



**COUNTY OF LOS ANGELES**  
**DEPARTMENT OF PUBLIC WORKS**

*"To Enrich Lives Through Effective and Caring Service"*

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IN REPLY PLEASE  
REFER TO FILE: **WM-9**

October 25, 2006

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



Dear Ms. Her:

**COMMENT LETTER - SAN GABRIEL RIVER METALS  
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 Metals and Selenium in the San Gabriel River and Tributaries dated July 29, 2006. Our comments are included in the enclosed document.

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

Very truly yours,

DONALD L. WOLFE  
Director of Public Works

A handwritten signature in cursive script, appearing to read "Daniel J. Jeffery".

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 Total Maximum Daily Load  
for Metals and Selenium in San Gabriel River and Tributaries**

**1. Improper incorporation of numeric Waste Load Allocations into the Municipal Stormwater National Pollutant Discharge Elimination System (NPDES) Permits.**

COMMENT: Clean Water Act Section 402(p)(3)(B)(iii) states that the municipal stormwater permits "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants." The proposed Total Maximum Daily Load (TMDL), if adopted, would result in the incorporation of numeric effluent limitations into the municipal stormwater permits, contradicting the Maximum Extent Practicable principle on which the permit is based.

RECOMMENDATION: Modify Table 7-20.1, Implementation Element, Page 9, as follows:

"Except for the Municipal Stormwater Permits, Each NPDES permit assigned a WLA shall be reopened or amended at reissuance, in accordance with applicable laws, to incorporate effluent limitations that implement the applicable WLAs as permit requirements. Each Municipal Stormwater Permit shall be reopened or amended at reissuance to incorporate a combination of structural and non-structural BMPs, to the Maximum Extent Practicable and as part of a Regional Board-approved, iterative and adaptive implementation strategy, by which each permittee will use to achieve the desired pollutant load reductions. Reductions to be achieved by each BMP shall be documented and sufficient monitoring put in place to verify BMP effectiveness."

Modify Table 7-20.1, Implementation Element, Page 12, as follows:

"For the dry-weather conditions, mass-based WLAs will be used incorporated into these or other NPDES permits. Applicable CTR limits are being met most of the time during dry-weather. Due to the expense of obtaining accurate flow measurements required for calculating loads, concentration-based permit limits equal to the dry-weather WLAs assigned to

the POTWs, power plants, and other non-storm water program NPDES permits may apply to MS4 and Caltrans permittees during dry weather. For the wet-weather conditions, mass-based WLAs will be used ~~incorporated into NPDES permits as mass-based permit limits.~~

Modify Table 7-20.2, "Effective Date of TMDL", Page 17, as follows:

"Regional Board permit writers shall incorporate WLAs into NPDES permits with the exception of the MS4 and Caltrans Stormwater Permits. WLAs will be implemented through NPDES permit limits in accordance with the implementation schedule contained herein, at the time of permit issuance, renewal, or re-opener. For the MS4 and Caltrans Stormwater Permits, Regional Board permit writers shall incorporate a combination of structural and non-structural BMPs, to the Maximum Extent Practicable and as part of a Regional Board-approved, iterative and adaptive implementation strategy, by which each permittee will use to achieve the desired pollutant load reductions."

## **2. Unsuitability of California Toxics Rule as Numerical Objective for Total Maximum Daily Load**

**COMMENT:** The proposed TMDL uses numeric targets based on the water quality objectives established by the California Toxics Rule (CTR) for both dry and wet weather. The CTR is inappropriate as a standard for metals concentrations in stormwater on both regulatory and scientific grounds.

