

11/15/06 Bd Mtg Item ___
 San Gabriel River TMDL
 Deadline: 10/27/06 12pm



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October 23, 2006

Honorable Tam Doduc, Board Chair
 State Water Resources Control Board
 1001 I Street
 Sacramento, CA 95814

Attn: Song Her, Clerk to the Board

Subject: Comment Letter San Gabriel River Metals TMDL



Dear Chair Doduc:

The City of Glendora submits the following comments on the San Gabriel River Metals TMDL (TMDL) for your consideration. While we support the State Water Resources Control Board's goals of improving surface water quality in the region, we encourage the Board to strengthen its efforts to base regulations on sound science and methods, and to proceed in a manner that is practical, achievable and cost-effective. Moving forward in a practical and reasoned manner is especially critical, since many of the sources of metals found in surface waters are beyond the regulatory control of local government. Additionally, iterative approaches are required since removal technologies for metals are expensive and do not yet achieve California Toxics Rule requirements for urban runoff.

This letter supplements the information provided by the ad hoc group of cities known as the Coalition for Practical Regulation (CPR) and by Richard Montevideo, special counsel to the various cities who comprise CPR. We have also relied upon three reports to complete our comments and these reports are included by reference. They are "*The Impacts of Atmospheric Deposition in the San Gabriel Watershed*," June 2006, prepared by Mr. Richard Watson; "*Analysis of the Total Maximum Daily Loads for Metals and Selenium, San Gabriel River and Impaired Tributaries with Emphasis on Implementation*," June 2006, prepared by Mr. Richard Watson; and "*San Gabriel River Metals TMDL Technical Comments*," June 2006, prepared by Drs. Susan Paulsen and John List of Flow Science. These reports were included in Mr. Montevideo's submittal of June 19, 2006 to the Los Angeles Regional Water Quality Control Board.

Orange County Cities and Los Angeles County Cities Should be Regulated in a Similar Manner

The San Gabriel River watershed is split between two counties and 27 cities in Los Angeles County and 13 cities in Orange County. There are two NPDES Permits in effect in the watershed, one issued by the Los Angeles Regional Water Quality Control Board for coastal Los Angeles County and one issued by the Santa Ana Regional Water Quality Control Board for most of Orange County. The Los Angeles Board (Regional Board) has taken the lead in preparing this

TMDL. The proposed TMDL provides unequal treatment for cities in the watershed, based on differing requirements found in the two separate NPDES Permits. The Los Angeles Regional Board has failed to resolve fundamental equal treatment issues, impacting implementation, waste-load allocations and cost sharing of the TMDL's requirements.

These fundamental problems stem from the Regional Board's holding the Los Angeles County cities accountable for atmospheric deposition, while the Santa Ana Regional Board exempts their cities from being responsible for atmospheric deposition. As the State Board recognizes, a growing body of credible scientific evidence reveals that significant sources of metals in surface waters can be attributed to stationary and mobile sources beyond the regulatory control of local government (i.e. copper in brake dust or zinc in tire dust). The Santa Ana Regional Board recognizes this reality by exempting local government from these sources of metal pollution. We quote from the NPDES Permit for the County of Orange:

"16. The permittees may lack legal jurisdiction over storm water discharges into their systems from some State and Federal facilities, utilities and special districts, Native American tribal lands, waste water management agencies and other point and non-point source discharges otherwise permitted by the Regional Board. The Regional Board recognizes that the permittees should not be held responsible for such facilities and/or discharges. Similarly, certain activities that generate pollution present in storm water runoff may be beyond the ability of permittees to eliminate. Examples of these include the operation of internal combustion engines, atmospheric deposition, brake pad wear, tire wear and leaching of naturally occurring metals from local geography." (Emphasis added)

