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COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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October 27, 2011

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

Dear Ms. Townsend

COMMENT LETTER – MACHADO LAKE PESTICIDES AND POLYCHLORINATED BIPHENYLS TOTAL MAXIMUM DAILY LOAD

Thank you for the opportunity to comment on the proposed Amendment to the Water Quality Control Plan for the Los Angeles Region to incorporate Machado Lake Pesticides and Polychlorinated Biphenyls Total Maximum Daily Load. Enclosed are comments submitted on behalf of the Los Angeles County Flood Control District. The Los Angeles County Flood Control District also concurs with the comments submitted by the County of Los Angeles and hereby incorporates them by reference.

We look forward to your consideration of our comments. If you have any questions, please contact me at (626) 458-4300 or ghildeb@dpw.lacounty.gov or your staff may contact Ms. Angela George at (626) 458-4325 or ageorge@dpw.lacounty.gov

Very truly yours,

GAIL FARBER
Director of Public Works

A handwritten signature in blue ink that reads "Gary Hildebrand".

GARY HILDEBRAND
Assistant Deputy Director
Watershed Management Division

EI:jtz

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Enc.

IMMEDIATE



**COMMENTS OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT ON
THE PROPOSED MACHADO LAKE PESTICIDES AND POLYCHLORINATED
BIPHENYLS TOTAL MAXIMUM DAILY LOAD**

1. Naming the Los Angeles County Flood Control District (LACFCD) as a responsible party is inappropriate

The proposed TMDL should not name the LACFCD as one of the responsible parties for meeting the TMDL's Waste Load Allocations (WLAs) or for monitoring associated with assessing compliance with WLAs. None of the land areas draining to the LACFCD storm drains that empty into Machado Lake are under the jurisdiction of the LACFCD. The drains themselves function solely as a conveyance for urban and stormwater runoff from the upstream municipalities and do not generate any of the pollutants of concern at issue in the TMDL. Because the LACFCD does not control the land uses within the municipalities, it has no practical means of preventing the pollutants at issue flowing from those land uses from entering its facilities and ultimately Machado Lake.

The TMDL instead should be directed at the jurisdictions and private entities that have control over the areas that are generating the pollution. It makes no sense to allocate a WLA to the LACFCD when the LACFCD does not have control over the area from which the pollution is coming.

The Regional Board's response to these concerns was that the LACFCD as owner and operator of many of the storm drains that discharge into Machado Lake, including the Wilmington Drain, is responsible for ensuring that water discharged from its facilities does not cause or contribute to exceedances of water quality standards, and that the LACFCD has the authority to install pollutant controls at the points of entry to its facilities or within its facilities.

This response does not address the heart of the problem. If pesticides or PCBs are continuing to be introduced into Machado Lake, then the source of the sediment containing those pesticides and PCBs needs to be addressed. The LACFCD does not have the authority over those sources. Moreover, although LACFCD has the responsibility to maintain the flood conveyance capacity of its channels, it does not control the sources that empty into its channels, including the sources that empty into the Wilmington Drain.

In Los Angeles region Trash TMDLs, the Regional Board properly assigns WLAs to jurisdictions that have control of the areas that generate trash. For instance, in its response to comments for the Santa Monica Bay Debris TMDL, the Regional Board states:

The Regional Board's approach to regulating trash in the context of a TMDL is unique and unlike that used for other pollutants. Trash is generally visible and easily containable, and these attributes make it a pollutant that is readily controllable within its area of origin through proper and frequent collection and disposal by municipalities and the public. Also, the feasibility of containing this pollutant allows for determining compliance within a jurisdiction prior to discharge to the MS4. The LA Region trash TMDLs take this into account in identifying responsible jurisdictions and agencies and their points of compliance, and in assigning waste load allocations. (*Responsiveness Summary – TMDL for Debris in the Near-Shore and Offshore of Santa Monica Bay, Comment Due Date: September 13, 2010*, Regional Water Quality Control Board, Los Angeles Region, p. 25)

The fact that pollutants, such as pesticides and PCBs, are not "generally visible and easily containable" should have no bearing on who is ultimately responsible for addressing them.

Naming the LACFCD as a responsible party in the long run will hinder rather than promote accomplishing the goals of the TMDL because including the LACFCD as a responsible party diverts responsibility from the other entities that have the control over the sources of the pollutants entering the lake. In this regard, the Regional Board's response that joint and several liability is appropriate under the Clean Water Act is erroneous as a matter of law. Moreover, the Regional Board's response with respect to joint and several liability is based on its position that the parties are joint permittees to the permit. This position will only encourage permittees to seek their own separate permits, rather than seeking to work together under one permit.

For these reasons, we request that the State Water Board remand the proposed TMDL to the Regional Board and direct the Regional Board to remove the LACFCD from the list of responsible parties in footnote 1 on page 5 of the Basin Plan Amendment.

2. Monitoring for the Wilmington Drain should take place after the completion of the Wilmington Drain Multi-use Project

The proposed TMDL requires the LACFCD to monitor Wilmington Drain to demonstrate that Wilmington Drain is not re-contaminating Machado Lake. This monitoring is to be initiated at the same time as other required monitoring which can be as early as late 2012 if the TMDL takes effect in March 2012.

This requirement does not appear to take into account a restoration effort currently being planned by the City of Los Angeles, in collaboration with the LACFCD, to remove potentially contaminated sediment in Machado Lake and Wilmington Drain and to enhance these waterbodies for public use. Should the project proceed as

planned, sediment removal for Wilmington Drain is anticipated to be complete by late 2013. To avoid the monitoring of sediment that is slated to be removed, monitoring within Wilmington Drain should be conducted after the completion of the restoration project. The LACFCD requests that the State Water Board make the following clarifying, nonsubstantive change to the last sentence of the last paragraph on page 9 of the Basin Plan Amendment:

This monitoring shall be initiated at the same time as all other required WLA monitoring, except that the Executive Officer of the Regional Board shall have the discretion to adjust the monitoring schedule for good cause.

3. The implementation schedule should be extended in light of the presence of an endangered species in Wilmington Drain

After the adoption of the TMDL by the Regional Board in 2010, it came to the attention of the LACFCD that Least Bell's Vireo (*vireo bellii pusillus*), a federally registered endangered species, was again observed in Wilmington Drain in 2011 as part of a focused survey conducted by Bon Terra Consulting. The last documented sighting of Least Bell's Vireo in Wilmington Drain was in 2007. The results of the 2011 survey are summarized in the enclosed technical memo¹.

This discovery potentially affects the ability of the LACFCD to maintain Wilmington Drain including any channel clearing or sediment removal activities that may be necessitated by the proposed TMDL. Even if allowed to go forward, the regulatory permitting process for projects that potentially affect endangered species habitat is lengthy and should be taken into consideration in the TMDL's compliance schedule.

The LACFCD requests that the State Water Board make a clarifying, nonsubstantive change to the proposed TMDL by adding a footnote 7 to Task 12 on page 14 of the Basin Plan Amendment. Footnote 7 should state that "The Executive Officer of the Regional Board shall have the discretion to extend the final compliance timeline for good cause".

4. Incorporation of the Comments of Los Angeles County

The LACFCD concurs with the comments submitted by the County of Los Angeles and hereby incorporates them by reference.

¹ Summary of 2011 Least Bell's Vireo Observations to Date at Wilmington Drain. Bon Terra Consulting, July 2011.