



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

DEC 12 2016

Sam Unger, Executive Officer  
Los Angeles Regional Water Quality Control Board  
320 W 4th St #200  
Los Angeles, California 90013

Dear Mr. Unger:

The U.S. Environmental Protection Agency (EPA) has completed a review of the amendment to the Water Quality Control Plan for the Los Angeles Region Basin (amendment). The Basin Plan amendment revises the copper and lead objectives and makes concomitant changes to the Total Maximum Daily Loads (TMDLs) for metals in the Los Angeles River and its tributaries. EPA is approving the changes to the water quality objectives pursuant to Section 303(c) of the Clean Water Act (CWA) pending concurrence with the U.S. Fish and Wildlife Service, and approving the concomitant changes to the TMDLs for metals in the Los Angeles River and tributaries pursuant to Section 303(d) of the CWA.

The amendment was adopted by the Los Angeles Regional Water Quality Control Board (Regional Board) on April 9, 2015 under Resolution R15-004 and approved by the State Water Resources Control Board on November 17, 2015 under Resolution 2015-0069. The California Office of Administrative Law (OAL) approved the amendment on July 11, 2016 (OAL File No. 2016-0526). EPA considers the State's submittal complete as of July 19, 2016.

### Today's Action

Section 303(c) of the CWA requires EPA to approve or disapprove new or revised state-adopted water quality standards. The State regulatory provisions that are subject to EPA's approval authority under Section 303(c) are those addressing anti-degradation, beneficial uses, water quality criteria, and implementation of water quality standards for surface waters. In today's action, EPA is approving the revised lead objectives; confirming that the site-specific adjustment of the previously approved copper criterion is consistent with EPA guidance and protective of the freshwater aquatic life beneficial use; and approving the incorporation of the revised objectives into the LA River and Tributaries Metals TMDLs.

The revised dissolved lead water quality objectives for the Los Angeles River and its tributaries are based on a recalculation of the water quality objectives established in 40 CFR §131.38 using the EPA Recalculation Procedure (US EPA 1994, 1997) and a 2008 internal EPA draft dataset. EPA has determined that the site-specific dissolved lead recalculation is subject to EPA's review and approval pursuant to CWA Section 303(c) and the implementing federal regulations at 40 CFR §131. EPA's approval is based on our finding that the amendment is consistent with the requirements of the CWA and EPA's regulations at 40 CFR §131.5 and §131.6.

For copper, the Regional Board developed Water Effect Ratios (WER), using a combination of the *US EPA's Interim Guidance on the Determination and Use of Water Effects Ratios for Metals (1994)* and the *US EPA's 2001 Streamlined Water-Effects Ratio Procedure for Discharges of Copper*. These allow for adjusting California Toxics Rule (CTR) copper numeric targets based on site-specific conditions, under the assumption that site-specific conditions reduce the bioavailability of copper and the toxicity to aquatic life. The WER adjustment constitutes the site-specific expression of the promulgated criteria based on the promulgated WER. Because the criteria themselves are not changed, EPA approval under CWA Section 303(c) is not required. EPA has determined that the WER complies with EPA guidance.

In 2007, EPA established the copper Biotic Ligand Model (BLM)-based criteria as the CWA Section 304(a) recommended aquatic life ambient freshwater criteria for copper. The Regional Board provided the calculated copper BLM values and a comparison between the proposed WER adjustments and the values predicted by the BLM. The copper criteria with the proposed WER are similar to those predicted by the BLM. EPA finds that the proposed copper WER adjustment is as protective as a BLM-based adjustment and, therefore, protective of the freshwater aquatic life beneficial use.

EPA notes that the Regional Board is applying both the anti-backsliding and anti-degradation provisions. The anti-backsliding provision ensures that effluent concentrations do not increase above levels that can be maintained by wastewater facilities at the time of permit reissuance. The anti-degradation provision requires permittees to track trends in water quality, and where increases are predicted or observed, evaluate the cause and identify control measures to arrest increases. Therefore, the amendments will have no effect on the discharge effluent limits for facilities that are currently discharging copper or lead at concentrations that are below the existing CTR values.

EPA approves the incorporation of the site-specific objectives into the LA River and Tributaries Metals TMDLs, finding that all the required elements are adequately addressed and approves the TMDLs pursuant to CWA Section 303(d).

### **Public Participation**

EPA compliments the State on its efforts to include the public in the development and review of new and revised water quality standards. Public involvement is an integral component of a successful water quality program. Based upon our review of the administrative record for the subject amendment, the public review procedures followed by the State in the development of Regional Board Resolution No. R15-004 and State Board Resolution No. 2015-0069 were consistent with the procedural requirements for public participation in triennial reviews, adoption, and revision of state water quality standards.

### **Endangered Species Act Consultation with the Services on EPA's Action**

Section 7(a)(2) of the Endangered Species Act states that each federal agency shall ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species (listed species) or result in the destruction or adverse modification of critical habitat. The EPA has determined that today's action may affect, but is not likely to adversely affect, listed species or their critical habitat because EPA finds that the site-specific objectives for copper and lead are protective of beneficial uses. EPA began informal consultation with the US Fish and Wildlife Service (FWS) on August 10, 2016, is presently preparing a Biological Evaluation showing these findings, and will request concurrence by the FWS. Consistent with the Endangered Species Act Section 7(d), EPA finds that approval of the amendment will not make any

irreversible or irretrievable commitment of resources that have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternatives that would not violate Section 7(a)(2) of the Endangered Species Act.

If there are any questions regarding EPA's action, please contact me or your staff may contact Suesan Saucerman of my staff, at (415) 972-3522. As always, EPA looks forward to continued cooperation with the Los Angeles Regional Water Quality Control Board in achieving our mutual environmental goals.

Sincerely,



Tomás Torres  
Director, Water Division

12/12/2014

cc: Tom Howard (SWRCB)  
Rik Rasmussen (SWRCB)  
Jenny Newman (LARWQCB)