Order No. R-8-2002-0010 (NPDES No. CAS618030), Page 6

The Los Angeles County NPDES Permit does not contain this exemption. This exemption is being proposed in the 2006 ROWD applications for Los Angeles County. However, it is clear that the Regional Board will not support this exemption by their action approving this TMDL. The TMDL will result in the cities in Los Angeles County being given waste load allocations for metals beyond of their regulatory control, while the Orange County cities are exempted. If left unchanged, the cities in Los Angeles County will be required to fund monitoring, implementation and scientific studies in the TMDL, while the Orange County cities have no such requirements as their NPDES Permit rightfully recognizes that atmospheric deposition is beyond their control. For example, the TMDL requires that the cities fund a study of the Estuary. It is unclear under the proposed TMDL if the Orange County cities will be required to participate in the funding. This conflict between the Regional Boards raises substantial questions of equity and fairness to the Los Angeles County cities. We request that the State Board extend the exemption to the Los Angeles County cities as well. The TMDL's requirements within the watershed should be consistent between the two Regional Boards. The State Board should not approve the TMDL, but should remand it to the Regional Board with direction that the Regional Board extend the exemption of any responsibility for atmospheric deposition to the Los Angeles County Cities.

Further, on its website, in a document entitled "Total Maximum Daily Loads (TMDL) Questions & Answers" the State Board has itself recognized that atmospheric deposition is a non-point source and thus should not be the Cities' responsibility. In response to the question: "What is the difference between point and nonpoint sources of pollution and how does this relate to TMDLs?" the State Board responded as follows:

A: Point sources release pollutants from discrete conveyances, such as discharge point from a factor and are defined in statute. Nonpoint sources release pollutants from landscape scale features (sic) and include such features as parking lot runoff, agricultural field runoff, and dust and air pollution from human activities (considered everything that is not covered under the point

source definition). TMDLs must allocate loads for both point and non-point sources. (See page 1, bracketed text in original)

By classifying "air pollution from human activities" as non point sources, the State Board has expressly recognized that atmospheric deposition is not a point source of metal pollution, and thus, has expressly recognized that the Cities should not be held responsible for atmospheric deposition in the Metals TMDL.

Scientific and Engineering Concerns with the TMDL

We support the efforts of the State Board to rely on sound science and engineering when considering the major water quality policy issues facing the State and local government. Our City is committed to improving water quality and working with the State Board, the Regional Board and the environmental community to implement programs that are scientifically sound and practicable from both an engineering and affordability standpoint. Unfortunately, this TMDL is based on incomplete and inadequate science and engineering. These inadequacies then lead to large expenditures of local government funds to complete the science and engineering for the development of a valid TMDL.

- **Regional Board should conduct Scientific and Engineering Studies**

The lack of adequate science and engineering is demonstrated by the amount of monitoring, implementation and special studies called for in the TMDL. Despite the Regional Board's statement that these studies are "voluntary," it is apparent that the studies are necessary to adopt a valid TMDL. The Regional Board is merely shifting the financial responsibility of conducting these studies to local government by labeling them "voluntary." We requested that Drs. Paulsen and List estimate the costs of these studies, in consultation with the Southern California Coastal Ocean Research Project. The study costs are estimated at \$5.9 million in the next five years. These costs will undoubtedly increase with the involvement of scientists from the United States Environmental Protection Agency (EPA), the Regional Board, environmental community and the peer review panel.

<u>Monitoring and Studies</u>	<u>Estimated Costs</u>
Estuary Study	\$1.2 million
Water Quality Monitoring	\$1.75 million
Copper Site Specific Objective	\$996,000
Atmospheric Deposition	\$590,000
Flow Sampling	\$530,000
BMP Effectiveness	\$833,000

- **Inappropriate Use of Exceedance Data Obtained During "El Niño" Years that Improperly Characterize Impairments**

Careful review of the data in the TMDL reveals that the majority of reported exceedance for copper, lead and zinc in the San Gabriel River Reach 2 and in the Coyote Creek occurred during the 1997-98 El Niño wet season (31.01 inches of rain in Downtown Los Angeles). In Reach 2, all copper, lead and zinc exceedances occurred during that wet season and in Coyote Creek, 4 of 7 lead exceedances, 3 of 6 selenium exceedances, and 5 of 6 zinc exceedances occurred during the same El Niño season.