A review of the incorporation of the CTR into the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (known as the State Implementation Policy, or "SIP"), indicates that the policy never was intended to apply to the regulation of storm water discharges. See footnote 1 to the SIP. The SIP provides guidelines for determining when a discharge has a "reasonable potential" to cause or contribute to an excursion above an applicable priority pollutant concentration or objective. The SIP also provides a process for determining the appropriate effluent limitation for that pollutant. These calculation procedures are not, however, intended to apply to storm water discharges, and indeed, are inappropriate for such discharges. This is so due to the intermittent, highly variable and complex nature of a storm event. In most cases, sufficient data do not exist for storm water discharges to make a defensible analysis of "reasonable

potential." Moreover, a review of Environmental Protection Agency's regulatory record accompanying the adoption of the CTR criteria indicates that the criteria were never intended to apply to storm water discharges, and were not intended to be applied without consideration of dilution. Moreover, the CTR criteria were not intended to be applied as never-to-be exceeded values.

We anticipate that staff will respond to this comment by noting that because the CTR standard is intended for specified receiving waters, including those in the San Gabriel River watershed, it must be employed as the numerical objective for the TMDL. However, in wet weather conditions, it is plain that those very receiving waters, which serve as the flood control system for much of the San Gabriel Basin, are merely conduits for storm water flows. In summary, there appears to be no support for applying CTR criteria directly to storm water discharges in the context of a TMDL. Application of these criteria as never-to-be-exceeded end-of-pipe limitation, especially without consideration of dilution in the receiving water, was clearly never contemplated during the development of the CTR criteria. Were the Regional Board to adopt the CTR criteria as numerical objectives for wet weather flows in the San Gabriel River watershed, it would be doing so in clear violation of the rationale for the CTR criteria, without evidence in the record, and in an arbitrary and capricious manner.

### **3. Improper application of Total Maximum Daily Loads to non-303(d) listed reaches**

COMMENT: It is undisputed that TMDLs are required under Federal law to be applied to waterways that are listed as "impaired" under Section 303(d) of the Clean Water Act. See 40 CFR Section 130.7(c)(1) ("Each State shall establish TMDLs for the water quality limited segments identified in paragraph (b)(1) of this section . . . .")

However, the proposed TMDL would establish, in violation of Federal law, waste load allocations for waterbodies that are not listed as impaired. Specifically, the TMDL's Staff Reports states:

"This TMDL addresses the 2002 metals listings in the San Gabriel River and Coyote Creek as well as additional impairments found in the Estuary and San Jose Creek Reach 1 based on more recent data." (Staff Report, Page 2)

The "additional impairments" mentioned above is translated into dry-weather waste load allocations for Copper in San Gabriel River Estuary and Reach 1 and for Selenium in San Jose Creek Reaches 1 and 2. Moreover, not only are these waterbodies not on the 2002 303(d) list, but they are also not proposed to be listed as part of the most recent 303(d) list update.

**RECOMMENDATION:** We, therefore recommend that the Los Angeles Regional Board direct staff to revise the TMDL to remove those dry-weather waste load allocations for Copper in San Gabriel River Estuary and Reach 1 and for Selenium in San Jose Creek Reaches 1 and 2.

**4. San Gabriel River Reach 2 is not impaired for lead**

**COMMENT:** With respect to the lead issue in San Gabriel River Reach 2, we hereby incorporate by reference the comment provided by the Sanitation Districts of Los Angeles County.

**5. Issues regarding the prescribed ambient monitoring program**

**COMMENT:** The proposed TMDL requires the Municipal Stormwater (MS4) and Caltrans NPDES permittees to conduct a monthly ambient monitoring program "to assess water quality throughout the San Gabriel River and its tributaries... until at least year five when the TMDL is reconsidered.... The ambient monitoring program shall contain monitoring in all reaches and major tributaries of the San Gabriel River...." (Table 7-20.1, Page 13)

While it is undisputed that the California Water Code Section 13267 gives the Regional Board the authority to require dischargers to conduct ambient monitoring in the San Gabriel River watershed as part of the TMDL, we believe the implementation of such a program should be done under the State's Surface Water Ambient Monitoring Program. The reason for only placing the ambient monitoring responsibility on the MS4 and Caltrans NPDES permittees is also not clear.

