



GAIL FARBER, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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Public Comment
LA INDICATOR BACTERIA TMDL
Deadline: 6/20/11 by 5:00 p.m.

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

June 20, 2011

IN REPLY PLEASE

REFER TO FILE: WM-9

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-2000



Dear Ms. Townsend:

COMMENT LETTER – LOS ANGELES RIVER INDICATOR BACTERIA TOTAL MAXIMUM DAILY LOAD

Thank you for the opportunity to comment on the proposed Amendment to the Water Quality Control Plan for the Los Angeles Region (Basin Plan) to incorporate the Los Angeles River Indicator Bacteria Total Maximum Daily Load. On behalf of the County of Los Angeles, enclosed are our comments.

We look forward to your consideration of these comments. If you have any questions, please contact me at (626) 458-4300 or ghildeb@dpw.lacounty.gov or your staff may contact Ms. Angela George at (626) 458-4325 or ageorge@dpw.lacounty.gov.

Very truly yours,

GAIL FARBER
Director of Public Works

GARY HILDEBRAND
Assistant Deputy Director
Watershed Management Division

GA:jtz

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Enc.

cc: Chief Executive Office (Dorothea Park)
County Counsel (Judith Fries)

COMMENTS OF THE COUNTY OF LOS ANGELES ON THE PROPOSED BACTERIA TOTAL MAXIMUM DAILY LOAD FOR LOS ANGELES RIVER AND ITS TRIBUTARIES

1. REC-1 AND REC-2 Use Designations Should Not Apply To Flood Control Channels With Restricted Access

More than 60 percent of the Los Angeles River Watershed is highly urbanized, and most parts of the Los Angeles River and its tributaries are heavily engineered for flood protection. The Los Angeles County Flood Control District is statutorily mandated to provide flood protection for the region and owns, operates, and maintains a majority of these engineered channels. Most channel segments are fenced and public access is restricted to protect public safety; the restricted access also bars any legal public contact with the water.

The Basin Plan recognizes the restricted access to these engineered channels by denoting them as "access prohibited by Los Angeles County DPW". Further, most of these channels are dry or effluent dominated in the absence of rain, which is during most of the year.

The REC-1 and REC-2 uses in these engineered channels have never been attained and are unlikely to be attained in the future. Requiring attainment of water quality standards for REC-1 and REC-2 uses in these channels should not be required where access is prohibited as it serves no purpose, yet the cost is significant. Because access is prohibited in those reaches; no REC-1 and REC-2 activity could lawfully take place.

The Regional Board is currently reviewing the existence of REC-1 and REC-2 uses in engineered flood control channels. The TMDL should not assign waste load allocations to these channels until the Regional Board's review is complete.

In its response to comments below, the Regional Board stated that the removal of beneficial uses was beyond the scope of the TMDL. The Regional Board misconstrued this comment. The County does believe that the designations should be removed. The comment with respect to the TMDL, however, was that no waste load allocation (WLA) should be assigned to these channels until the Regional Board's review is completed. It makes no sense to be spending money in an attempt to meet REC-1 and REC-2 standards when those designations are currently being reviewed. The State Board should remand the TMDL to the Regional Board with instructions to the Regional Board to complete its review of the appropriateness of the designations before adopting this TMDL.

2. Stormwater agencies should be responsible only for their own discharges

The proposed TMDL requires stormwater agencies to comply with WLAs in the receiving water where many factors potentially affect the quality of the water from the time it is discharged to the time it is tested at the compliance monitoring location.

The TMDL recognizes that there are natural sources of bacteria and that there can be growth, resuscitation, and die-off based on conditions in the channel and sediment. The TMDL specifically states that “the relative contribution of such sources is unknown.” (Attachment A, p. 4.)

In its comments to the Regional Board, the County noted that, according to a study conducted by Cleaner Rivers through Effective Stakeholder-led TMDLs (CREST) for the Los Angeles River, a significant portion (more than 50 percent) of the bacteria loading to the Los Angeles River is unaccounted for (i.e., sources are unknown) and beyond the control of stormwater agencies. In its response to comments, the Regional Board stated that, in reach 4, in stream loading was minor compared to loading from storm drains and tributaries. This response did not address the point made in the CREST report that, even if storm drains are addressed, the water quality standards for bacteria will still be exceeded. In other words, the Regional Board must rethink its approach and not place the burden of compliance solely on storm drains as this approach will not be successful. Moreover, the Regional Board’s response referred to only Reaches 2 and 4, not the entire river.

