



Via e-mail to [celine.gallon@waterboards.ca.gov](mailto:celine.gallon@waterboards.ca.gov)  
Celine Gallon  
Los Angeles Regional Water Quality Control Board  
320 West 4<sup>th</sup> Street Suite 200  
Los Angeles, CA 90013

December 4, 2017

**RE: Comments Letter- 2017-19 Triennial Review**

Dear Ms. Gallon:

Los Angeles Waterkeeper (LAW) thanks you for the opportunity to comment on the 2017-19 Triennial Review. The Triennial Review will help set basin planning priorities for the next three years. LAW requests that the Regional Board focus on the following issues, which we believe will enhance the usefulness of the Review and ensure cleaner water and enhanced enjoyment of designated beneficial uses in Region 4.

The Regional Board Should Develop Water Quality Objectives/Criteria to Implement Beneficial Uses with Respect to Hydromodification as the Pollutant.

Many of southern California's rivers are either partially or completely channelized or confined within artificial concrete channels and concrete stream bottoms. As a result, the natural hydrology is essentially destroyed and the waterway often cannot support designated beneficial uses. LAW staff have been leading intensive sampling on the Los Angeles River, one such partially concretized river, for over the past year. LAW has observed concrete sections with higher temperatures and greatly reduced biodiversity compared even to sections of the river that are still confined by concrete levees and channelized but have a soft bottom. LAW has been collecting evidence of such impacts to beneficial uses resulting from hydromodification along the Los Angeles River, and we believe it is the interests of all stakeholders that the Regional Board at a minimum develop narrative criteria consistent with the rest of the basin plan to fully protect all designated beneficial uses from hydromodification as the pollutant.

LAW is in the process of adding several additional check boxes to the standard CEDEN form to allow for collection of data on impacts to beneficial uses from hydromodification, and including a new section where observers can note the presence or absence of concrete and channelization, as well as the associated ecological and environmental parameters associated with these areas. To allow further refinement of our data collection, and to ensure that our efforts at data collection and monitoring have maximum benefit, we ask that the Regional Board disclose what it considers adequate evidence of negative impacts to designated beneficial uses such that the Regional Board would develop standards/criteria to implement beneficial uses with respect to hydromodification as the pollutant. We

also believe meetings with stakeholders and other Regional Boards that have addressed this issue (such as the San Diego Regional Board) would be helpful going forward.

The Regional Board Should Develop Water Quality Objectives/Criteria to Implement Beneficial Uses with Respect to Flow as the Pollutant.

The Regional Board should also develop criteria for implementing beneficial uses with respect to flow as the pollutant. This issue is currently the subject of litigation against the State Board, but LAW believes that beneficial use implementation standards/criteria based on flow as the pollutant, based on local conditions in Region 4, can and should be developed even as the litigation (currently in the Sacramento County trial court) works through the court system. LAW hopes to build on the momentum of the recent day-long State Board hearing in Los Angeles on issues related to flow in the Los Angeles River. Criteria should be developed by determining when beneficial uses are degraded because of too little flow, but also, particularly relevant for water bodies such as the Los Angeles River, when discharge of treated effluent and uncontrolled stormwater runoff lead to degradation of beneficial uses based on too much flow as well. Similar to our requests regarding hydromodification, we ask that the Regional Board respond with what it considers adequate evidence of negative impacts to designated beneficial uses such that the Regional Board would develop standards/criteria to implement beneficial uses with respect to flow as the pollutant. LAW also requests that the Regional Board, at a minimum, develop narrative criteria consistent with the rest of the Basin Plan to implement beneficial uses with respect to flow as the pollutant. We also believe meetings with stakeholders would be helpful going forward.

The Regional Board Should Develop a Policy for Application of Water Effect Ratios, Preferably as a SoCal-wide Policy Developed in Conjunction with Other Southern California Regional Boards.

While LAW believes that Water Effect Ratios (WER) and other forms of site specific objectives can play some role in the setting of Standards and Total Maximum Daily Loads (TMDL), LAW is quite concerned with how WERs in particular have been applied in local waterways. For example, the 2015 WER study for copper in the Los Angeles River watershed led to final WERs that were so high as to effectively repeal the copper TMDLs and lead, in the words of one Regional Board member, to “compliance...without doing anything.” Moreover, highly variable sample WERs and small sample sizes can lead to significant complications when developing WERs for impaired water bodies, potentially even violating applicable anti-degradation policies. While LAW is involved in litigation against both the Regional and State Boards regarding the 2015 copper WERs in the Los Angeles River, LAW believes that, regardless of the outcome of that litigation, a well drafted guidance document on application of WERs and other forms of SSOs would help reduce potential for future litigation and provide greater clarity to all parties before undertaking what can be costly and lengthy studies.

The State Board developed a draft WER policy a number of years ago in recognition that California’s unique hydrological cycle makes many aspects of federal WER guidance inapplicable here. However, the policy was never finalized. In any event, LAW requests development of guidance more tailored to the “flashy” rivers with summer periods of extremely low flow typical of southern California. Any such guidance should address issues such as sampling, monitoring, integration of any CEQA and Porter-Cologne reviews, consistency with anti-degradation policies, and “best practices” to ensure that WERs are rigorously periodically reviewed and modified if hydrological conditions are changing in dynamic rivers such as the Los Angeles River. Having litigated this issue against the Water Boards for two years over copper WERs in the Los Angeles River, and tentatively at least having had a much more

cooperative effort with the Regional Board on the copper WER process now underway in Marina del Rey, LAW would welcome a renewed effort to develop WER guidance going forward.

Thank you for this opportunity to comment. We look forward to cooperating with the Regional Board as the Triennial Review process continues. If you have any questions on any of the recommendations or requests in this letter, please feel free to contact me at (310) 394-6162 x 102 or at [arthur@lawaterkeeper.org](mailto:arthur@lawaterkeeper.org).

Sincerely,



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Arthur S. Pugsley  
Senior Attorney, Los Angeles Waterkeeper

Cc: Deb Smith, Los Angeles Regional Board  
Renee Purdy, Los Angeles Regional Board  
Jenny Newman, Los Angeles Regional Board