

**Draft Comment Summary and Responses**

Comment Deadline: September 30, 2015

Amendment to the Water Quality Control Plan for the Los Angeles Region  
to adopt site-specific objectives for lead and copper in the Los Angeles River Watershed and  
to revise the TMDL for metals in the Los Angeles River and Tributaries

List of Commenters:

Comment Reference No.	Organization	Representative
1	City of Los Angeles Bureau of Sanitation	Shahram Kharaghani
2	City of Burbank	Daniel Rynn
3	County of Los Angeles and the Los Angeles County Flood Control District	Gail Farber Angela George
4	Heal the Bay, Los Angeles Waterkeeper, and Natural Resources Defense Council (collectively, Environmental Groups)	Rita Kampalath, Bruce Reznik, and Becky Hayat
5	General Public	Joyce Dillard

Response to Comments:

No.	Author	Comment	Response
0.1	Multiple	Many of the comments submitted in opposition to the State Water Resources Control Board's (State Water Board) approval of this amendment to the Water Quality Control Plan for the Los Angeles Region (Basin Plan) to adopt site-specific objectives for lead and copper in the Los Angeles River Watershed and to revise the TMDL for metals in the Los Angeles River and Tributaries were either previously submitted to the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) and submitted verbatim to the State Water Board without further explanation, or were not timely raised before the Los Angeles Water Board and no explanation was provided as to why the commenter was unable to raise the specific comment before the Los Angeles Water Board.	<p>The State Water Board's Notice of Opportunity to Comment concerning this Basin Plan amendment accurately informs interested persons of the procedural requirements used to implement the State Water Board's regulatory programs. According to the State Water Board's CEQA Regulations (23 Cal. Code Regs. § 3779, subd. (f)):</p> <p>The state board, when considering approval of a regional board's adoption of an amendment to its water quality control plan or guideline, shall prescribe a comment period of not less than 30 days. The state board may refuse to accept any comments received after the noticed deadline. All comments submitted to the state board must be specifically related to the final amendment adopted by the regional board. If the regional board previously</p>

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			<p>responded to the comment, the commenter must explain why it believes that the regional board's response was inadequate. The commenter must include either a statement that each of the comments was timely raised before the regional board, or an explanation of why the commenter was unable to raise the specific comment before the regional board. The state board may refuse to accept any comments that do not include such a statement. The state board is not required to consider any comment that is not in compliance with this section.</p> <p>Several of the comments submitted to the State Water Board opposing this matter are either identical to a comment submitted to the Los Angeles Water Board at the time the draft version of this regulation was under consideration by the Los Angeles Water Board, or was not timely raised to the Los Angeles Water Board. Where a comment was not timely raised to the Los Angeles Water Board, the commenter did not include an explanation of why the commenter was unable to raise the specific comment before the Los Angeles Water Board. Where a commenter has merely repeated the comment submitted below or did not timely raise it to the Los Angeles Water Board, the comment does not comply with the above-quoted regulation or the State Water Board's Notice of Opportunity to Comment.</p>

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			<p>During its consideration, the Los Angeles Water Board received and provided written responses to all significant comments. Los Angeles Water Board's responses either indicated that changes would be made to the regulatory provisions or related documentation in view of the comment (in which case corresponding changes were made), or the Los Angeles Water Board's written responses indicated that changes would not be made, and the response indicated why not.</p> <p>The State Water Board cannot divine what the commenter believes has been adequately satisfied by the Los Angeles Water Board, nor can it determine the reason for any remaining dissatisfaction. Without that information, the State Water Board does not have a fair opportunity to understand what, if any, remaining concerns exist.</p>
1.1	City of Los Angeles Bureau of Sanitation	<p>The City of Los Angeles Bureau of Sanitation (LASAN) would like to reiterate our support for the adoption of the proposed amendments. The copper water-effect ratio (WER) and lead recalculation studies followed established USEPA guidance. The studies were rigorously reviewed by Los Angeles Water Board staff and an independent Technical Advisory Committee (TAC). The multiple reviews of the work plan, interim work products, and final reports resulted in the most comprehensive site-specific objective study in Southern California. Additionally, the results of the copper WER study are consistent with the findings of previous efforts within the watershed, which were incorporated into the 2010 Metals TMDL Amendment. LASAN finds</p>	Comment noted.

