



COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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October 19, 2006

Ms. Song Her
Clerk to the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814



IN REPLY PLEASE
REFER TO FILE: WM-9

Dear Ms. Her:

COMMENT LETTER - BALLONA CREEK BACTERIA TOTAL MAXIMUM DAILY LOAD

We appreciate this opportunity to provide comments on the proposed Amendment to the Water Quality Control Plan for the Los Angeles Region to incorporate a Total Maximum Daily Load for Bacteria in Ballona Creek, Ballona Estuary, and Sepulveda Channel dated July 21, 2006. Our comments are included in the enclosed document.

If you have any questions, please contact Ms. Carrie I. Douangsithi at (626) 458-4346.

Very truly yours,

DONALD L. WOLFE
Director of Public Works

A handwritten signature in dark ink, appearing to read "Mark Pestrella".

FOR MARK PESTRELLA
Assistant Deputy Director
Watershed Management Division

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Enc.

**THE COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC WORKS'
COMMENTS ON THE PROPOSED BASIN PLAN AMENDMENT TO ADD
TOTAL MAXIMUM DAILY LOADS FOR BALLONA CREEK, BALLONA
ESTUARY, AND SEPULVEDA CREEK (DRAFT TOTAL MAXIMUM DAILY LOAD)**

Before turning to our specific comments on the draft Total Maximum Daily Load (TMDL), the County of Los Angeles Department of Public Works (Public Works) would like to note that, with the exception of the Ballona Creek Estuary, none of the reaches covered by the draft TMDL are designed to support the full gamut of contact recreational usages. As the Los Angeles Regional Board's Staff Report (Staff Report) reflects, the State Water Resources Control Board removed the Water Contact Recreation (REC-1) designation from Reach 1 and limited the REC-1 designation for Reach 2 after a detailed use attainability analysis was conducted by Regional Board staff. This de-designation reflected the fact that these waterbodies are concrete flood control channels, restricted to human access and either lack any significant recreational amounts of water during dry weather or filled with dangerous flood waters during wet weather.

In light of these facts, Public Works strongly supports an approach to the bacteria TMDL that applies realistic water quality objectives to these reaches, and supports as well continued beneficial use analyses to ensure that scarce municipal resources are not wasted attempting to attain water quality objectives that will never be enjoyed by any person those objectives were intended to protect.

Public Works appreciates this opportunity to provide comments on the draft TMDL. The following are our specific comments and suggestions regarding the draft TMDL:

1. The implementation schedule for responsible jurisdictions electing to use the Integrated Water Resources Approach has been linked in the draft TMDL with that of Santa Monica Bay Bacteria TMDL (SMBB TMDL). However, while the SMBB TMDL allowed 18 years to achieve compliance, this linkage reduced the implementation period for the draft TMDL to only 14 years with a final compliance date of July 15, 2021. We suggest that staff has not demonstrated a sufficient justification for this shorter compliance time period. In particular, the Cleaner Rivers Through Effective Stakeholder Total Maximum Daily Load (CREST) Technical Memorandum accompanying to the Staff Report for the draft TMDL notes the concerns of stakeholders on this shortened time period. See CREST Technical Memorandum (CREST TM), page 22. If there is any need to synchronize TMDL compliance dates, one approach (suggested also in the CREST TM) would be to link the compliance dates for the SMBB TMDL and the TMDL for the Ballona Creek Estuary alone, and allow the extra time requested for Reaches 1 and 2 and Sepulveda Channel. Our preference, however, is for the final compliance date in the draft TMDL to be 18 years from the effective date or by 2015.

Requested Action:

Change “14 years” to “18 years” in Table 7.21.1 and “July 15, 2021” to “July 15, 2025” in Table 7.21.3 of Attachment A to the Resolution 06-011 and Table 7.2 of the Staff Report, and remove all references to the need to link final draft TMDL compliance with final compliance with the SMBB TMDL.

2. As set forth in the Staff Report, Sepulveda Channel was listed on the 303(d) list only because it was a tributary to Reach 2, which at the time had a full REC-1 beneficial use. As the Staff Report notes on page 6, the use attainability analysis performed by Regional Board staff caused the State Board to remove that beneficial use. Nonetheless, Sepulveda Channel retains a potential REC-1 use, despite the fact that it, like Reach 2, is entirely unsuitable for this use.

