

February 11, 2003

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**COMMENTS ON PROPOSED TOTAL MAXIMUM DAILY LOADS FOR
BACTERIA IN THE MALIBU CREEK WATERSHED**

The following are the comments of the City of Westlake Village concerning the proposed Total Maximum Daily Loads (TMDLs) for bacteria in the Malibu Creek Watershed (TMDLs Document).

- We understand that, due to a significant lack of existing water quality monitoring data combined with the expedited TMDLs development schedule and associated uncertainties in the analyses presented in this TMDLs document, the EPA is at this juncture merely establishing the TMDLs for bacteria in the Malibu Creek watershed, and is not mandating implementation. Therefore, we request that EPA delete its implementation recommendations, as they are neither required nor appropriate to be included at this time. If EPA believes that the recommendations should be contained as an informational item in the TMDLs document, it should so explicitly indicate. Further, the RWQCB must be given clear guidance that it is not required to implement this TMDLs Document, so long as it timely develops its own TMDL program and that program meets the requirements of the Clean Water Act.

EPA Response: *There is no lack of data to suggest that the lagoon or the creeks are exceeding water quality standards for bacteria. The Regional Board did not to meet the consent decree deadline of March 22, 2002. Therefore EPA is required to establish the TMDL by March 22, 2003. Although EPA Regulations do not require an implementation plan, EPA has provided implementation recommendations based on discussions with Regional Board staff. If the Regional Board establishes its own TMDL for bacteria, EPA will review that TMDL to determine if it meets the requirements of the Clean Water Act. If EPA approves a Regional Board TMDL, then that TMDL will supercede EPA's. If no Regional Board TMDL is established however, EPA expects the Regional Board to develop implementation measures for the EPA TMDL.*

- The approach used for establishing allowable single sample exceedance frequencies largely ignores the variability of natural sources among sub-watersheds. Populations of birds and wildlife that contribute to the “background” loading of a particular water body vary considerably from water body to water body. The assumption that the dynamic between background loading and exceedance events for coliforms in Malibu Lagoon should be equivalent to that of Arroyo Sequit is completely unfounded and likely to be erroneous. The TMDLs Document itself acknowledges that the birds in Malibu Lagoon may be sufficient alone to cause an exceedance. It appears that the only basis for using the reference system approach is because it has already been done for the Santa Monica Bay TMDL. Although it is acknowledged in this TMDLs document that this is an uncertainty, there is no clear guidance directing that this uncertainty be completely resolved prior to any attempt at implementation of Bacteria TMDLs for the Malibu Creek Watershed. Again, we request that the EPA clarify that this TMDLs Document must not be implemented as currently written.

EPA Response: *The approach to develop the allowance does not ignore variability among different sources. The allowable load was calculated based on an assessment of flow considerations from 6 sub-watersheds and the water quality standard for fecal coliform. The predicted loadings from each of these watershed areas took into account differences in land use from each of these watersheds. The concept of allowable exceedance days was employed in this TMDL to address the issue that it is likely that water quality objectives will be exceeded whenever it rains. The Regional Board allows for a reference watershed approach to be used in TMDLs to address this issue. Lacking a reference watershed within the system, we opted to use data from an adjacent watershed (Arroyo Sequit). The rationale for selecting Arroyo Sequit (discussed in the TMDL) is that it is the least developed watershed in the area, it has a freshwater outlet like Malibu Creek, and it was used as the reference watershed to set allowances for beaches in Santa Monica Bay including Surfrider beach at the mouth of Malibu Lagoon. We believe that the TMDL provides sufficient information on the sources of bacteria to the system to allow implementing agencies to begin targeting source reduction activities.*

- We strongly urge the EPA to suggest in the TMDLs Document that RWQCB follow an iterative “phased approach,” such as that recommended in Region 9’s Guidance when “data and information needed to determine the TMDL and associated allocations are limited.” Guidance, p. 9, for development of an implementable TMDLs Document to replace this one. Under such a phased approach, TMDL implementation can commence while additional information is collected. Based upon the findings of the additional data collection, TMDL elements may be revised.

A more thorough source analysis needs to be conducted so that the stakeholders know what sources must be reduced, where BMPs should be located and other source-specific information. It is critical to identify the most important bacteria sources so that valuable time and resources will not be wasted treating sources that are not significant contributors to the violation of water quality standards.

EPA Response: *We agree that it makes sense for the Regional Board and affected stakeholders to develop a phased plan toward implementation of the bacteria TMDL. However we disagree that there is insufficient guidance in the document or that more information is needed before any action to reduce sources can or should take place.*

- We are concerned about the lack of independent peer review with respect to the scientific analyses used to develop this TMDL.

EPA Response: *It is unclear what aspect of the TMDL the commenter wishes to be peer reviewed. It is clear that water quality standards for bacteria are being exceeded throughout much of the watershed. The allowable daily loads defined in this TMDL were based on simple application of the Regional Board's water quality standards and implementation policy. The HSPF model has been reviewed extensively in the scientific literature. The only portion of the TMDL that might benefit from a peer review would be the assumptions used in the application of this model to the Malibu Creek watershed to estimate source loadings and recommend load reductions. The assumptions made in this TMDL regarding sources were based on information provided to EPA and Tetra Tech by the Regional Board. If more complete or accurate is available we recommend that this information be provided to the Regional Board for consideration in future TMDL reviews. There is no requirement that EPA TMDLs be peer reviewed..*

- We strongly support L.A. County Department of Public Works' comments on the TMDL document and incorporate them by reference.

We appreciate the opportunity to make these comments, and wish to thank EPA for providing an opportunity for stakeholders to discuss with the agency some of their concerns. We look forward to working with EPA, the RWQCB and other stakeholders in developing appropriate and implementable bacteria TMDLs for the Malibu Creek watershed.

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