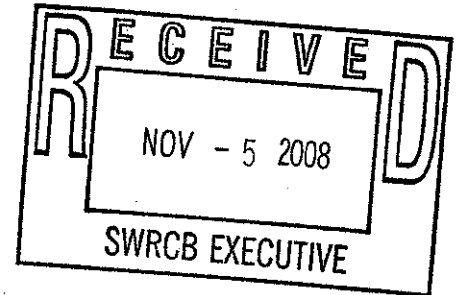


San Gabriel River Watershed Management Area Committee

November 5, 2008

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Re: Comment Letters - Bacterial Standards for REC-1 Waters

Ms. Stephanie Rose and Mr. Rik Rasmussen:

The San Gabriel River Watershed Management Area Committee (SGRWMAC) would like to take this opportunity to reiterate our comments made on October 22, 2008 at the subject California Environmental Quality Act (CEQA) Scoping Meeting in Anaheim. The SGRWMAC is composed of 28 municipalities regulated under the Los Angeles Regional Water Quality Control Board (LARWQCB) Municipal Separate Storm Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) Permit. The San Gabriel River (SGR) watershed includes Coyote Creek (CC), a significant tributary which during dry weather and minor storms (+/- 1 cm) is probably the most significant source of urban runoff to Reach 1 of the SGR Reach and the SGR estuary. This catchment is shared with twelve additional Orange County municipalities having a separate MS4 Permit issued by the Santa Ana Regional Water Quality Control Board (SARWQCB) and is 303(d) listed as impaired for Coliform bacteria with a Consent Decree Total Maximum Daily Load (TMDL) scheduled for development by 2019.

First, we offer our sincere appreciation to the Board staff for holding this meeting in Southern California and thoughtfully considering the extensive local experience with indicator bacteria, MS4 permits, TMDLs, and related regulatory matters. Second, we encourage your considered attention to the technical comments provided at the local meeting; in particular those speakers representing the Santa Ana Watershed Protection Authority (SAWPA). While others might suggest that technical comments are unrelated to CEQA scoping and analysis, it is our on-going experience that basic scientific matters are precisely the necessary elements needed to assess the magnitude of environmental impact which might be imparted through adoption of the developing regulations.

Regulatory boundaries and standard setting

Our most significant comment relates to the continuing challenge of differing Regional Boards, and potentially standards, regulating opposing sides of Coyote Creek. (In actuality, the situation is even more complex, since City, County and Board boundaries repeatedly zigzag across CC.) If differing permits and standards were adopted for opposite sides of this tributary, it is entirely plausible that permissible discharges from one bank could result in excessive loads and regulatory enforcement, or third party initiated litigation aimed against municipalities situated on the opposite river bank. One

might anticipate oscillating sub-reaches of compliance and violation of a few hundred meters in length. This ambiguity begins with the September 2008 Informational Document provided by the SWRCB, which states that "*The proposed policy may be applied statewide or may exclude waters under the jurisdiction of Los Angeles Water Board...*". Since downstream impairments may result in upstream TMDL Waste Load and Load Allocations, it is entirely possible for this "project" to unnecessarily and adversely impact hundreds of square miles in the urbanized SGR watershed. This is apparent in the San Gabriel River Metal TMDL, where copper impairments in CC and the estuary have resulted in dry-weather load allocations for cities whose discharges only reach the estuary during large regional storms. Page 9 of the soon to be published (www.nap.edu) National Research Council report entitled *Urban Stormwater Management in the United States* recommends to "**base all stormwater and other wastewater discharge permits on watershed boundaries instead of political boundaries.**" The CEQA document should address these ongoing inter-jurisdictional irregularities and what the watershed wide impacts of that reconciliation might be.

Indicator bacteria are spurious surrogates of pathogen/health risk

The CEQA documents should address the potential environmental impact of wrongly assessing public health (pathogen) risk, using indicator bacteria counts. Recent studies demonstrate the existence of endogenous riverine sources of benign enterococcus bacteria with no apparent relationship to human pathogen risk. Los Angeles County and the National Resources Defense Council recently settled with the United States Environmental Protection Agency to develop, by 2012, better pathogen monitoring and assessment methodologies. This national effort should precede that proposed State Board standards development action which might, if more restrictive than federal standards, result in a significant unfunded state mandate for municipalities, which could then be redirected back on to the state. This diversion of public resources would most likely result in significant environmental impacts on the provision of both state and local public services for fire protection, law enforcement, education, parks and public facilities including wastewater conveyance, treatment, and flood protection.

Areas of illegal trespass are inherently of low body contact risk

The analysis should explicitly assert that storm water conveyances are inherently unsafe during wet weather and often prohibited from trespass during both dry and wet weather. Areas so designated are clearly not intended for Body Contact Recreation (REC-1) Beneficial Use and to do so, would impart a significant impact on other aspects of the environment as will be more generally characterized in the following paragraphs.