Since the State's Listing Policy states that "If the majority of samples were collected on a single day or during a single short-term natural event (e.g. a storm, flood, or wildfire), the data shall not be used as the primary data set supporting the listing decision," and "In general, samples should be available from two or more seasons or from two or more events when effects or water quality objective exceedances would be expected to be clearly manifested." These El Niño

exceedances do not appear to warrant proposing listings of these waters. This raises the question of whether portions of the TMDL are even warranted. The State Water Board should clarify that El Niños are short-term natural events and that data from such events should not be used as the primary data set supporting listing decisions.

- Atmospheric Deposition – Cities being held responsible for metal pollution outside of their control

The Regional Board's staff report clearly states that atmospheric deposition is almost certainly the largest source of metals in urban runoff. The report cites recent studies (Sabin et al), revealing that 57% to 100% of the metals found in urban runoff at one study site were attributed to atmospheric deposition (copper in brakes, zinc in tires, etc).

We appreciate the work of the State Board in beginning to address the impacts of atmospheric deposition on water quality. You suspended the metals loads requirements in the Metals TMDL for the Los Angeles River until 2011 and requested that the Regional Board resolve the atmospheric deposition issue prior to the TMDL be reopened in 2012. The State Water Board met with the California Air Resources Board in February of 2006 to discuss the issues surrounding metals reaching surface waters from air-borne sources. Although the meeting was a first good step, the Boards indicated at this meeting that no funds exist or have been budgeted to conduct the scientific studies necessary to address the issue. We have received no assurance from the Regional Board that funding has been secured and that the proper studies are underway.

The State Board recognized in the Metals TMDL for the Los Angeles River that time will be necessary to complete the necessary atmospheric deposition studies. Time will also be necessary for extensive planning, design, financing and construction of structural Best Management Practices (BMPs) to deal with metals in urban runoff. The State Board should suspend the metal reduction requirements in the San Gabriel River Metals TMDL until these studies are completed. This is the fair and equitable approach, since local government cannot control the sources of atmospheric deposition and should not be held responsible to reduce metals loads from sources beyond their control to regulate. As referenced above, the State Board in literature its own website had plainly recognized that atmospheric deposition is a non-point source of pollution, and thus should not be the responsibility of the Cities.

We also request that the TMDL and the associated resolution include language, similar to language inserted by the State Board into the adopting resolution for the Los Angeles River Metals TMDL, specifying that a "reopener" will occur to incorporate the results of the special studies. We further request similar language specifying that any policy or guidance adopted by either the State or Regional Boards on urban runoff regulation, design storm or hydrologic conditions, and/or numeric limits for urban runoff, be incorporated into the TMDL at the reopener stage.

- Application of the California Toxics Rule is Inappropriate

We are concerned that the TMDLs application of the California Toxics Rule (CTR) levels to urban runoff is inappropriate and, in its current form, unworkable. The TMDL, as currently written, if applied as strict numeric limits to the cities, will result in the application of CTR limits as end-of-pipe numeric limits to be met at all times. We cannot support this approach. CTR limits are extremely low, exceeding municipal drinking water standards by many times. Much of the municipal drinking water in the watershed averages 190 micrograms per liter (chronic, based on hardness of 100), while the CTR standard would require a reduction to 9 micrograms per liter. We are concerned that the Regional Board intends to enforce the CTR as strict, "never to be exceeded" numeric limits, as evidenced in their recent "reopener" of the NPDES permit to include the Santa Monica Bay Bacteria TMDL.

