June 16, 2011

City of Arcadia

Public Works Services Department

Tom Tait
Public Works Services Director

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

commentletters@waterboards.ca.gov

Re: Comment Letter – Los Angeles Water Board Indicator Bacteria

Dear Ms. Townsend:

The City of Arcadia appreciates the opportunity to submit comments regarding the State Water Resources Control Board's proposed approval of the Los Angeles Watershed Indicator Bacteria Total Daily Maximum Load (TMDL) Basin Plan Amendment. The City of Arcadia supports the technical and legal comment letters submitted on behalf of the Cities of Downey and Signal Hill. This letter incorporates those letters by reference and provides supplemental comments.

Our City strives to provide for numerous public services and supports dozens of environmental programs, including one for improving and protecting water quality. One of our many objectives is to work collaboratively with the State and Regional Water Boards to find cost-effective solutions to reach our mutual water quality goals. However, we are concerned that if the Bacteria TMDL is approved in its current form, our water quality protection efforts will jeopardize the delivery of our City's other vital services. We believe that, at a minimum, the State Board should remand the TMDL back to the Regional Board for further evaluation of the appropriateness of recreational uses in the concrete lined portion of the Los Angeles River and its tributaries. This letter includes a brief background of the issues, as well as our concerns about the TMDL and our requests of the State Board. More detailed comments can be found in Exhibit A, attached to this letter.

Background

The Los Angeles River and its many urban and open space tributaries exceed the bacteria water quality objectives established in the Basin Plan to protect REC-1 and REC-2 beneficial uses. The River drains a unique and unusual 834-square mile watershed that is subject to extremes in topography and weather conditions, and is comprised of 44% open space. The San Gabriel Mountains can experience over 40 inches of mostly winter rain annually, making the control of storm flows difficult. Many of our communities were subject to significant flooding problems prior to the channelization of the River and some areas still require flood insurance.

11800 Goldring Road
Post Office Box 60021
Arcadia, CA 91066-6021
(626) 256-6554
(626) 359-7028 Fax
www.ci.arcadia.ca.us

Studies by the Army Corps of Engineers revealed that over 336 square miles of the watershed were threatened by floods prior to the development of a comprehensive flood control system. The government's response to a series of massive floods from 1919 to 1938 was to construct concrete banks along 94% of the River's course. The River is now an almost complete concrete channel, with paved beds and sides, for three-quarters of its 51-mile length. Over 53.2 miles of the tributaries are channelized. The channelization of the Los Angeles River remains the biggest public works project undertaken by the Army Corp of Engineers west of the Mississippi. Levees on the sides of the River in Reaches 1 and 2 were raised in 2002-2005.

The Basin Plan's indicator bacteria objectives are based on acceptable human health risks for fresh recreational waters. Recreational uses for the channels were never considered by either the Army Corps of Engineers or the County Flood Control District's planners when the system was designed and constructed. In many places, public access to the River and its urban tributaries is restricted due to the inherent dangers in attempting to wade or swim in the channel (see Basin Plan Table 2-1, footnote "m. Access prohibited by Los Angeles County Department of Public Works in the concrete- channelized areas").

Many of the urban channels are extremely shallow during the dry season, rendering recreational uses impractical and dangerous. Wet-weather flows during major rain events can exceed the volume of water on the Mississippi River at St. Louis. Local fire departments have formed special "Swift Water Rescue Teams" to respond when persons enter the River during storms. Non-point sources are a significant source of the bacteria in the River and are attributable to wildlife, equestrian activities, and birds, in both the urban flood control system and the creeks in the forest area.

CREST Effort – The River Will Continue to Exceed Standards even with MS4 Dry-Weather Flows Diverted at a Cost of over $1.1 Billion to Local Government

The CREST study revealed that human sources of bacteria to the Los Angeles River are not the main reason the River exceeds the REC-1 and REC-2 standards, particularly in certain reaches. Bacteria are prolific and regrow in the environment. Non-human sources are significant according to the CREST BSI study. This study found that in Reach 2 only 10-50% of bacteria present in the River enter it from storm drains and tributaries. Since storm drain and tributary inputs account for only a fraction of the bacteria loading, controlling the MS4 storm drains or eliminating inflows from storm drains and tributaries will not attain water quality standards. Natural sources of bacteria, bacteria re-growth, and bacteria in sediment are significant and uncontrollable sources. However, the TMDL does not allow revisions to be made to allocations until diversions to sewers are made, even though existing evidence is sufficient to conclude that such diversions will not attain the TMDL requirements. The Regional Board estimated the cost of the dry weather diversions to be $1.1 billion, which we believe to be a low estimate. This fact alone argues for the State Board to remand the TMDL back to the Regional Board in order to review and revise the designated beneficial uses.

Wet Weather TMDL – A $5.4 Billion Problem

We are concern on how the cities are supposed to comply with wet weather flows given the TMDL targets and allocations and compliance time schedule in the TMDL. The Board is proposing that the existing High Flow Suspension be applied to the River and its tributaries.

However, the suspension applies only to major rain events (those with 0.5 inches of rain or more). The region deals, on average, with 32 days of rain annually, with storms varying in size. A close review of the storms that fall below the High Flow Suspension reveals major rain storms would have to be impounded and treated in order to comply with the TMDL's wet weather requirements.

Root of the Problem - REC-1 and REC-2 Uses are Impractical

The REC-1 and REC-2 uses are improperly designated for the concrete-lined channels of the Los Angeles River and its tributaries. The Basin Plan lists many of the REC-1 and REC-2 uses as "potential" or "intermittent". In many of the channels, it is dangerous to enter and access is illegal. Despite this, the TMDL indicates that cities are to take "aggressive action to restore" the river to allow for "water contact recreation (REC-1)".