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		the amendments overwhelmingly consistent with the findings of the studies and honors the commitment of both Los Angeles Water Board staff and stakeholders' commitment to productively work together on these technical challenging issues.	
2.1	City of Burbank	<p>The City of Burbank generally supports the Basin Plan amendment. The City has worked closely with the Regional Water Board on site-specific objectives in the Los Angeles River for over 15 years. Similar to previous site-specific objective work efforts, the development of technical information to support the amendments occurred through a thorough stakeholder and scientific review process. Scientific review conducted as part of the special studies supporting the amendments consisted of the review of the Work Plan, work progress reports, and the Final Study Reports by Regional Water Board staff and an independent Technical Advisory Committee (TAC). The TAC conducted independent peer review of multiple versions of the Work Plan, preliminary data analysis, and the Final Study Reports and provided feedback on key questions raised by Regional Water Board staff.</p> <p>Notwithstanding the comment below, the remaining components of the amendment effectively represent the findings of the study as supported by the TAC. As such, the City supports approval by the State Water Board, with the requested modifications to Chapter 3 of the Basin Plan noted</p>	Comment noted.

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		below, as a confirmation that effective stakeholder led efforts to improve the science of water quality objectives are an important comments of the water quality regulations.	
2.2	City of Burbank	<p>The City raised concerns during the Regional Water Board adoption process on several issues, which were ultimately not addressed. The primary unaddressed comment relates to the Regional Water Board's decision to not include a copper WER that was developed for Burbank Western Channel (BWC) above the City's Water Reclamation Plant. Two copper WER sampling sites were established in the Burbank Western Channel (BWC) for the study, one site upstream and one site downstream of the Burbank Water Reclamation Plant (BWRP), to evaluate the difference in waterbody conditions with and without the influence of tertiary treated wastewater. The results of the study indicated that separate copper WERs (5.44 and 4.75 upstream and downstream of the BWRP, respectively) are appropriate. However, only the downstream WER was utilized and is applied to the entirety of the BWC. This approach is inconsistent with the original TMDL, which acknowledged different conditions upstream and downstream of the BWRP by establishing different numeric targets (WER*26 µg/L and WER *19 µg/L upstream and downstream of the BWRP, respectively).</p> <p>The City commented that Chapter 3 (Water Quality</p>	<p>This comment was previously made to the Los Angeles Water Board and the Los Angeles Water Board responded to it. The State Water Board reviewed and agrees with the Los Angeles Water Board's response to Comment No. 1.3 to Los Angeles Water Board Resolution R15-004, the relevant portion of which states:</p> <p>As stated in the staff report supporting the proposed Basin Plan amendments, revising the loading capacity and allocations in the TMDL by applying two separate WERs in the Burbank Western Channel would require an adjustment of the critical flows contemplated in the original TMDL, which is beyond the scope of this reconsideration.</p> <p>Furthermore, applying a higher WER in the channel segment above BWRP is not needed. The existing copper data (2003-2013) collected above the BWRP show that copper concentrations are lower than the adjusted numeric target calculated using the WER of 4.75. The median copper concentration of samples collected above the BWRP is 14 ug/L and the maximum is 95 ug/L, while the adjusted numeric target using the WER of 4.75</p>