Several studies have demonstrated that current BMPs cannot consistently achieve the metals reductions required to CTR levels. (See Flow Science Study cited above and Caltrans Retrofit Pilot BMP Study, 2004). We know that some BMPs can and do result in significant improvements to water quality. Some BMPs work well on particulate metals. However, the dissolved metals generally cannot be removed through conventional BMPs. Many areas of the watershed have clay soils or high ground water, which are not conducive to infiltration BMPs. Flow through media filter BMPs are in their developmental infancy and do not remove metals to CTR standards. The Los Angeles water board has downplayed the need to construct reverse-osmosis or micro-filtration systems, but these devices are the only current technologies meeting CTR standards consistently, but at extremely high capital and maintenance costs, including the construction of storm water storage and brine disposal facilities.

- TMDL's Numeric Limits are Infeasible at this Time

We want to thank the State Board for convening the expert panel to consider the question of whether it is technically feasible to establish numeric limits for inclusion in storm water permits. The State Board should carefully consider the recommendations of the panel's report "*The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities*" in relation to this TMDL. The Regional Board approved this TMDL prior to the conclusion of this important study. The State Board should require fundamental amendments to the TMDL, to reflect the panel's recommendations.

We support the panel's overall findings for municipal storm water permits, that "*It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban discharges*" (Page 4, Panel Report). Both dry-weather and wet-weather implementation of this TMDL is BMP based, including sewer diversion systems, infiltration, and filter technologies. The panel also found that monitoring for BMPs would be a challenge, since "there is wide variation in stormwater quality from place to place, facility to facility, and storm to storm." (Page 6, Panel Report)

The proposed TMDL requires that local government comply, regardless of the storm size. The expert panel found that that it may be "unreasonable" to expect that all storm events be below a numeric value.

"In a similar circumstance, there are a number of storms each year that are sufficiently large in volume and/or intensity, to exceed the design capacity volume or flow rates of most BMPs." (Page 6, Panel Report). "The Panel acknowledged that several to more times each year, the runoff volume or flow rate from a storm will exceed the design storm volume or rate capacity of the BMP. Stormwater agencies should not be held accountable for pollutant removal from storm beyond the size for which a BMP is designed." (Page 10, Panel Report)

The recommendations of the State Board's panel demonstrate it is premature to require compliance with numeric limits in the proposed TMDL. The TMDL currently would require that local governments meet the CTR numeric limit of 100% dry-weather compliance with the waste-load allocation by 2015 and 100% compliance with the wet-weather waste-load allocation by 2023. Such an approach is directly contrary to the recommendations of the State Board Panel. Moreover, the Regional Board should be directed to consider establishing Screening Action levels as par of the TMDL, rather than require strict compliance with numeric waste load allocations, in accordance with recommendations of the Panel in its Report.

- Lack of a Design Storm Complicates TMDL Implementation

The proposed TMDL presents a significant engineering problem for local government, in that the regulation does not contain a storm size or duration on which city engineers can base their BMP

designs. The TMDL requires compliance with all size of storm events, regardless of practicality or cost factors. The El Niño events in this region produce exceptionally large quantities of rain, complicating the engineering, technical and affordability problem.

For example, the large El Niño rainstorms of 2004-05, made that year one of the largest storm years on record – 37.25 inches of rain in downtown Los Angeles. This was only .93 inches off of the record set in 1883-84 and more than double the long-term annual average rainfall of 15.14 inches. Rainfall was significantly greater in the San Gabriel Valley, especially in areas adjacent to the San Gabriel Mountain range. Orpids Camp, located in the San Gabriel Mountains, near Mount Wilson, registered 107 inches of rain in the 2004-05 El Niño storm season.

Although we are encouraged that the Los Angeles water board established a Wet Weather Task Force in February of 2005, with a subcommittee to examine the size of storms that cities would be required to control, we are concerned that the task force has not produced recommendations and it may be some time before they have recommendations. The State Board's panel of experts found that BMP design will take time and that it is premature to assign numeric limits to municipal BMPs during this period of high uncertainty.

