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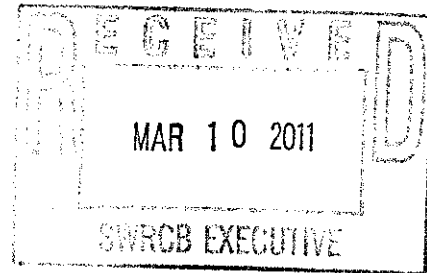
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March 9, 2011

Chair Hoppin and Board Members  
State Water Resources Control Board  
1001 I Street, 15th Floor  
Sacramento, CA 95814

[Sent via email to [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)]



**Re: Comments on Proposed Approval of an Amendment to the Water Quality Control Plan: Los Angeles Region Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties (Basin Plan) to Revise the Total Maximum Daily Load for Metals in the Los Angeles River and Tributaries**

Dear Chair Hoppin and Board Members,

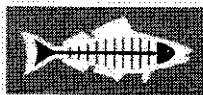
On behalf of Heal the Bay, we appreciate the opportunity to review and provide the following comments on the *Proposed Amendment to the Water Quality Control Plan For The Los Angeles Region (Basin Plan) To Revise The Total Maximum Daily Load (TMDL) For Metals For The Los Angeles River and its Tributaries*. Heal the Bay is an environmental organization with over 13,000 members dedicated to improving water quality in Santa Monica Bay and Southern California coastal waters for people and marine life.

In general, we are opposed to this amendment. The proposed amendment is a perfect example of why a statewide WER guidance document from the State Board is desperately needed. Although we do not support the pursuit of WERs or their incorporation into TMDLs, we believe a WER policy is needed to outline methods for performing WER studies in a more protective fashion. Also, if WERs are incorporated into TMDLs, it must be done in a consistent fashion in order to adequately protect beneficial uses of waterbodies within the state instead of in the piecemeal fashion we have seen to date.

Pertaining to this amendment specifically, we are concerned that the proposed amendment inappropriately increases the copper loading to reaches 1 through 4 of the Los Angeles River. In addition to this, we believe the original site-specific objective study used to develop the WER is flawed. We are also concerned about the ambiguity of the requirement that effluent discharge must meet or exceed the current performance of the facilities' treatment technologies. These and other concerns are outlined below.

**The State Board should not incorporate the copper WER into this TMDL.**

1. Incorporating this WER into the TMDL is not protective of water quality.



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We often see WER studies pursued by dischargers as a way to avoid meeting protective water quality standards. This WER is no exception. In general, the use of WERs to modify water quality standards is not a protective approach. Of note, there has never been a WER study pursued that resulted in tougher water quality objectives. The incorporation of WERs into this TMDL will increase the amount of allowable discharge of copper by nearly a factor of 4, which in turn could have serious impacts to beneficial uses. Moreover, the SSO study for the WER proposed to be included in the TMDL is inadequate, as we explain below. Thus, there is little assurance that the WER will actually be protective of the beneficial uses of the waterbody.

**2. The WER was developed using inappropriate methods and reasoning.**

The original SSO study for developing the WER has a number of inadequacies, as Heal the Bay commented to the Regional Board back in August 2004. To summarize, we believe a number of non-conservative assumptions were made and insufficient data were collected to determine the critical condition of the tributaries being investigated during the development of the WER. For instance, the sampling design does not encompass the entire range of environmental conditions in the watershed and may not adequately address critical conditions. The study evaluates merely five sampling sites for dry weather, and merely three sites in wet weather. In addition, the wet-weather sampling plan may not address critical conditions. Five sample events occurred over the course of less than a year, with merely one storm event included in the sampling. Considering that the Los Angeles River is over 50 miles long and that these WERs are being applied to entire reaches of the Los Angeles River, these were too few sample locations and events to capture the annual site-to-site variations of the Los Angeles River. Because of these inadequacies, we believe the WER value developed is flawed and is not protective of beneficial uses in the Los Angeles River. Hence, this value should not be incorporated into the TMDL.