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		<p>Objectives) of the Basin Plan should include the separate WERs and the TMDL should be revised to incorporate both WERs into the TMDL targets, loading capacity, and wasteload allocations sections. The Regional Water Board's response (1.3) indicated that revising the loading capacity and allocations in the TMDL by applying two separate WERs would require an adjustment of the critical flows contemplated in the original TMDL, which is beyond the scope of the reconsideration. While the City prefers that both Chapter 3 and the TMDL be modified, at a minimum, Chapter 3 should be revised to include separate copper WERs (5.44 and 4.75 upstream and downstream of the BWRP, respectively). Revisions to Chapter 3 were part of the scope of the reconsideration and the Basin Plan should reflect the appropriate criteria that were developed through a robust and independently reviewed study.</p>	<p>is 123 ug/L.</p> <p>While revisions to Chapter 3 of the Basin Plan were part of the scope of the Los Angeles Water Board's reconsideration, the State Water Board agrees with the Los Angeles Water Board that separate WERs for upstream and downstream of the BWRP are unnecessary.</p>
3.1	County of Los Angeles/Los Angeles County Flood Control District	<p>The County of Los Angeles and the Los Angeles County Flood Control District support the proposed amendments and recommend approval by the State Water Board. The copper WER and lead recalculation studies on which the proposed amendments are based spanned over five years at a cost of over \$2 million. The studies represent state-of-the art science and involved nationally recognized scientists. We support the proposed amendment because the revised TMDL is based on sound science and remains protective of beneficial uses.</p>	<p>Comment noted.</p>

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4.1	Environmental Groups	<p>The Copper WER Study broadly identifies dry weather, regardless of season, as the critical condition in the Los Angeles River Watershed. Critical condition is defined as the condition with the lowest WER or the condition in a waterbody when aquatic life is most threatened. We agree with this approach. However due to the very limited dataset that the Copper WER Study is based on as well as the relatively short timeframe over which the study was conducted, we believe the Copper WER Study cannot ensure that critical conditions were captured. Six dry weather samples were used to calculate final WERs for each reach of the Los Angeles River and tributaries (except for Rio Hondo where only five sample results were used), with the intention of capturing the critical condition.</p> <p>Further, the study was conducted over a period of only 17 months, March 2011 to August 2012, covering just one wet season. This is concerning as 2011-2012 had below average rainfall and does not represent average (or wetter than average) conditions in the Los Angeles River Watershed – annual rainfall was 6.29 inches below average*. Though we agree that dry weather in general is likely the critical condition, we are concerned that the full range of WERs that would be observed over time during dry weather (based on season, proximity to a rain event, or simply the natural variability inherent in a watershed) was not characterized. The proposed WER must be</p>	<p>See response to Comment No. 0.1. This comment was previously made to the Los Angeles Water Board and the Los Angeles Water Board responded to it. The commenter has not explained why and in what manner the commenter believes the Los Angeles Water Board’s response to this comment was inadequate or incorrect.</p> <p>The State Water Board reviewed and agrees with the Los Angeles Water Board’s response to Comment No. 2.2 to Los Angeles Water Board Resolution R15-004, which states:</p> <p>In accordance with Section I.7.a.of the Interim Guidance, water quality data collected during the WER Study period were reviewed to evaluate their representativeness of long-term conditions within the Los Angeles River watershed. The results are presented in Section 6.5 of the WER Study Report. The comparisons indicate that the WER Study parameters (TSS, DOC, and hardness for main stem sites and hardness only for tributary sites), compared to historical parameters, are within the expected range for the sites. These results are presented visually in Figures 1-3, attached to this response to comments. Figure 1 and Figure 3 present the dry- and wet-weather hardness data, respectively. Figure 2 presents the dry-weather DOC data.</p> <p>Additionally, a previous WER study conducted for Reaches 1-4 of the Los Angeles River,</p>