"It will take substantial research effort, including data gathering on well-designed BMPs, to develop design criteria for the removal of pollutants with confidence intervals that enable us to make reliable estimates of the median and variance of the effluent concentrations to be expected from the various BMPs. Until this is done, it will be very difficult to assign legally enforceable numerical effluent limitations to any particular BMP." (Page 6-7, Panel Report)

Concerns with CEQA, Economic and Housing Analyses

We believe that an Environmental Impact Report or proper functional equivalent document (FED) for the TMDL must be prepared rather than the negative declaration proposed, given the potentially significant adverse environmental impacts that may result from the TMDL. (See *City of Arcadia v. State Water Resources Control Board (2006) 134 Cal. App. 4th 1392*). In the Arcadia case, the Appellate Court ruled that the State and Regional Boards must complete an environmental impact report, or its functional equivalent, analyzing the reasonably foreseeable adverse impacts of the Trash TMDL on the environment.

We believe that the impacts of the San Gabriel River Metals TMDL will be significantly greater than the impact of the Los Angeles River Trash TMDL. This TMDL warrants the equivalent of a full environmental impact report. While the removal of trash and gross solids is difficult, especially with the lack of an effective design storm, the removal of suspended and dissolved metals will be technologically complex and implementation will have even a greater adverse impact on the environment. The impacts of the construction of infiltration and sand filters in 60% of our community must be reviewed for their environmental impacts.

- **Inadequate Project Description**

The Regional Board has failed to discuss the reasonably foreseeable need for our community to purchase private property in order to construct the sand filter and infiltration trench BMPs. Failure by the water board to discuss the likely location of these structural BMPs leads to a false sense of the overall impacts of the TMDL for the general public. This fundamental flaw skews the entire environmental discussion, as well as the economic discussion.

- **Failure to Discuss Likely Locations of Treatment Devices and the High Costs of Land Acquisition**

The Regional Board estimated that local government compliance costs would range between \$2.1 million (FHWA) to \$2.8 million (EPA) per square mile for this one TMDL. The EPA costs assumptions, relied on by the Regional Board, specifically indicated that they did not include land costs, or all capital costs or regional adjustments ("Preliminary Data Summary of Urban Storm Water Best Management Practices, EPA-832-R-99-012, August 1999). We disagree with the Regional Board's low cost estimates, since the Board staff has refused to include the reasonably foreseeable costs of land acquisition and have failed to make adjustments based on Southern California retrofit construction costs known to the Regional Board. Also, the likely implementation costs will be much higher than anticipated, since we do not believe that even the Regional Board's implementation plan will result in compliance with the low CTR levels and the waste load reductions in the TMDL. It is foreseeable that the cities will be forced to construct BMPs in their entire watershed areas.

- Failure to Fully Disclose the Impacts on Housing

The Gateway Cities Council of Governments completed a review of the potential housing impacts of the Metals TMDL ("*Impacts on Housing of the Metals TMDL for the San Gabriel River,*" Gateway Cities Council of Governments, June 14, 2006). The report made conservative assumptions that infiltration trenches and sand filters will need to be constructed in residential areas, based on the prevailing land use patterns found throughout the watershed. Residential land uses comprise more than 50% of the total land uses in many of the watershed's communities. The report found that local government would be required to construct 1,272 sand filters and 12,720 infiltration trenches under the TMDL. A total of 10,176 residences would need to be purchased to construct these devices and their associated flow control detention basins.

The COG study found that the watershed communities continue to fall behind in state housing unit production requirements (by 14,041 units in the 1998-2005 reporting period). A full forty-seven percent of the watershed communities failed to meet the state's housing production requirements. The COG also found that housing affordability has worsened in the watershed. Only 12% of the families in Los Angeles County can afford the median home (from 17% in 2004). Only 10% of households in Orange County can afford the median home (from 13% in 2004).