The State Board should remand the TMDL to the Regional Board and direct it to consider these issues.

3. The Basin Plan Amendment Should Provide the Same Implementation Schedule Regardless of Whether an Agency Pursues a Load Reduction Strategy (LRS), and Regardless of Whether it Pursues a LRS Independently or with Other Agencies

The TMDL provides that the WLAs can be achieved through any viable implementation strategy. The TMDL provides that one strategy is a “Load Reduction Strategy (LRS)”. Agencies that pursue a LRS are given an additional 6.5 years to meet WLAs.

In comments submitted to the Regional Board, the County noted that a LRS does not necessarily require multiparty coordination. In response, the Regional Board stated that an alternative strategy does not necessarily include intensive outfall monitoring. The Regional Board’s response, however, does not address the County’s comment that an agency might choose to pursue an LRS on its own. Moreover, other non LRS strategies may also take time. The record contains no evidence that standards can be met in a shorter time through a non LRS strategy; the record contains no evidence to support any of the time frames set forth in the TMDL.

The State Board should remand the TMDL to the Regional Board and direct it to reflect the same implementation schedule regardless of whether or not an agency pursues the LRS, and if it does pursue a LRS, whether or not it pursues it independently or as part of a group.

4. The geometric mean should not be calculated daily

The U.S. Environmental Protection Agency (EPA) originally intended the use of the geometric mean as a tool to determine the condition of a water body over a longer period of time and to detect chronic problems. Section 40 of the Code of Federal Regulations Part 131, Vol. 69, No. 220, states that “because a geometric mean provides information pertaining to water quality that looks backwards in time, it is not necessarily useful in determining whether a [water body] is safe for swimming on a particular day.” Further, EPA states that “it would be technically appropriate to apply the averaging period on a set basis such as monthly or recreational season.” In other words, the geometric mean is intended as an assessment tool for condition over time and not from day to day. Therefore, the proposed TMDL’s use of the rolling 30-day period is inconsistent with EPA’s original intent.

The Regional Board’s response to comments did not address these points. The Regional Board did not address the issue that the geometric mean should be used as an assessment tool, not to determine compliance on a daily basis, or the fact that it was using the geometric mean for a purpose other than what it was designed for. The State Board should remand the TMDL and order the Regional Board to revise the proposed TMDL so that the geometric mean is calculated once per month or once per season.

5. The definition of wet weather should be consistent with the metals TMDL

The existing metals TMDL for the Los Angeles River and its tributaries defines wet weather as “days when flow at the Wardlow Station is greater than 500 cubic feet per second,” whereas the proposed bacteria TMDL defines wet weather as “days with rainfall of 0.1 inch or more plus the three days following the rain event.” Such inconsistency between the two TMDLs would create a challenge in integrating the implementation activities of the two TMDLs.

In its response to comments, the Regional Board stated that this definition is consistent with other bacteria TMDLs. Nevertheless, it is not appropriate to have two definitions of wet/dry weather for the same water body. The County and other agencies will have to coordinate their response to all the TMDLs that apply to the Los Angeles River. There should be one definition of wet weather as it applies to the river.

The State Board should remand the TMDL and direct the Regional Board to define wet weather in the TMDL consistent with the definition of wet weather in the metals TMDL for Los Angeles River and its tributaries.

6. An analysis should be performed to determine the appropriate schedule for dry and wet weather

The proposed TMDL prescribes the same final compliance schedule for dry and wet weather; neither the Staff Report nor the TMDL contain an analysis of whether the TMDL's limits can be reached within the time frame proposed.

As has been seen in other similar TMDLs, addressing the wet-weather issues poses larger technical and economic challenges than addressing the dry-weather. In light of this fact, the implementation schedule for the wet weather should be longer than for the dry weather to reflect the time needed to address the added challenges associated with the wet weather.

In response to comments, the Regional Board recognized the technical challenge to complying with the wet weather component of the TMDL, but did not address the issue other than to acknowledge it. In fact, nothing in the record supports the dates chosen by the Regional Board for either dry or wet weather.

The TMDL should be remanded and the Regional Board directed to perform an analysis of whether the TMDL's limits can be reached within the time frame proposed before assigning time frames for each segment. The time frames should then be modified to reflect the analysis.

