the Permit's provisions at that time. The variability of storm conditions and the permittees' lack of control of these conditions, however, still suggest that incorporation of these waste load allocations as numeric effluent limits would be an abuse of discretion.

The Regional Board's proposed amendment is also inconsistent with EPA guidance on incorporation of TMDLs into municipal stormwater permits. On November 22, 2002, EPA issued guidance entitled "Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs." In that memorandum, EPA expressly rejected placing numeric limits based on TMDLs in storm water permits, except in rare circumstances. EPA recognized that numeric limits are neither feasible nor appropriate given the variability of storm water runoff and the current lack of knowledge as to sources of pollutants and effective treatment for those pollutants. EPA said:

[I]n light of 33 U.S.C. § 1342(p)(3)(B)(iii), EPA recommends that for NPDES-regulated municipal and small construction storm water discharges effluent limits should be expressed as best management practices (BMPs) or other similar requirements, rather than as numeric effluent limits. . . .

EPA's policy recognizes that because storm water discharges are due to storm events that are highly variable in frequency and duration and are not easily characterized, only in rare cases will it be feasible or appropriate to establish numeric limits for municipal and small construction storm water discharges. The variability in the system and minimal data generally available make it difficult to determine with precision or certainty actual and projected loadings for individual dischargers or groups of dischargers. Therefore, EPA believes that in these situations, permit limits typically can be expressed as BMPs, and that numeric limits will be used only in rare instances.

EPA November 22, 2002, Memorandum at p. 4.

EPA further reaffirmed the appropriateness of an iterative, adaptive BMP management approach. EPA said:

The policy outlined in this memorandum affirms the appropriateness of an iterative, adaptive management BMP approach, whereby permits include effluent limits (e.g., a combination of structural and non-structural BMPs) that address storm water discharges, implement mechanisms to evaluate the performance of such controls, and make adjustments (i.e., more stringent controls or specific BMPs) as necessary to protect water quality. This approach is further supported by the recent report from the National Research Council (NRC), *Assessing the TMDL Approach to Water Quality Management* (National Academy Press, 2001). The NRC report recommends an approach that includes "adaptive implementation," i.e., "a cyclical process in which TMDL plans are periodically assessed for their achievement of water quality standards" . . . and adjustments made as necessary. *NRC Report* at ES-5.

EPA November 22, 2002, Memorandum at p. 5.

For the convenience of the Regional Board, a copy of the State Board panel's report and the EPA Guidance and proposed Part 7 and Appendix 7-1 with the revisions suggested above are included with this letter.

D. Conclusion

For the reasons set forth above, a footnote should be added to Tables 1a and 1b of Appendix 7-1, making these tables consistent with the Basin Plan and the settlement agreement. Proposed Part 7.1.B(4) should be deleted. Finally, proposed Part 7.1 and Appendix 7-1 should be modified to reflect that the waste

load allocations are included within the Permit as municipal action levels, not effluent limits, consistent with the recommendation of the State Board's panel of experts and EPA's guidance on the inclusion of TMDLs into stormwater permits.

II. REQUEST TO SUBMIT EVIDENCE

The District requests that the following documents be admitted into evidence and made a part of the administrative record:

1. Settlement Agreement Regarding Total Maximum Daily Loads For Trash in the Los Angeles River Watershed and Ballona Creek and Wetland Watershed.
2. The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities (Storm Water Panel Recommendations to the California State Water Resources Control Board, June 19, 2006).
3. EPA issued guidance entitled "Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs."

Copies of these documents are submitted with this request.