**3. The Regional Board should pursue other alternatives to incorporating a WER into this TMDL.**

As mentioned in their March 11, 2010 letter to Los Angeles Regional Board responding to the first proposed revisions, EPA did not support an extension of compliance schedules to meet final WLAs for POTWs, and they were concerned "with the application of site specific copper WERs, which may be implemented in the NPDES permits as new, less stringent, interim limits" (EPA letter page 2). In response, the Regional Board amended final Waste Load Allocations (WLAs) to incorporate the WER value for copper resulting from the 2008 Copper WER study. We do not believe this was an appropriate solution to the concerns EPA raised in their letter. From the information EPA provided with their letter, it appears that all of the plants are meeting interim limits, and two out of three of the plants are already able to meet final effluent limitations based on sample data taken between January 2008 and December 2009. Hence, using WERs to increase the WLAs in the TMDL for the express purpose of facilitating one out of three of the plants to comply seems unnecessary, is poor public policy, and should be avoided. A preferred



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alternative would be to simply issue a Time Schedule Order to allow Burbank time to improve their processes to better treat copper if necessary.

**Several components of the TMDL Amendment should be clarified:**

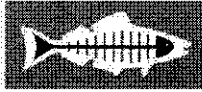
**1. The determination of existing performance of treatment technologies should be outlined.**

We support the fact that TMDL includes antidegradation provisions aimed to prevent dischargers from discharging an amount of copper at higher levels than they can currently treat, in response to concerns brought up by EPA. However, it is unclear how these provisions will be interpreted. Footnote 2 of the revisions to the waste load allocation section of the TMDL states, "Regardless of the WER, effluent limitations shall ensure that effluent concentrations and mass discharges do not exceed the levels of water quality that can be attained by performance of this facility's treatment technologies existing at the time of permit issuance, reissuance, or modification." (TMDL page 8). It is unclear how the Regional Board plans to define the facilities' performance "existing at the time of permit issuance." What performance data will be used? This needs to be defined in order for this provision to be effective in preventing increased copper loading to the Los Angeles River. As discussed above, the Tillman and Glendale plants are already meeting the current final effluent limits. Also, as the Regional Board included this footnote to prevent the plants from backsliding from the achieved existing effluent limits, it appears the Regional Board intends for the POTWs to meet technology based limits below the proposed WER-adjusted-WLAs. Therefore, what is the point of including a WER in the Basin Plan Amendment? This causes much confusion and should be modified.

**2. The TMDL should include an explicit margin of safety.**

We disagree with the Margin of Safety section of the Basin Plan Amendment which state "An additional explicit margin of safety is provided in Reaches 1-4 and Burbank Western Channel for which a site-specific WER has been developed" (Revised BPA page 12). While we agree that the WER should not be applied to sources other than the POTWs, we do not believe this equates to an explicit margin of safety. The Regional Board can apply a more protective margin of safety to this TMDL by including an explicit margin of safety equal to 10% of the loading capacity available for reaches 1-4.

To conclude, changing a water quality threshold is a very serious issue and should be approached cautiously. This amendment highlights the need for the State Board to draft guidance on the implementation of WERs to ensure they are implemented in a cautious and consistent manner. Since a WER allows higher metal concentrations than those that have been found in the past to be toxic, there are major implications to the amendment of this TMDL. As discussed above, we urge the State Board not to incorporate Copper WERs into the TMDL BPA. We believe that this



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addition will fail to protect sensitive beneficial uses and will further degrade impaired waters. Thank you for your consideration of these comments. If you have any questions, please contact us at 310-451-1500.

Sincerely,

A handwritten signature in cursive script that reads "Kirsten James".

Kirsten James, MESM  
Water Quality Director  
Heal the Bay

A handwritten signature in cursive script that reads "W. Susie Santilena".

W. Susie Santilena, MS, EIT  
Water Quality Scientist  
Heal the Bay