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		<p>protective during average as well as wetter than average years – can the study proponents really guarantee this with any level of confidence?</p> <p>Though we understand that this study represented a significant effort on the part of the study proponents, the fact is that these standards are at least doubling (in one case raising by nearly an order of magnitude) standards which have been in place for decades, and are proposed to apply more or less in perpetuity. For this reason, it is absolutely critical that the study fully investigates the range of conditions that may occur in the watershed. We recommend that data collection and sampling continue over a five year study period to develop a WER that is well supported and protective of beneficial uses. This would ensure that samples are collected over a wide range of chemical and flow conditions which influence bioavailability of copper.</p> <p>*We acknowledge that additional data was collected between 2005 and 2006 for a 2008 report, however, this study period also represents drier than average conditions</p>	<p>based on data collected in 2005 and 2006, determined a final WER of 3.96. The final WER for the currently proposed Basin Plan amendment for these same reaches is 3.97. The fact that the final WERs based on 2005-2006 and 2011-2012 data are similar demonstrates that the WER data are accurately representative of conditions in the watershed.</p> <p>The proposed Basin Plan amendment contains ongoing monitoring with triggers for WER reevaluation if data show that conditions are changing in a way that might affect the toxicity of copper in the Los Angeles River watershed.</p> <p>The comment cites to the 2008 Copper WER Report and states that 2005 and 2006 are drier than average years. This is not correct. According to rain gauge data in the Los Angeles Region, 2006 is a drier than average year and 2005 is a wetter than average year. The State Water Board agrees with the Los Angeles Water Board's determination that the WER studies are based on a robust dataset that reflects representative chemical and flow conditions in the watershed, which has resulted in protective WERs.</p>
4.2	Environmental Groups	<p>Fourteen sampling sites were used to represent four reaches and six tributaries of the Los Angeles River Watershed (roughly 154 stream miles; 50 miles in the main stem). Given the geographic extent and varied land use of Los Angeles River and its tributaries, 14 dry weather sites and 10 wet weather sites are unlikely to be representative of all</p>	<p>See response to Comment No. 0.1. This comment was previously made to the Los Angeles Water Board and the Los Angeles Water Board responded to it. The commenter has not explained why and in what manner the commenter believes the Los Angeles Water Board's response to this comment was inadequate or incorrect.</p>



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		<p>watershed conditions. For many of the tributaries, only one sampling location was used in the study despite having tremendous variability in land use, substrate and other conditions. Vegetation in waterbodies can also greatly influence water chemistry, flow dynamics, the binding of copper to sediments, etc., potentially having great influence on WER calculations. Thus, it is inappropriate to use a single sample location for tributaries because it cannot adequately characterize water chemistry for an entire reach. In addition, less than 100 data points were used to conduct the watershed wide SSO; this is simply not enough data to characterize an entire watershed and change WQOs. The California Toxics Rule (40 CFR §131.38) allows SSOs because every waterbody has slightly different conditions influencing toxicity. However, in identifying site-specific objectives, it is essential that robust data is collected in multiple locations for each reach to capture variability. The severely limited sampling regimes used in the Copper WER Study fails to use enough data to account for watershed variability.</p>	<p>The State Water Board reviewed and agrees with the Los Angeles Water Board’s response to Comment No. 2.3 to Los Angeles Water Board Resolution R15-004, which states:</p> <p>Copper WER sampling sites were located within the tributaries at the most downstream locations in the waterbodies to represent conditions for the length of the tributary. The intent of the WER Study was for the WERs to apply to the upstream portions of the tributaries as well, consistent with the assumptions used in the development of the TMDL. The lengths of the tributaries evaluated are mostly within the urbanized portions of the watershed and are subject to dry- and wet-weather urban runoff from similar land uses throughout their lengths. The application of the WERs in the proposed Basin Plan amendments was clarified in response to Comment 1.2.</p> <p>However, in response to this comment and to examine the assumption that downstream tributary monitoring locations are representative of the entire tributary, additional monitoring requirements have been added to the Basin Plan amendment. If the additional monitoring shows that downstream tributary monitoring locations are representative of the entire tributary, this additional monitoring may be discontinued.</p>