The COG report concluded that the Regional Board did not review the Regional Housing Needs Assistance requirements. Our City is committed to providing affordable housing, however the proposed TMDL will make it impossible to meet the state's housing production requirements, creating an adverse impact on housing in our community. This impact must be fully discussed in the environmental document for the TMDL.

- Failure to Fully Disclose the Impacts on Municipal Services

The Regional Board has failed to discuss all of the direct and indirect impacts on local municipal services from the TMDL. The Regional Board maintains that it only need discuss the impacts to the physical environment, such as the grading required to construct sand filters. The Board has declined to discuss the impacts on municipal services, when budgets are reduced or eliminated in order to fund the TMDL's requirements. However, these budget impacts create real physical impacts. For example, reductions in our law enforcement budget results in increases property crimes, vandalism, graffiti and arsons.

We have completed a review of the costs of implementing the TMDL to gauge the impact on our City budget and the associated impacts to our municipal services. We believe it is foreseeable that the City will have to finance the TMDL requirements with our General Fund. Our General Fund supports a variety of critical services, including law enforcement, fire protection, paramedic services, public works, and public facilities, and street and parks maintenance. Absent new voter approved fund, the City will be required to reduce, eliminate or defer existing critical services to pay for the new TMDL requirements.

The TMDL will require that our City participate in monitoring, implementation and scientific studies. As discussed above, the estimated cost of these studies alone is \$5.9 million. Just dividing the costs equally among the local government groups results in a "per city" share of \$254,000 in the next three-year period. Relying on the Regional Board's cost estimates of \$2.8 million per square mile, the TMDL will cost our community (19.5 square miles x \$2.8 million) \$54.6 million. This is a substantial amount to our community and it should be noted that the Regional Board's estimate does not include the costs of land acquisition in our community.

Our City also will be required to schedule additional maintenance crews to service the devices during and after rainstorms. We will most likely be required to install additional sand filters and infiltration trenches over time, when it is demonstrated that additional street sweeping and non-structural BMPs in 40% of the watershed fail to comply with CTR. Since sand filters will not comply with the CTR, especially in reducing the dissolved fraction of metals, we may be required to install more costly micro-filtration or reverse osmosis controls. These costs have not been included in our review and were not reviewed by the Regional Board.

The City will most likely be required to obtain bond financing, due to the TMDLs aggressive implementation schedule and since we do not have sufficient General Funds to pay for the TMDL requirements. The bonds will most likely be pledged from our General Fund revenues, since it is doubtful that the City can obtain the 2/3rds voter approval for local storm water taxes.

- **Failure to discuss the Cumulative Impacts**

The San Gabriel River will have multiple TMDLs, including Metals and Bacteria. We are very concerned about the lack of review of the cumulative impacts of the multiple TMDLs to be adopted by the State Board. It is reasonably foreseeable that the City will be facing extraordinary impacts on municipal services, housing, land uses, parks, street maintenance and public safety as a result of the TMDL implementation on the San Gabriel River. There is a clear failure by the Regional Board to engage in a discussion of the cumulative in the proposed environmental document.

Failure to Conduct Economic Analysis or Provide Relief to Small Cities (Under 50,000 In population)

It is clear from the CTR record that the United States Environmental Protection Agency (EPA) did not conduct the required economic analysis of the impacts of applying CTR to small cities (under 50,000 in population). The economic analysis is to inform the public about how entities might be potentially affected by State's implementation of water quality standards in the NPDES Permit program. EPA estimated that statewide compliance costs with the CTR would range between \$33.5 million and \$61 million.