Appendix 7-1

Wasteload Allocations
**Interim and Final Effluent Limitations for Trash for Permittees Identified as Responsible
Jurisdictions in the Los Angeles River Watershed Trash TMDL**

Waste Load Allocations

Table 1a: Los Angeles River Watershed Trash Effluent Limitations¹ per Storm Year²
 (gallons of uncompressed trash)³

Permittees	2010 (50%)	2011 (40%)	2012 (30%)	2013 (20%)	2014 (10%)	2015 (3.3%)	2016 ⁴ (0%)
Alhambra	19952	15961	11971	7981	3990	1317	0
Arcadia	25054	20043	15032	10022	5011	1654	0
Bell	8013	6410	4808	3205	1603	529	0
Bell Gardens	6750	5400	4050	2700	1350	446	0
Bradbury	2139	1711	1283	855	428	141	0
Burbank	46295	37036	27777	18518	9259	3055	0
Calabasas	11253	9002	6752	4501	2251	743	0
Carson	3416	2733	2050	1366	683	225	0
Commerce	29367	23493	17620	11747	5873	1938	0
Compton	26596	21276	15957	10638	5319	1755	0
Cudahy	2968	2374	1781	1187	594	196	0
Downey	19532	15625	11719	7813	3906	1289	0
Duarte	6105	4884	3663	2442	1221	403	0
El Monte	21104	16883	12662	8442	4221	1393	0
Glendale	70157	56126	42094	28063	14031	4630	0
Hidden Hills	1832	1465	1099	733	366	121	0
Huntington Park	9580	7664	5748	3832	1916	632	0
Irwindale	6176	4941	3706	2470	1235	408	0
La Cañada Flintridge	16748	13398	10049	6699	3350	1105	0
Los Angeles	687423	549938	412454	274969	137485	45370	0
Los Angeles County	155112	124089	93067	62045	31022	10237	0
Lynwood	14101	11280	8460	5640	2820	931	0
Maywood	3065	2452	1839	1226	613	202	0
Monrovia	23344	18675	14006	9337	4669	1541	0
Montebello	25185	20148	15111	10074	5037	1662	0
Monterey Park	19450	15560	11670	7780	3890	1284	0
Paramount	13726	10981	8236	5490	2745	906	0
Pasadena	55999	44799	33599	22400	11200	3696	0
Pico Rivera	6977	5581	4186	2791	1395	460	0
Rosemead	13653	10922	8192	5461	2731	901	0
San Fernando	6974	5579	4184	2789	1395	460	0
San Gabriel	10172	8137	6103	4069	2034	671	0
San Marino	7196	5756	4317	2878	1439	475	0
Santa Clarita	451	360	270	180	90	30	0
Sierra Madre	5806	4644	3483	2322	1161	383	0
Signal Hill	4717	3774	2830	1887	943	311	0
Simi Valley	69	55	41	27	14	5	0
South El Monte	8000	6400	4800	3200	1600	528	0
South Gate	21952	17562	13171	8781	4390	1449	0
South Pasadena	7454	5963	4472	2981	1491	492	0
Temple City	8786	7029	5272	3514	1757	580	0
Vernon	23602	18881	14161	9441	4720	1558	0

¹ Effluent limitations are expressed as allowable trash discharge relative to baseline Waste Load Allocations specified in Table 7-2.2 of the Basin Plan.

² Storm year is defined as October 1 to September 30 herein.

⁴ Permittees shall achieve their final effluent limitation of zero trash discharge for the 2015-2016 storm year and every year thereafter.

³ The Regional Board will review and reconsider these final Waste Load Allocations once a reduction of 50% has been achieved and sustained in the watershed.

Waste Load Allocations

**Table 1a: Los Angeles River Watershed Trash-Effluent Limitations¹ per Storm Year²
(gallons of uncompressed trash)³**

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Irwindale	6176	4941	3706	2470	1235	408	0
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Los Angeles County	155112	124089	93067	62045	31022	10237	0
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San Gabriel	10172	8137	6103	4069	2034	671	0
San Marino	7196	5756	4317	2878	1439	475	0
Santa Clarita	451	360	270	180	90	30	0
Sierra Madre	5806	4644	3483	2322	1161	383	0
Signal Hill	4717	3774	2830	1887	943	311	0
Simi Valley	69	55	41	27	14	5	0
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¹ Effluent limitations are expressed as allowable trash discharge relative to baseline Waste Load Allocations specified in Table 7-2.2 of the Basin Plan.

² Storm year is defined as October 1 to September 30 herein.

⁴ Permittees shall achieve their final effluent limitation of zero trash discharge for the 2015-2016 storm year and every year thereafter.