Public Works believes that either Sepulveda Channel be removed from the draft TMDL or, alternatively, that the bacterial water quality objectives for Sepulveda Channel be established to support the limited REC-1 usage designated for Reach 2.

Requested Action:

Remove references to Sepulveda Channel in Attachment A to Resolution 06-011 or, alternatively, amend Attachment A to change all references to the beneficial use for Sepulveda Channel from REC-1 to limited REC-1, the same beneficial use as was established by the State Board for Ballona Creek’s Reach 2.

3. The draft TMDL assigns waste load allocations (WLA) only to the stormwater conveyance system leading into Ballona Creek and Estuary. As the Staff Report notes, there are a number of other regulated point sources, including dischargers with individual National Pollutant Discharge Elimination System (NPDES) permits, general industrial and general construction stormwater permit holders. However, as the Staff Report further notes on page 16, “the bacteria loads associated with these discharges are largely unknown, since most do not monitor for bacteria.” Moreover, the draft TMDL does not take into account the potential impact of nonanthropogenic sources of bacteria, such as that from birds, waterfowl, and other wildlife. The Federal regulations governing TMDLs require that all point, nonpoint, and background sources of pollutants of concern be described in the TMDL. Attachment A already provides that each NPDES permit assigned a WLA shall be reopened or amended at reissuance to incorporate the applicable WLAs as a permit requirement. It should be explicit that this undertaking will include all private NPDES permit holders. The draft TMDL also should provide that Regional Board staff will take steps to require private NPDES permittees to

monitor for bacteria discharges. Control of these discharges before they enter into the stormwater conveyance system will enhance the ability of the responsible jurisdictions and agencies to meet the TMDL bacteria targets in a timely fashion and would comply with the requirements of the Clean Water Act and its implementing regulations.

Requested Action:

Provide in Attachment A that nonmunicipal/non-Caltrans point sources will be subject to monitoring for bacteria as part of their NPDES permitting. Provide further that the Regional Board will undertake studies on the impact of wildlife on bacteria loadings in the impaired waterbodies and incorporate those studies into reevaluation of the WLAs when the TMDL is reconsidered.

4. Waste load allocations (WLAs) and load allocations (LAs) should be assigned only for the impaired waterbodies on the Section 303(d) list. For example, Table 7.21.2b prescribes WLAs and LAs at four non-303(d) listed waterbodies, Benedict Canyon Channel, Centinela Creek, and Del Rey Lagoon. Moreover, as the Staff Report indicates on page 21, it has not been determined whether the sources of bacteria from Del Rey Lagoon are anthropogenic, a situation that warrants a study to make such a determination. Therefore, LAs should not be prescribed for these locations until the studies to be conducted by the City of Los Angeles (in Del Rey Lagoon) identify the bacterial sources in these areas.

Requested Action:

Remove all the rows in Table 7.21.2b of the Attachment A representing WLAs and LAs at Benedict Canyon Channel, Centinela Creek, and Del Rey Lagoon.

5. When waterbodies are listed as impaired on the 303(d) list, that listing does not specify impaired points in the waterbodies, but includes the waterbodies as a whole. Therefore, it is not appropriate for the draft TMDL to prescribe the WLAs and LAs to be achieved at specific points within the waterbodies as apparently required in Table 7.21.2b of Attachment A.

Also, the inclusion of these apparent compliance points shown in Table 7.21.2b of Attachment A appear to require compliance monitoring at these points. In the "Monitoring" and "12 months after the effective date of the TMDL" sections of Attachment A, responsible jurisdictions and agencies are required to conduct compliance sampling in Centinela Creek and Benedict Canyon Channel as well as the "tributaries" of Ballona Estuary and Ballona Creek Reaches 1 and 2. As noted above, monitoring should not be required in reaches that are not listed as impaired. Moreover, the responsible jurisdictions and agencies must be allowed to select the specific monitoring

locations to demonstrate the compliance of the WLAs and LAs within the impaired reaches. These jurisdictions and agencies are better able than the Regional Board to select appropriate sampling locations based on a variety of factors, including, but not limited to, site logistics, safety, costs, and scientific evidence. The locations would be presented in the required Coordinated Monitoring Plan, which is subject to Regional Board staff's review and approval. (It is, of course possible, that the monitoring locations chosen by the jurisdictions and agencies could in fact be the same or similar to the locations noted in the draft TMDL. This decision should, however, be left to those jurisdictions and agencies.)