Format and Analysis of the Environmental Documentation

Project alternatives including "no action" and "delay pending federal pathogen analytical method development" should be utilized. The environmental impact documentation used by the State Board should be in the form of a programmatic analysis to address those impacts that might be predictably observed from statewide regulatory implementation. A well written and thoughtful programmatic analysis would provide a spring board from which local agencies can move forward with supplemental environmental documents related to specific implementation project plans.

Above and beyond these policy and technical observations, it is our assertion that, depending on the Fresh Water Bacterial Standards ultimately adopted by the Board, there may be potentially significant adverse impact on the following CEQA Checklist categories presented to the public by Board staff at the October 22, 2008 meeting.

Aesthetics

Studies demonstrate an abundance of endogenous riverine indicator bacteria sources including wildlife. Ignoring the distinction between human pathogen risk and indicator bacteria, will result in unnecessarily strict beneficial use attainment standards, likely causing the construction of diversions that intercept riparian flows and degrade visual bike and jogging trail aesthetics along the main stem and tributaries of the SGR. This outcome is apparent at the mouth of the Santa Ana River, where a sanitary sewer diversion was built. Furthermore, strict REC1 standards has resulted in the construction of (disinfection) treatment facilities, that produced little obvious benefit in downstream bacterial counts as was observed in Aliso Creek (JO1P28) and at Moonlight Beach.

Air Quality

In addition to short term construction related air impacts, improperly selected standards could result in the construction of energy intensive diversion and treatment facilities, which would mostly likely be powered by fossil fuel combustion. Fossil fuel combustion is a significant and predictable source of air pollutant (ozone and NO_x) and green house gas (CO₂) emissions, which could predictably impact state air quality attainment and green house gas reduction initiatives, with little or no water quality benefit.

Biological Resources

Since wildlife is a known and significant source of indicator bacteria (e.g. enterococcus) and these microorganisms are observed to endogenously replicate in riparian systems, it would be prudent to eliminate non-permitted flows to remove any doubt regarding the effectiveness of the assumed municipal source control measures. In areas such as Coyote Creek, which do not convey recycled wastewater, this may eliminate substantial nuisance flows that are still beneficially, if unnaturally, utilized by wildlife.

Geology and Soils

In order to control the source of urban runoff contaminants, the Los Angeles Regional Water Quality Control Board has asserted that our MS4 Permit mandates the need for Low Impact Development, runoff conservation, and infiltration (Clarificatory letter of December 15, 2006). In contradiction, the State Geologic Service has asserted the presence of liquefaction zones within the SGR watershed. Unnecessary and inexact bacteria standards could result in infiltration/runoff retention that would exacerbate conditions of geologic upset, at least until such time as the State Geologist correct said maps to accurately reflect current and reasonably foreseeable groundwater elevations.

Hazards and Hazardous Materials

Areas of the SGR watershed exhibit a correlation between winter rainfall and selenium concentrations in groundwater drainage. Capricious bacterial standards may result in regulatory conflict and hazardous materials discharges by implementing bacterial

source control infiltration efforts that exacerbate observed selenium impairments. Otherwise, these conflicting impairments might result in the need for the state to undertake a site specific objectives study, resulting from the proposed action.

Hydrology and Water Quality

Bacterial control is an inexact science with its own environmental impacts. Engineered methods may require toxicants (e.g. chlorine, chloramine, or ozone), filtration (removes natural water constituents), infiltration, or UV-disinfection. Rehabilitation alternatives (revitalization or daylighting) may alter conveyance parameters or characteristics, shifting structures, particularly residential units, into the future floodplain or floodway.

Land Use Planning

Watershed Management Plans for both the San Gabriel River and Coyote Creek have been developed and finalized. These plans acknowledged beneficial use impairments due to indicator bacteria, as a substitute for human pathogens, and anticipated future source controls. It is likely the proposed bacterial standards would produce planning objective conflicts and impacts, such as those alluded to in the previous paragraphs.

Public Services

While properly analyzed and scientifically documented standards adoption could reduce the demand on public services by considering exposure risk (i.e. access in prohibited channels), the "defer until better monitoring methods are developed" alternative would have less impact, by not squandering public resources on minor risk factors. As noted, other indicator bacterial control projects have resulted in the wholesale diversion to sewers and treatment of runoff, while resulting in little, or no, identifiable benefit.

Utilities and Service Systems

Attempts to comply with bacterial objectives (JO1P28, and Moonlight Beach) and MS4 permit requirements (Santa Monica Bay Beaches Bacteria) have led many agencies to construct runoff diversion or treatment facilities with wastewater diversions. This project may necessitate the construction of diversions, expand wastewater conveyance and treatment demands, and result in an increased risk of sanitary system upsets. This potential impact advocates for four year's patience in allowing the USEPA to develop better pathogen detection methods rather than risking competing water quality efforts.

The SGRWMAC appreciate your consideration of our comments and concerns and would appreciate having the opportunity to work with the State in resolving these issues.

ORIGINAL SIGNED BY

Gerald E. Greene, DEnv, PE, QEP
Chair, SGRWMAC
cc: SGRWMAC Permittees
 John Hunter, LARWMC Chair
 Patricia Elkins, DCWMC Chair