3) The Regional Board will review and reconsider the Final Waste Load Allocations once a reduction of 50% has been achieved and sustained in the watershed.

for inspection by the Regional Board, and that they are in compliance with any conditions of their certification, shall be presumed to have discharged trash in an amount that corresponds to the percentage of the baseline waste load allocation represented by the drainage in question. A permittee may overcome this presumption by demonstrating (using any of the methods authorized in this Part 7.1.) the actual or calculated discharge for that drainage.

- (3) Any Permittee that fails to demonstrate that it is in compliance with the interim and final effluent limitations as specified in this Part 7.1 shall be presumed to have violated the applicable interim and/or final effluent limitations.
- ~~(4) Any Permittee that establishes that it lacks authority over the MS4 physical infrastructure because it is under the authority of the Los Angeles County Flood Control District shall be held jointly and severally liable with the Los Angeles County Flood Control District for violations of the interim or final effluent limitations assigned to that jurisdiction unless the Permittee and the Flood Control District submit a duly executed agreement (the terms of which has been approved by the Executive Officer to ensure it is consistent with the requirements of this Order) that allocates between them all responsibility for compliance with these provisions, and further provided that the Permittee is in compliance with its respective obligations under the agreement.~~

C. Monitoring and Reporting Requirements (pursuant to Water Code section 13383)

- (1) Within 60 days of adoption of Part 7, Section 1 (Los Angeles River Trash TMDL) and on October 31, 2010 and every year thereafter, each Permittee identified in Appendix 7-1 shall submit a TMDL Compliance Report detailing compliance with the interim and final effluent limitations. Reporting shall include the information specified below. The report shall be submitted on a reporting form to be specified by the Executive Officer. The report shall be signed under penalty of perjury by the Director of Public Works or other agency head (or their delegee) that is responsible for ensuring compliance with this permit. Permittees shall be charged with and shall demonstrate compliance with the relevant effluent limitations beginning with their October 31, 2010 TMDL Compliance Report.

(a) Reporting Compliance based on Full Capture Systems:

Permittees identified in Appendix 7-1 shall provide information on the number and location of full capture installations, the sizing of each full capture installation, the drainage areas addressed by these installations, and compliance with the applicable interim or final effluent

Addition of New Part 7:

PART 7 - TOTAL MAXIMUM DAILY LOAD PROVISIONS

The provisions of this Part implement and are consistent with the assumptions and requirements of Waste Load Allocations from TMDLs for which some or all of the Permittees in this Order are responsible.

1. TMDL for Trash in the Los Angeles River Watershed

A. Waste Load Allocations: Each Permittee identified in Appendix 7-1 shall comply with the interim and final effluent limitations set forth in Appendix 7-1 hereto.²

B. Compliance:

(1) Permittees may comply with the effluent limitations using any lawful means. Such compliance options are broadly classified as *full capture*, *partial capture*, or *institutional controls*, as described below, and any combination of these may be employed to achieve compliance:

(a) Full Capture Systems:

- 1) The Basin Plan authorizes the Executive Officer to certify *full capture systems*, which are systems that meet the operating and performance requirements as described in this Order, and the procedures identified in "Procedures and Requirements for Certification of a Best Management Practice for Trash Control as a Full Capture System." (See Appendix 7-2.)³
- 2) Permittees are authorized to comply with their effluent limitations through certified *full capture systems* provided the requirements of paragraph 3), immediately below, and any conditions in the certification, continue to be met.
- 3) Permittees may comply with their effluent limitations through progressive installation of *full capture systems* throughout their jurisdiction until all areas draining to the Los Angeles River system are addressed. 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

² The interim and final effluent limitations set forth in Appendix 7-1 are equivalent to the Compliance Points identified in Table 7-2.3 of the Basin Plan.

³ The Regional Board currently recognizes eight *full capture systems*. These are: Vortex Separation Systems (VSS) and seven other Executive Officer certified *full capture systems*, including specific types or designs of trash nets; two gross solids removal devices (GSRDs); catch basin brush inserts and mesh screens; vertical and horizontal trash capture screen inserts; and a connector pipe screen device.

The Trust TMDL. Appendix 7-1 sets forth municipal action levels for measuring compliance with these effluent limitations