Furthermore, the TMDL does not address, as required by the California Water Code, the burden, including costs, that this program will have relative to its expected benefits. We submit that a monthly monitoring frequency is unnecessarily intensive for the stated objective, and that quarterly monitoring (two samples during dry weather and two during wet weather) will result in a dataset of statistical significance after five years at a lower cost. According to our rough estimate, quarterly sampling will cost about \$600,000 over five years, whereas monthly sampling will cost three times as much, or \$1.8 million. Note that Southern California Coastal Water Research Project's conducts quarterly monitoring to quantify pollutant loading from natural sources in its two-year, U.S. Environmental Protection Agency-funded Natural Loading Study.

**RECOMMENDATION:** Modify Table 7-20.1, Monitoring and Special Studies Element, Page 13, as follows:

"The MS4 and Caltrans NPDES permittees**Responsible agencies** are jointly responsible for implementing the ambient monitoring program in coordination with the Surface Water Ambient Monitoring Program. The responsible agencies shall sample for total recoverable metals, dissolved metals, and hardness once every three months~~per month~~ at each proposed ambient monitoring location until at least year five when the TMDL is reconsidered." (Table 7-20.1, Page 13)

**6. Inadequate compliance timeline**

**COMMENT:** The proposed TMDL requires that the dry and wet weather Waste Load Allocations for MS4 and Caltrans Stormwater Permits be met within 10 and 15 years, respectively. This timeline is shorter compared to that given for the Los Angeles River Metals TMDL (18 and 22 years for dry and wet weather, respectively). Implementation of the proposed TMDL will face similar obstacles to those found in the Los Angeles River watershed and will require the additional time.

**RECOMMENDATION:** Modify Table 7.20-2, MS4 and Caltrans Stormwater Permits Element, Page 19, as follows:

Date	Action
8 <u>14</u> years after effective date of the TMDL	The MS4 and Caltrans storm water NPDES permittees shall demonstrate that 75 percent of the total drainage area served by the storm drain system is effectively meeting the dry weather WLAs.
10 <u>18</u> years after effective date of the TMDL	The MS4 and Caltrans storm water NPDES permittees shall demonstrate that 100 percent of the total drainage area served by the storm drain system is effectively meeting the dry weather WLAs and 50 percent of the total drainage area served by the storm drain system is effectively meeting the wet weather WLAs.
15 <u>22</u> years after effective date of the TMDL	The MS4 and Caltrans storm water NPDES permittees shall demonstrate that 100 percent of the total drainage area served by the storm drain system is effectively meeting both the dry and wet weather WLAs.

## 7. Issues regarding compliance with California Environmental Quality Act

COMMENT: We respectfully disagree with the Regional Board's assertion that the Checklist represents a satisfactory substitute for an environmental document under the California Environmental Quality Act (CEQA). The Checklist notes, in several places, that a separate CEQA review process will likely be required. However, the Regional Board must analyze the entire "project;" it cannot avoid its CEQA responsibilities by deferring them to other agencies who will be legally bound (upon adoption of the TMDL and its incorporation into NPDES permits) to implement that project. The cases under CEQA are clear; an agency cannot split a "project" into segments and thus avoid discussing the environmental impacts of the split-off segments.

Moreover, the Checklist, in the discussion of deferring mitigation, staff has consistently assumed that there are, in fact, feasible mitigation measures for every potential adverse impact and has refused to acknowledge that some of the impacts may not be possible to mitigate. Future actions that will be required in order to carry out the TMDL may result in significant unavoidable impacts. Through the use of improperly deferred mitigation measures, the Executive Officer has impermissibly failed to disclose to the Regional Board that the proposed Basin Plan Amendment may have a significant effect on the environment.

The Executive Officer, in his Determination, found that while the proposed Basin Plan Amendment "could have a significant adverse effect on the environment," there are "feasible alternative and/or feasible mitigation measures that would substantially lessen any significant adverse impact." The finding further states that such alternatives are discussed in the Checklist and in the Staff Report. In fact, neither the Checklist nor the Staff Report provides any meaningful mitigation or alternatives, but merely vague assurances that have no empirical basis. Importantly, the lead agency may not base a negative declaration or mitigated negative declaration on the presumed success of mitigation measures that have not been formulated at the time of project approval.