Requested Action:

Remove the entire column titled "Point of Application" in Table 7.21.2b of Attachment A and change the water quality objectives shown for the waterbodies listed in Table 7.21.2b to the objectives designated in the Basin Plan. Remove references in Attachment A to the necessity for monitoring in reaches not listed on the 303(d) impairment list.

6. Although it was not specifically stated in Attachment A and the Staff Report, it appears that the Arroyo Sequit Watershed and Leo Carrillo Beach were used as a reference system for the subject watershed. We understand that the Regional Board is leading a study, in which Public Works is a participant to explore alternative reference systems. However, for the record, we reiterate our concern with respect to using such watersheds as a reference system for the Ballona Creek Watershed. In particular, we note that the reference watershed does not contain the estuary system that Ballona Creek Watershed has. We hope this issue will be adequately addressed when the TMDL is reconsidered at the four-year point.
7. In the "Implementation" section of Attachment A, it is noted that the Regional Board intends to reassess the WLAs for Benedict Canyon Channel, Sepulveda Channel, and Centinela Creek based on the results of the required compliance monitoring, and/or any voluntary beneficial use investigations. We already have commented regarding the inappropriateness of including WLAs for Benedict Canyon Channel and Centinela Creek. We also respectfully suggest that the Regional Board open the reconsideration of the TMDL to include all factors relevant to the TMDL, including, but not limited to, TMDL design storms, the results of nonanthropogenic factors, difficulties in implementation, and other issues that may arise in the first four years of the implementation of the TMDL.

8. We have already commented on aspects of the "Monitoring" section of the TMDL as it relates to the location of various sampling sites. However, because these monitoring provisions, like the rest of the TMDL, are not self-executing, and because directives to conduct monitoring are subject to the requirements of Water Code, Sections 13225 or 13267, we note that the monitoring requirements will be subject to the cost-benefit analysis required in those statutes to be performed by the Executive Officer. The same analyses would be required in the event of a compliance investigation.
9. The allowable exceedance for REC-2 usage is stated as 110 percent of the REC-2 standard. We believe this is a misstatement of the Basin Plan water quality objectives, which require that at least four single REC-2 samples per month must not exceed 2,000/100 ml for fecal coliform and that 10 percent of those samples must not be greater than 4,000/100 ml. Further, we believe that the 2,000 and 4,000 values must be applied to a suitable reference reach to develop an allowable number of exceedance days for REC-2 use, similarly to the ones developed for REC-1 and limited REC-1 uses.

Requested Action:

Revise the statements regarding the allowable exceedance for REC-2 to properly represent the Basin Plan water quality objectives. Develop the WLAs for REC-2 in terms of allowable exceedance days based on a suitable reference system.

10. The California Environmental Quality Act (CEQA) checklist prepared by Regional Board staff acknowledges that the implementation of the draft TMDL will cause a "significant adverse effect" on the environment. Despite this finding, the CEQA documentation provided with the draft TMDL does not adequately discuss those effects or suggest alternatives or mitigation. Even though staff asserts that its CEQA review for the draft TMDL represents a Tier 1 review (with more detailed CEQA analysis to be left for the lead agencies for individual implementing projects), this does not abrogate the Regional Board's responsibility to fully discuss the general environmental impacts of TMDL implementation (effects which can readily be determined from even a cursory examination of the possible implementation options discussed in the Staff Report or in the accompanying CREST report.

The preparation of a Basin Plan Amendment is a "certified regulatory program," which does not require preparation of all of the CEQA documents that otherwise would be required of an agency approving a project. Nonetheless, the environmental documentation under a "certified regulatory program" still must meet the substantive requirements of CEQA. And, the specific requirements of the CEQA guidelines for the Regional Board require that staff prepare a document describing the

project, alternatives to the project and, if the project is found to have significant effects on the environment, "mitigation measures to avoid or reduce any significant or potentially significant effects that the project may have on the environment." 14 Cal. Code Reg. Section 15252.

The CEQA documentation cited by staff is the Staff Report and the CEQA checklist as well as the to-be-completed response to comments. With respect to the Staff Report, it does not appear to discuss with any detail any of the environmental impacts of implementation of the draft TMDL, any project alternatives, or any mitigation of environmental effects or potential environmental effects.