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4.3	Environmental Groups	<p>We acknowledge that the study proponents met the minimum number of samples required by the EPA guidance, however we believe this simply highlights the critical need for development of regionally specific guidance on SSO development. EPA guidelines were developed as a national guide, likely with the goal of not imposing overly burdensome requirements on potentially very small watersheds. The LA River Watershed however is likely one of the most complex systems in the nation, and therefore we believe the EPA guidance should be regarded as a minimum starting point rather than an appropriate standard.</p>	<p>The State Water Board disagrees that regionally specific guidance on SSO development is needed. While EPA guidance on developing WERs is a national guide, it is a guide for deriving site-specific criteria based on site specific conditions. The WER Study approach was based on EPA Guidance using site specific data for the Los Angeles River and it reflects local conditions.</p> <p>In addition, the Los Angeles Water Board required additional monitoring locations and samples above and beyond what is recommended by the EPA guidance to better reflect the unique sources and flow conditions in the Los Angeles River. The EPA guidance recommends a minimum of three samples at each site; the copper WER study had six samples for each site, except Rio Hondo, where only five samples could be collected. As a result, a total of 83 dry-weather and 20 wet-weather samples were collected at 14 and 10 sites, respectively.</p>
4.4	Environmental Groups	<p>Perhaps most concerning in the Proposed Amendment is an issue which became clear at the Regional Board hearing, which is that monitoring is proposed to be a backstop to address issues with data limitations that were noted above. We assert that rigorous monitoring should be conducted beforehand and then an appropriate WER should be established based on this data, rather than the current process of establishing a WER based on limited data and then confirming that it is adequately protective.</p>	<p>The State Water Board disagrees that the WERs are based on a limited data set. See response to Comment No. 4.3. The monitoring included in the Basin Plan amendment is not a backstop to address data gaps. The WER Study, as conducted, is based on a robust data set that has resulted in protective WERs. The monitoring is included to ensure ongoing protectiveness of the WERs in case conditions in the Los Angeles River or its tributaries change due to implementation actions in a way that might affect the toxicity of copper. The Los Angeles Water Board may revise its Basin Plan at any time, including in response to any monitoring results</p>

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		<p>Using monitoring as a backstop is particularly unacceptable here since the Proposed Amendment contains no guidance on how monitoring results will be used to inform or adjust the SSO. What will be done if toxicity is observed at the higher standard? What is the threshold that must be met to reconsider the WER? When will a formal evaluation be conducted? At the very least, if the Proposed Amendment is accepted, this process should be clearly defined and regular reopeners should be scheduled during which the appropriateness of the WER is reevaluated.</p>	<p>showing that the WER is not being protective of beneficial uses.</p> <p>In addition, the TMDL specifies that responsible parties must monitor and use the Biotic Ligand Model to track changes in water quality and conduct additional WER monitoring if changes are observed.</p>
4.5	Environmental Groups	<p>Changing a water quality threshold is a very serious action and should be approached cautiously. Since SSOs may allow for higher concentrations of metals than what the California Toxic Rule qualifies as toxic to freshwater aquatic life there are major implications of their application. Moreover, if SSOs are developed using inappropriate methods, data, and reasoning, TMDLs will prove ineffective in addressing water impairments. Almost all of Los Angeles' waterbodies are impaired. It is critical that the region work to improve water quality in these waterbodies to protect their many beneficial uses. The Proposed Amendment would dramatically alter one of the most important TMDLs in Los Angeles County. It is imperative that robust datasets and analysis support any changes to regional WQOs. We urge the Regional Board to address our above comments and seriously reconsider the Proposed</p>	<p>See response to Comment No. 0.1. This comment was previously made to the Los Angeles Water Board and the Los Angeles Water Board responded to it. The commenter has not explained why and in what manner the commenter believes the Los Angeles Water Board's response to this comment was inadequate or incorrect.</p> <p>The State Water Board agrees that changing a water quality objective should be approached with caution. The State Water Board, however, believes that the Los Angeles Water Board did proceed cautiously in developing this Basin Plan amendment, especially in requiring additional monitoring locations and samples above and beyond what is recommended by EPA guidance to better reflect the unique sources and flow conditions in the Los Angeles River.</p> <p>Further, the State Water Board reviewed and agrees with the Los Angeles Water Board's response to</p>