EPA is required by the Regulatory Flexibility Act to certify that a proposed rule will not have a significant economic impact on a substantial number of small cities. The Regulatory Flexibility Act recognizes the budgetary hardships that strict compliance would cause to small cities, small businesses, small school districts and small non-profit corporations and requires an economic analysis of the impacts of the regulation on them, unless there is no such significant economic impact. No analysis was performed on the economic impacts on small cities under the Regulatory Flexibility Act, since the EPA Administrator concluded that: *"This final rule will not impose any requirements on small cities."*

EPA relied on the following findings when approving the CTR:

"The State has considerable discretion in deciding how to meet water quality standards and in developing discharge limits as needed to meet the standards... As a result of EPA's action here, the State of California will need to ensure that

permits it issues include limits as necessary to meet water quality standards established by the criteria of today's rule. In so doing, the State will have a number of discretionary choices associated with permit writing. While California's implementation of today's rule will ultimately result in some new or revised permit conditions for some dischargers, including small entities, EPA's action today does not impose any of these yet unknown requirements on small entities." (Pages 31709-08, CTR)

The proposed TMDL will apply CTR to eighteen small cities in the watershed (Artesia, Brea, Claremont, Cypress, Duarte, Hawaiian Gardens, Industry, Irwindale, La Habra Heights, La Palma, La Puente, La Verne, Los Alamitos, San Dimas, Santa Fe Springs, Seal Beach, South El Monte and Walnut). The proposed TMDL mandates the same compliance schedule, monitoring, implementation and special studies to all of the cities, regardless of size under the Regulatory Flexibility Act.

The TMDL's implementation plan anticipates the construction of sand filters and infiltration trenches in 60% of a city's watershed area. The "per square mile" construction costs for these filters and trenches are estimated at \$32.5 million (costs of infiltration trenches are estimated at \$22,500,000 per square mile and cost of sand filters are estimated at \$9,966,000 per square mile). It should be noted that these costs do not take into account any necessary land purchases. These cost estimates, for residential land only, are detailed in the study "*Impacts on Housing of the Metals TMDL for the San Gabriel River*," prepared by Richard Watson, June 14, 2006 and previously provided to the Regional Board. Further, this report shows residential land acquisition and relocation costs of approximately \$6 billion. The land acquisition cost estimated for commercial and industrial property is approximately \$2.4 billion, bringing the total land acquisition costs figures ignored by the Regional Board to approximately \$8.4 billion. The land acquisition and relocation cost figures are significant and should have been considered by the Regional Board.

The costs of TMDL implementation are excessive no matter the size of the city. The costs are especially onerous due to the short implementation period in the TMDL. We fail to understand why our communities are given less time to comply than the cities affected by the Los Angeles River Metals TMDL were given. These cities have six additional years to reach the 75% dry-weather requirement; eight additional years to reach the 100% dry and 50% wet-weather requirement; and 7 additional years to reach the 100% wet-weather requirement. The State Board has a number of discretionary choices when adopting this TMDL, including increasing compliance times due to the financial hardships facing local government as a result of compliance with this TMDL.

Failure to Consider Sections 13000 and 13241

The Los Angeles Regional Board has failed to estimate the economic, social and housing impacts of the TMDL as required by Section 13000 and 13241 of the Porter-Cologne Act. It appears that the proposed TMDL will impose state requirements that are more stringent than federal law. As stated above, EPA forecast that the annual statewide compliance costs of implementing the CTR would range between \$35.5 million and \$61 million. This cost estimate included all private and public sector costs.

The Regional Board estimates the costs of this one TMDL will be \$1.9 billion without land acquisition costs (i.e. \$2.8 million per square mile). These costs alone are a significant financial burden for our community. Further, as shown by the cost estimation study, the Regional Board's estimates may be low by as much as eleven times. There are clearly broad economic, social and housing impacts with the proposed TMDL on our community.

