



City of Thousand Oaks

**PUBLIC WORKS DEPARTMENT
JAY SPURGIN, INTERIM DIRECTOR**

October 25, 2011

Via email

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
PO Box 100
Sacramento, California 95812-2000



Subject: Proposed Total Maximum Daily Load for Debris in the Nearshore and Offshore of Santa Monica Bay – Comment Letter

State Board Members:

The City of Thousand Oaks (the City) appreciates the opportunity to once more comment on the proposed draft Santa Monica Bay (SMB) Marine Debris Total Maximum Daily Load (Debris TMDL) Staff Report and Basin Plan Amendment (BPA). The City commented previously to the Regional Board (September 13, 2010) and those comments are included herein by citation.

However, the overarching concern that the City wants to express to the State Board is our alarm at the failure of the Regional Board to provide any substantive linkage analyses and an overreaching use and abuse of jurisdictional authority with the Regional Board's interpretation of what's commonly referred to as the Tributary Rule. This tributary rule, was used consistently by the Regional Board staff in response to SMB Debris TMDL comments, as 'justification' in lieu of any due diligence to provide any linkage analysis or rationale between inland, upstream activities and offshore impairments.

Before expounding on the City's concern, a bit of background is being provided. A small portion of the City (about 16%) lies within the upper Malibu Creek Watershed (MCW). The City is currently identified as a responsible party to the Malibu Creek Watershed Trash TMDL. These are on 303(d) listed reaches for trash impairment. The City has coordinated compliance efforts with other MCW stakeholders and is actively implementing and currently meeting all MCW Trash TMDL compliance requirements.

The City then is extremely frustrated in that this broadly asserted 'tributary rule' is being used in this era of scarce public revenue and assets to force the City and (other MCW stakeholders) to expend additional funds to combat the same trash/ debris impairment, from unlisted reaches as we are from the currently listed reaches. Additionally these additional 'debris control' expenditures must occur concurrently with 'trash control' expenditures prior to any determination as the effectiveness of the trash control efforts and expenditures during the implementation of the Trash Monitoring and Reporting

Program (TMRP). This is an expensive Regional Board driven bureaucratic redundancy.

To further illuminate the City's position we are most highly troubled with specific comments, made by Regional Staff in the Responsiveness Summary, their impact on the residents of Thousand Oaks and the inadequate response from Regional Board staff by citing the "Tributary Rule":

Naming the City as a responsible party under the Santa Monica Bay Debris TMDL in addition to the Malibu Creek Watershed Trash TMDL will require the City to meet the requirements of two different regulations addressing the variations of exactly same impairment in the MCW. It also places the City in regulatory "double jeopardy", in that compliance with the "trash" TMDL does not ensure compliance with the "debris" TMDL. The existing EPA approved MCW Trash TMDL addresses all listed trash impairments in the watershed. The Regional Board has not provided adequate linkage analysis data to justify the imposition of additional TMDL implementation and monitoring requirements. The overlapping TMDLs will ultimately led to extraordinary costs, complication and confusion for both the City and the other MCW Trash TMDL responsible parties, without increased beneficial use protection.

Regional Board (Responsiveness Summary 11.1):

The SMB Debris TMDL has been specifically developed to coordinate with the requirements and schedule of the MCW Trash TMDL to ensure that entities identified under the MCW Trash TMDL do not face duplicative requirements. Please also see responses to comments 5.3 and 8.4.

The only rationale for Regional Board staff to insist that these requirements are not duplicative, is that they apply to reaches unlisted for trash impairment.

(5.3) Compliance with the Ballona Creek Watershed Trash TMDL and the Malibu Creek Trash TMDL will constitute compliance with the trash related requirements of the SMB Debris TMDL for areas jurisdictions within the the Ballona Creek and Malibu Creek Watersheds that are addressed by those existing TMDLs. Clarification is provided in the Basin Plan Amendment and Staff Report.

(8.4) As stated in the Basin Plan Amendment, the trash WLA and trash related requirements of the SMB Debris TMDL that are applicable to responsible agencies and jurisdictions covered by the Ballona Creek Watershed Trash TMDL and the Malibu Creek Trash TMDL shall be addressed through the Ballona Creek Trash TMDL and the Malibu Creek Trash TMDL.

So the takeaway message is for the City to keep performing all the requirements for compliance with the Trash TMDL for the listed reaches and now add all the

requirements for the Debris TMDL to control the same pollutant for the unlisted reaches is due to the Regional Boards perspective that:

(8.11) First many areas with the Santa Monica Bay WMA are unassessed... it is REASONABLE to assign wasteload and load allocations to ALL land areas draining to the Santa Monica Bay. ...and nothing in Section 303(d) limits the Regional Board's authority to establish a TMDL for upstream waterbodies that flow into downstream waterbodies that are identified as impaired. Therefore the TMDL includes all areas that MAY be a source of trash to downstream water bodies. (emphasis added)

Consequently the Regional Board fails to apply a linkage analysis and subsequently applies an overreaching application of the Tributary Rule. The City is remains highly concerned with the Regional Board's use of this 'tributary rule' to apply these overlapping TMDL requirements if the Debris TMDL is adopted as proposed.