7. Monitoring responsibilities should be incorporated into the TMDL for nonpoint-source and non-MS4 point-source dischargers

The TMDL assigns WLAs and load allocations to a number of parties in addition to the municipal stormwater dischargers, including the U.S. Forest Service, California Department of Parks and Recreation, and National Parks Services. However, the monitoring responsibilities in the TMDL are given entirely to the municipal stormwater dischargers without adequate justification. Municipal stormwater dischargers should not solely bear this responsibility because the non-MS4 sources also contribute bacterial loading into the Los Angeles River and its tributaries. Without this monitoring, the parties and the public will not know whether any failure to meet water quality standards is due to a discharge from non-MS4 sources.

In response, the TMDL provides that monitoring for dischargers other than MS4 permittees shall be established through those dischargers permit or waste discharge requirements, or through the nonpoint source implementation and enforcement policy. Whereas the MS4 dischargers have to submit a coordinated monitoring program within one year, however, no date for submission of a monitoring plan and commencement of by non-MS4 sources is assigned. Thus, it could be several years before the parties know the extent of the contribution from these other sources, and in the interim much money and effort could be wasted by not focusing on the correct sources.

The State Board should remand the TMDL and direct the Regional Board to revise the proposed TMDL to include specific monitoring requirements for all nonpoint-source and non-MS4 point-source parties. Monitoring by non MS4 parties should be synchronized with that conducted by the municipal stormwater dischargers.

8. Establishment of the WLAs should consistently follow the reference system approach

The TMDL provides for five (5) days of allowable single-sample exceedances for dry weather. This calculation was improperly derived by excluding the so-called “minimally impacted” reference sites. By including the minimally impacted sites in the analysis, the single-sample exceedance days for the reference watershed is 21 days.

Excluding minimally impacted sites is inappropriate for two reasons: First, the justification given to categorize those sites as “minimally impacted” is not convincing. For instance, one reason cited for characterizing a site as minimally impacted is the impact from wildfires. Wildfires are a naturally occurring phenomenon and, therefore, should not be considered as an “impact” in the sense of anthropogenic impact. Secondly, given the highly urbanized nature of the Los Angeles River Watershed, using minimally impacted sites as reference is appropriate. The Regional Board’s response to comments does not address either of these points.

In the case of the geometric mean WLA, the proposed TMDL abandons the reference system approach entirely without justification. According to the CREST study, significant exceedances of geometric mean were detected at the reference sites. Including results from the minimally impacted sites, the reference system exceeded the geometric mean numeric target 16 percent of the time; the number of exceedances is reduced to 1.5 percent when results from the minimally impacted sites are excluded. Additionally, by arbitrarily setting the geometric mean WLA at zero (0) exceedances, the proposed TMDL is essentially requiring the treatment or diversion of nonanthropogenic sources of bacteria. A reference system-based geometric mean standard has been used by other California Regional Water Quality Control Boards, such as the San Diego Regional Board. Therefore the Regional Board’s response that EPA may not permit it is not well taken.

The State Board should remand the TMDL and direct the Regional Board to revise the proposed TMDL so both the dry-weather single-sample and geometric mean WLAs are established in accordance with the reference system approach and include minimally impacted sites in the calculation.

9. The TMDL should recognize the ongoing scientific progress on bacteria

There are ongoing scientific studies of the bacteria indicators currently being used in the TMDLs. Recent studies conducted in Southern California have indicated the absence of correlation between traditional bacteria indicators and human health risks. EPA recognizes the lack of sound science on bacteria and is currently

conducting necessary scientific studies to establish new bacteria indicators and associated criteria for recreational waters by 2012. Further, the Southern California Coastal Water Research Project is also currently conducting an epidemiological study in Southern California and is expected to address some of the existing scientific limitations. Thus, developing the Los Angeles River Bacteria TMDL based on traditional indicators, which do not accurately predict the risk of illness, may lack scientific justification and needs reconsideration as new findings are made available.

The TMDL currently recognizes these uncertainties and provides that the TMDL should be reconsidered in 4 years based on technical studies or policy changes. The TMDL, however, requires substantial work prior to that time based on standards that could well be changed. The TMDL should provide that the TMDL can be reconsidered in less than 4 years based on these studies and that implementation deferred until these studies are completed.