The CEQA checklist does contain some analysis of the impacts and potential mitigation measures; however, the discussion in the checklist, while significantly better than the discussion in checklists prepared for other Basin Plan Amendments, still does not meet the requirements of CEQA. Required mitigation is often described in conclusory and tautological terms. For example, in discussing the potential impacts of the draft TMDL on earth disruptions and displacement (checklist Item 1[b]), the checklist notes only that a potential adverse impact "could be managed to less than significant levels if structural Best Management Practices (BMPs) are properly designed and sited in areas where the risk of soil disruption is minimal." Similar conclusory or inadequate discussions of mitigation can also be found in the discussion of effects on parking (Item 13[b]), transportation/circulation (13[c]-[d]), human health (17[a]), recreation (19[a]) and other areas. In these discussions, mitigation is reduced to a hope that mitigation will occur during construction activities.

In the discussion of air emissions (Item 2[a]), it is admitted that the construction and operation of draft TMDL implementation structures could have "significant" impacts, "especially in areas where the region is designated nonattainment for relevant air pollutants." It is widely known that the County of Los Angeles, along with the rest of Southern California, is nonattainment for a variety of air pollutants. Yet, there is no discussion of these impacts or the potential pollutants involved.

In the discussion of the diversion of surface water (Item 3[a]), it is concluded only that the impacts will likely be positive, as the diversion of stormwater from open channels "will likely reduce the potential for flooding during storm events." With respect, the channels in question are designed carefully to maximize the movement of flood waters so as to protect life and property. Activities that impact that design, whatever the purpose, may adversely, not positively, affect the ability of the flood control channels to handle peak stormwater flows. In the specific discussion of

flooding (Item 3[c]), the checklist acknowledges that diversion and storage of stormwater would result, an important environmental effect given the flood control purpose of the waterways covered by the draft TMDL. However, the checklist does not discuss these impacts nor the potential flooding impacts of diverting stormwater into culverts at places such as school yards (see Staff Report, page 43). There also is no discussion of the impacts on school activities from culvert construction or other TMDL implementation activities on school or public property. (See Item 14[c].)

Similarly, while the checklist acknowledges (in Item 16[e]) that there will be impacts on the storm drain system from implementation of the draft TMDL, those impacts are only described as “positive” with the only adverse impacts being “short-term noise and traffic impacts.” This discussion again does not discuss the potential for adverse impacts on the ability of the flood control system to handle flood waters during TMDL implementation construction or thereafter.

In the discussion of noise impacts, (Item 6[b]), it is concluded that “it is not foreseeable that this proposal will result in exposure of people to severe noise levels.” However, Public Works has determined that the noise of pumping of storage areas for stormwater, which is a foreseeable consequence of the implementation strategies outlined for the draft TMDL, is severe. In fact, Public Works was forced to halt its use of vacuum trucks to clean out a continuous deflective separator unit in Culver City designed to collect trash, a unit that would be similar in concept and operation to the type of structural BMPs used to implement the draft TMDL. Public Works was forced to stop the use of the vacuum truck due to resident complaints about noise.

In the discussion of the impacts on public services (Item 14), there is no discussion of the impacts on public services caused by the need to spend multiple millions of dollars on TMDL implementation and monitoring. Nor is there any discussion in the Public Services Section on the impacts on public parks, school yards, or other public areas from construction activities required to implement the draft TMDL. The checklist instead concludes that there will be no impacts on public services, beyond a need for increased monitoring and maintenance of structural BMPs as well as the need for new governmental services to address nonstructural BMPs, such as education. However, these impacts are not analyzed and there is no suggested mitigation.

Also, the checklist finds that there would be no cumulative impacts from the implementation of the draft TMDL, a conclusion that appears to be belied by the discussion of environmental impacts in the checklist itself.

Generally, the checklist provides only a “once over lightly” approach to environmental analysis, an approach which does not, we respectfully suggest, meet the requirements of CEQA. More rigorous analysis is required, as was held recently by the Court of Appeals in *City of Arcadia v. State Water Resources Control Board* (2006) 135 Cal. App. 4th 1392.

We request the Regional Board to direct staff to conduct a more thorough CEQA review of the draft TMDL, including a full evaluation of alternatives and a more thorough analysis of mitigation to avoid the significant adverse environmental impacts identified in the checklist and in these comments and the comments of other stakeholders.

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