It appears unclear why the Regional Board is adopting additional TMDL requirements in the MCW, essentially creating duplicative regulatory actions and requirements addressing the same pollutant. The City has invested resources into meeting compliance requirements per the EPA approved MCW Trash TMDL for identified and listed reaches impaired for trash. The Regional Board is not allowing the adopted Trash TMDL Implementation Plan to address the issue. The City would be required to address point sources via a mechanism other than the current Minimum Frequency Assessment Program (MFAC) approach and develop separate Trash Monitoring and Reporting Plans (TMRPs), as would be required in the Debris TMDL BPA. The current Debris TMDL language acknowledges the use of the MCW baseline for the Debris TMDL but lacks any reference to current MFAC or TMRPs. Furthermore, the Debris TMDL BPA lists implementation requirements for open space areas not currently 303(d) listed for trash. Again, the BPA would essentially require two separate MFACs and TMRPs for the same sub-watershed area.

The City believes that the improvements and constructive elements included in the MCW Trash TMDL should be allowed to be fully implemented and evaluated prior to any effort to re-double the regulatory burden on listed Responsible Parties. As proposed, the City would have to develop and implement two TMRPs. We request clarification in both Staff Report and BPA language to clarify any possible confusion, and again, would recommend clearly stating that a responsible party implementing and in full compliance with the MCW Trash TMDL is meeting all trash/ debris requirements of the Debris TMDL.

The City would like to also take this opportunity to provide comment at the State level that this failure of the Regional Board to conduct an appropriate linkage analyses and the overly broad application of the Tributary Rule is also leading to gross inconsistencies in the application of this proposed regulation. Agencies directly discharging to the Los Angeles River are unaffected by this regulation. This despite direct hydraulic contact from "highly urbanized areas and/or heavily used recreation areas- and the ubiquitous nature of debris in the environment" (Responsiveness

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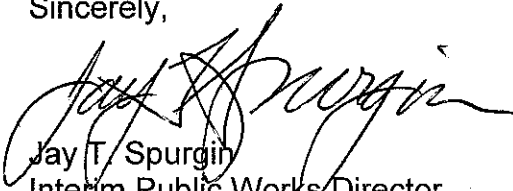
Summary Section 8.11). The proposed Debris BPA also fails to address other 'reasonable hydraulic contact' sources. This would include pleasure boat use, the large commercial passenger/ cruise boat industry, the freight/ commercial shipping industry, the fishing industry. Yet the City is listed as a Responsible Party along with several other Malibu Creek inland agencies which have an extremely limited seasonal conduit of hydraulic contact with the debris impaired Santa Monica Bay. More than 10 months a year there are more than five 'sinks' and five more physical barriers that essentially paralyze the mobility of any water-borne trash to flow from the City's jurisdiction to Santa Monica Bay. These include; Lake Sherwood and dam, the consistently 'dry' reach between Lake Sherwood and Westlake Lake and dam, Lake Lindero and dam, Malibu Lake and dam, Rindge dam, Malibu Lagoon and beach sand bar also constitute nearly insurmountable barriers for trash movement from Thousand Oaks to the Santa Monica Bay. Additionally for most of the year the creek surface dries up on other significant reaches of the creek between the Calabasas/ Agoura Hills area and Tapia Wastewater Treatment facility. Yet the City and its neighbors are expected to bear the costs of implementing an additional trash-based Debris TMDL, due to impairments in a water body that conceivably is nearly impossible for us to impact with water-borne debris for over 10 months a year.

Based on the above comments, the City requests that it be removed as a responsible party to the Debris TMDL or that the BPA be revised to fully acknowledge that the City, and other Trash listed Responsible Parties, if implementing and fully complying with the MCW Trash TMDL, are deemed to be in compliance with the Debris TMDL.

The City is troubled by the precedent established by the approach taken in the BPA, which proposes TMDL requirements for reaches that have not been identified as impaired. It does not seem appropriate for the Regional Board to utilize a "guilty until proven innocent" approach for this TMDL, by seemingly assuming that every reach of stream that drains to the bay is a source of Marine Debris. The Malibu Creek Watershed has identified impaired areas which are addressed by the MCW Trash TMDL. The City requests the language be revised to remove any required Debris TMDL efforts outside of the identified impaired reaches in the MCW.

Thank you for your attention to the City's concerns with the proposed Debris TMDL. If you have any questions or need additional information, please call Bob Carson at (805) 449-2424 or myself at (805) 449-2444.

Sincerely,



Jay T. Spurgin
Interim Public Works Director