The State Board and Regional Board have a model economic analysis that they can rely upon (Sunding, et al) as a template. The State and Regional Boards should not fear the economic

review, since it can be designed to find the most cost-effective and environmentally beneficial measure to implement metals reductions in the San Gabriel River watershed. However, the refusal of the Los Angeles water board to review the economic, social and housing impacts of the Metals TMDL, in either the Triennial Review or with this TMDL, is not fair to local government and our fiduciary responsibility to our taxpayers, residents and businesses.

Dry-Weather Illicit Discharges – Lack of an Iterative Process

The Regional Board recently adopted a controversial "reopener" to the Los Angeles Area-wide Municipal NPDES Permit. This reopener added the Santa Monica Bay Beaches Dry-Weather TMDL to the storm water permit, and implements numeric limits as measured for beach closures. It potentially subjects the County and various cities immediately to fines and third-party litigation for bacterial exceedances of water quality standards.

The Regional Board ignored the recommendations of the expert panel on numeric limits (as discussed above) and is now strictly applying numeric limits to the Cities by simply incorporating the TMDL numeric limits into the Municipal NPDES Permit. The Regional Board's rationale is that dry weather discharges, for unexplained reasons, should be treated the same as "illicit discharges," under the "Discharge Prohibitions" section of the Municipal NPDES Permit. The Regional Board has effectively defined all dry-weather runoff as an "illicit discharge," requiring instant compliance. The Regional Board's action does not take into account the reality that dry-weather runoff is also difficult to characterize. Summer flows vary in size and duration, much like wet-weather flows.

As discussed previously, the State Board's expert panel on numeric limits considered the question of whether it is technically feasible to establish numeric limits for inclusion in storm water permits. Municipal storm water permits by definition and practice include both dry and wet-weather flows. The key finding of the expert panel stated that ***"It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban discharges."*** The expert panel did not differentiate between dry and wet-weather discharges in municipal storm water permits. The Region Board's action effectively eliminates the iterative process for dry-weather flows called for in EPA regulations, including the CTR. This action is also contrary to adopted State Board Policy as required by *State Water Board Order No. 2001-15, p. 8:*

While we continue to address water quality standards in municipal storm water permits, we also continue to believe that the iterative approach, which focuses on timely improvements to BMPs, is appropriate. We will generally not require "strict compliance" with water quality standards through numeric effluent limitations and will continue to follow an iterative approach, which seeks compliance over time. The iterative approach is protective of water quality, but at the same time considers the difficulties of achieving full compliance through BMPs that must be enforced through large and medium municipal storm sewer systems."

The Regional Board's action calls into question their intention with the dry-weather compliance schedule in the TMDL. The schedule calls for cities to comply with a 50% waste load reduction within six years; 75% waste load reduction in 8 years and 100% waste load reduction in 10 years. The effect of the language similar to the language in the recent "reopener" for the Municipal NPDES Permit that defines dry-weather runoff as waste, would be to require instant compliance with the TMDL's numeric limits, with no iterative process.

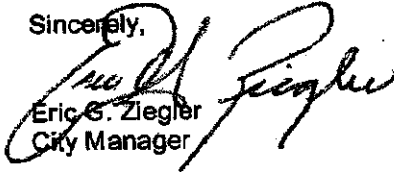
Summary

We request that the State Board remand the TMDL to the Regional Board to correct the deficiencies noted in this letter and in the prior Comments submitted on behalf for the CPR Cities

to the Regional Board. We are concerned that the scientific foundation of the San Gabriel River Metals TMDL is inadequate. The State Board should direct the Regional Board to conduct the appropriate scientific studies, Porter-Cologne analysis and CEQA analysis prior to adoption of the TMDL. We stand ready to work with the State and Regional Boards to supply the necessary information, to assist in defining the potential significant adverse environmental impacts from the TMDL, including the cumulative impacts, along with feasible alternatives and mitigation measures, and to provide timely review of the environmental impact report.

Thanks you for your consideration of our comments.

Sincerely,



Eric S. Ziegler
City Manager

Cc: City Council
D. Davies, Public Works
S. Wong, Planning