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		<p>Amendment. We believe it is premature to move forward with adopting SSOs for metals in the Los Angeles River Watershed at this time as there are clear data gaps in the Copper WER Study and Lead Recalculation Report. We are particularly concerned that accepting these SSOs for metals in the Los Angeles River Watershed will set a harmful precedent for the future SSOs. At the very least, a clear process needs to be put in place to evaluate and if necessary alter or remove the WERs.</p>	<p>Comment No. 2.7 to Los Angeles Water Board Resolution R15-004, which states:</p> <p>The proposed site-specific WERs and recalculated lead objectives are based on studies that were conducted according to a work plan that was approved by the Executive Officer after revisions were made in response to comments from the Regional Board, stakeholders, and the TAC. When providing comments on the draft work plan and ultimately approving the final work plan, the Executive Officer considered direction provided by the Regional Board regarding the scientific rigor required for development and application of WERs. The work plan was implemented under the supervision of Regional Board staff and the TAC to ensure that the sampling and analysis followed all applicable guidelines and that any resulting WERs or recalculated criteria were protective of the most sensitive beneficial uses of the Los Angeles River and tributaries.</p> <p>The Regional Board recognizes the proposed amendments constitute significant changes to the copper and lead water quality objectives. As a result, the proposed amendments contain ongoing monitoring to ensure that the revised water quality objectives and TMDL remain protective.</p>

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			<p>The proposed amendments were submitted for independent scientific peer review. The peer reviewers found that the proposed revisions were scientifically defensible and consistent with USEPA guidelines.</p>
5.1	Joyce Dillard	<p>This TMDL was established by a SEP. We are unclear what the baseline is to establish degradation or if they are arbitrary.</p>	<p>See response to Comment No. 0.1. This comment was not timely raised before the Los Angeles Water Board nor was an explanation of why the commenter was unable to raise the specific comment provided.</p> <p>The Basin Plan amendments were not established by a SEP. The Basin Plan amendments relied upon environmental analysis that was previously prepared for the Los Angeles River Metals TMDL, adopted by Los Angeles Water Board Resolution Nos. R07-014 and revised by R10-003.</p>
5.2	Joyce Dillard	<p>California Water Code (CWC) Section 13241 Economic Considerations appear to be defined in savings reduction, but what is the cost?</p>	<p>See response to Comment No. 0.1. This comment was not timely raised before the Los Angeles Water Board nor was an explanation of why the commenter was unable to raise the specific comment provided.</p> <p>As described in Finding 15 of Los Angeles Water Board Resolution R15-004, the Los Angeles Water Board considered the requirements set forth in California Water Code section 13241. As described in Section 6 of the Los Angeles Water Board's Staff Report, the Implementation Report submitted along with the Copper WER Report contained a consideration of the factors set forth in California Water Code section 13241. The report found that implementation of the SSOs is not expected to require additional management or control</p>

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			<p>for stormwater management agencies beyond what is currently required and, in fact, will reduce the necessary management and control actions. Additional monitoring, in addition to currently required monitoring under stormwater permits, will be necessary, but is relatively minor in comparison to the reduced costs associated with the reduction in necessary management or control measures.</p>
5.3	Joyce Dillard	California Water Code (CWC) Section 13241 Need to Develop Housing within the Region has not addressed costs to the homeowner.	<p>See response to Comment No. 0.1. This comment was not timely raised before the Los Angeles Water Board nor was an explanation of why the commenter was unable to raise the specific comment provided.</p> <p>As described in Finding 15 of Los Angeles Water Board Resolution R15-004, the Los Angeles Water Board considered the requirements set forth in California Water Code section 13241. As described in Section 6 of the Los Angeles Water Board's Staff Report, the Implementation Report found that adoption and implementation of the proposed SSOs are not expected to affect the development of housing in the region because they would not require additional treatment of wastewater or additional management of stormwater that could result in increased county or municipal costs that would in turn be transferred as increased cost to homeowners.</p>