Summary

The City of Arcadia urges the State Board to remand this TMDL back to the Regional Board to reconsider the beneficial use designations prior to re-adopting the TMDL. In addition, the State Board should consider deleting the wet-weather component of the TMDL and direct Regional Board to extend the High Flow Suspension to all concrete portions of the River and its tributaries.

Our City is committed to working in a collaborative manner with the State and Regional Boards on a Los Angeles River Bacteria TMDL that is technically and legally supported, and that is both reasonable and improves water quality. Thank you for this opportunity to provide these comments.

Sincerely,

Tom Tait

Tom Tait
Public Works Services Director

Attachment: Exhibit A

CC: Donald Penman, City Manager

Exhibit A

Detailed Comments on the Los Angeles River Bacteria TMDL For Consideration by the State Board June 2011

1. Public Notice

The City is concerned that the State Board's public notice on the TMDL indicates that "the commenter must explain why and in what manner each of the responses provided by the Los Angeles Water Board's response was inadequate or incorrect" or else "the State Water Board will presume that the Los Angeles Water Board's response adequately addressed the commenter's concern." We do not believe that this pre-condition to public comments is sanctioned either by CEQA or elsewhere in the law. The City has commented on several past TMDLs and other State Board actions and no such pre-condition was ever required. We believe that the State Board should respond to all relevant public comments that are presented in good faith and with reasoned analysis, and that the burden should not be on the general public to ferret through all of the Regional Board's responses to comments, various changes to the TMDL, and hearing transcripts to determine whether the Regional Board properly addressed concerns regarding the TMDL. It is evident that most if not all of the Cities' substantive comments on the TMDL were not addressed; nor did the Regional Board adequately explain the reason for not addressing such comments. The Cities and the public should not be required to, in effect, provide legal briefs and respond to all Regional Board comments. Instead, we believe that the merits or lack thereof of the TMDL should be determined by the record. This new pre-condition dampens public comments and is contrary to encouraging collaboration.

2. Dry-Weather Diversions – In Excess of $1.1 Billion in Costs to Local Governments

The City of Los Angeles should be commended for the CREST effort, for its investment in understanding the sources of bacteria, and for proposing an implementation plan for dry-weather conditions in Reaches 2 and 4 of the River. Based on CREST studies, it was estimated that compliance with the dry weather portion of the TMDL will require the diversion of 20% of the dry weather outfalls to the local sewer system. A total project cost was developed for 122 diversions, which would be installed by the cities over a 30-year period. Diversion costs were based on recent experience by the City of Los Angeles BOS/BOE.

It was assumed that the diversions could be located within 300 feet of the River; that flows would be 0.15 cfs per outfall and that no local/regional sewer upgrades would be required. The total estimated costs of this program were estimated to be $1.1 billion. The annual capital costs of the program were estimated at $37 million over the 30-year time frame. Operational costs grow to $57 million annually in the later years of the TMDL. The County Sanitation Districts also provided cost information, stating that an additional $122 million in connection charges and annual surcharge fees of $3.1 million would apply. The County Sanitation District trunk sewers are actually located as far as 4,900 feet from the River, and

average of only 2 (7%) days each year, and more than 2.25 inches falls about 1 day (3%) per year. Facilities constructed for wet-weather control would sit idle for approximately 333 of 365 days, or over 91% of the average rain year.

The Regional Board estimated that compliance costs with the full TMDL, including wet-weather compliance, would be $5.4 billion, excluding amortization and inflation. We have relied upon the cost sharing formula in the Metals TMDL special studies in order to give a sense of the order of magnitude of the wet-weather costs as compared to the dry-weather costs.

Aggregate Estimated Costs of Compliance
Wet Weather and Total Costs

City	Dry Weather	Wet Weather	Total Costs
Alhambra	$17,510,166	$66,332,166	$83,842,332
Commerce	$15,907,057	$57,294,230	$73,201,287
Los Angeles	$438,876,281	$2,446,090,101	$2,884,996,382
LA County	$130,051,862	$700,812,618	$830,864,480
Monrovia	$21,733,679	$90,143,650	$111,877,329
South Gate	$17,325,188	$65,289,327	$82,614,414

The Regional Board argued that the cities would be protected from the extremely high costs of controlling wet-weather flows by the High Flow Suspension. However, even some lower volume storms in streams subject to the high flow suspension are impossibly large to control. Flow Science analyzed storm flow volumes measured in the Los Angeles River in 2004-2005 and found that 924 million gallons per day (enough water to fill the Rose Bowl 11 times) would have required diversion and/or treatment, even after application of the High Flow Suspension and natural source exclusion. Further, in other streams, the High Flow Suspension does not apply. For example, in the Arroyo Seco, the volume that would have required diversion and treatment in 2004-2005 was 507 million gallons per day (enough to fill the Rose Bowl 7 times). The Regional Board has not responded directly to these comments.

The Regional Board argues that the Cities are already implementing the Metals TMDL and that "the metals TMDL is expected to address much of the bacterial impairment." However, there is no detailed description of how the Regional Board came to this conclusion. Regional Board staff recently reported to the Board (on June 2, 2011), that the nine implementation plans vary in scope from conceptual to more detailed. The plans were approved in December of 2010, after the Bacteria TMDL was adopted. All entities implementing these plans face great difficulty in dealing with wet weather conditions and lack sufficient funding to treat wet weather flows.