BASIN PLAN AMENDMENT - REVISION TO THE EARLY LIFE STAGE IMPLEMENTATION PROVISION OF THE FRESHWATER AMMONIA OBJECTIVES FOR INLAND SURFACE WATERS.
RESPONSIVENESS SUMMARY FOR AUGUST 2005 PUBLIC NOTICE

Table 1. List of commenters submitting written comments before the close of the public comment period.

Comment #	Commenter	Date Received
1	County of Los Angeles, County Sanitation Districts	11/07/05
2	Heal the Bay	11/07/05

Note: The comment # above corresponds to the first number in the Comment Number field in Table 2.

Table 2. Responsiveness summary for written comments submitted before the close of the public comment period.

COMMENT NUMBER	SUMMARY OF COMMENT	RESPONSE	REVISION	LOCATION IN DOCUMENTS
1.1	The proposed ELS provision will result in lower ammonia objectives for several waterbodies for which SSOs have been developed. Most of the dischargers to the waterbodies for which an SSO has been developed have permits requiring compliance with the ammonia limits in the Basin Plan. In the absence of adopting the SSOs, the implementation of the ELS provision could result in violations of effluent limits and costs for the implementation of additional treatment measures.	Comment noted. The Regional Board is scheduled to consider proposed site-specific objectives (SSOs) for ammonia in several watersheds in early 2006. Board staff understands and acknowledges the impact that the ELS provision can have on the proposed SSOs if ELS are present in a water body. While the two proposals are not being considered at the same Board hearing, staff will discuss this interplay with the Board. It should be noted that absent a SSO, the implementation of the ELS provision will only result in a more stringent regional objective at low temperatures (< 15 degrees C), which occur only infrequently in the Los Angeles Region. The decrease in the ammonia objective if a water body is treated as ELS present is not great enough to require additional treatment (beyond minor adjustments to treatment plant operations) if POTWs have in place nitrification and denitrification (N/DN). N/DN is capable of eliminating ammonia to approximately 1.0 - 2.0 mg total ammonia as N/L. The ELS present objective in the typical pH range for water bodies in Region 4 is above 2.0 mg total ammonia as N/L and so would be adequately treated by	No	

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		N/DN. The need for N/DN was prompted by the requirements of the 1994 Basin Plan ammonia objectives. Therefore the economic cost of this amendment should not be significant.		
1.2	The Districts request that the ELS provision be modified to state that implementation will not occur until the SSOs have also been adopted and implemented. Specifically, the Districts request that ammonia criteria with the ELS provision not be incorporated into any permit until the SSOs are as well. In this way, the SSOs and the ELS provision will be implemented at the same time and the ELS provision will not result in unintended violations in waterbodies where ammonia has been demonstrated to be less toxic through the SSO process.	Request noted. Given the process required for approval of a Basin Plan amendment, and the schedule for Board consideration of the ammonia SSOs, it is highly unlikely that the ELS provision would be incorporated into one of the Districts' permits before full consideration of the ammonia SSOs.	No	
1.3	The finding and statements regarding the SSOs create uncertainty as to the actual impact of the ELS provision on the SSOs. Because there is no description of the "separate implementation measures" that may be required for the SSOs, the ramifications of this BPA on the SSOs cannot be evaluated. These implementation measures may have far-reaching impacts on the SSOs (and hence the Districts' ability to achieve permit compliance) that cannot be anticipated based on the information provided. Therefore, it is not possible for the Districts to provide detailed technical comments on the proposed BPA at this time without knowing what the extent or subsequent impact of this provision will have on the SSOs. For this reason, again, we would request that the implementation of the ELS provision be tied chronologically to the implementation of the SSOs and that the	Request noted; see response to 1.2.	No	

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	ammonia requirements in our permits not be changed to reflect the ELS provision until the SSOs are incorporated as well.			
1.4	The presence or absence of ELS has a dramatic effect on the proposed SSOs. If the applicability of the ELS absent provision will be reconsidered for waterbodies with SSOs (as part of the SSO adoption), the Districts request that the limitations on reproduction due to physical waterbody characteristics considered in the development of the proposed ELS provision be implemented in the same manner for SSO waterbodies. In particular, for waterbodies where physical habitat is limiting reproduction, the ELS absent provision will apply regardless of whether or not an SSO is adopted for that waterbody.	Request noted. Board staff will be consistent where appropriate in its approach to identifying ELS absent waters. If adopted by the Board as proposed herein, Board staff would use a similar approach of examining physical characteristics that limit reproduction and early development in SSO waters also.	No	
1.5	For waters without an SSO, the period of time when the waterbody is below 15 degrees C will limit the implementation of the ELS-present provision, but for waterbodies with an SSO, the ELS-present provision may decrease allowable ammonia concentrations year-round based on the revised criteria (because ELS affects the SSOs at temperatures as high as 27 degrees C in some cases). This may be vastly overprotective of spawning periods. Therefore, the Districts request that for waterbodies for which an SSO is adopted and the waterbody is designated ELS present, seasonality be taken into account to determine the appropriate times when early life stages of fish may be present.	Request noted. Board staff is already considering approaches for implementing the ELS provision in cases where there is a site specific objective. In one of these approaches, Board staff would identify fish species distributions in the SSO waters and then define a seasonal ELS present period for these species using literature and expert knowledge.	No	
1.6	The Districts request that Finding 10 be revised as follows: "Where there is a site-specific ammonia	Request noted. Board staff will revise Finding 10 to reflect the concerns of the Districts that seasonality be considered when considering site specific objectives. See change sheet for	Yes	Tentative Resolution, Finding 10

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	objective for the water body and the waterbody is not designated as ELS absent due to physical characteristics of the waterbody, separate implementation provisions to protect Early Life Stages of fish may apply, since the temperature threshold at which ELS are more sensitive than invertebrates may change based on these site-specific conditions. The potential for seasonality for all ELS present waterbodies will be considered before the ELS provision is applied to waterbodies with a developed SSO. Any changes to the ammonia requirements in NPDES permits made necessary by the ELS provision will not be incorporated until the SSOs are also incorporated into the permit(s).	proposed language.		
1.7	The Regional Board should require the same burden of proof to de-designate ELS protection in a waterbody as was used to make the initial designation.	The proposed Basin Plan amendment requires the same burden of proof used by Board staff to make determination regarding the need for ELS protection in a water body. Where Board staff concluded that the data and local knowledge regarding ELS was inadequate, staff is proposing to make the conservative assumption that ELS are present. Board staff followed U.S. EPA recommendations on how to conduct site-specific assessments in order to implement the ELS present/absent provision, acknowledging that actually measuring the complete absence of early life stages of fish is generally not possible. These approaches are included in the proposed amendment consistent with U.S. EPA's recommendations. About site-specific approaches, U.S. EPA says, *"To best determine when and where the ELS absent provision should be applied, all readily*	No	

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		available information regarding the fish species distributions, spawning periods, nursery periods and the duration of sensitive life stages found in the water body should be considered. Information on water body temperature might also be useful. Expert opinions from fisheries biologists and other scientists should be considered, and where it can be obtained, the consensus opinion from a diverse body of experts may be heavily relied upon" (Federal Register, December 22, 1999). Regional Board staff looked at fish species distribution surveys, data and literature on spawning periods and gathered information from experts in fisheries biology. All references are part of the administrative record of this basin plan amendment and available for review. Technical Advisory Committee members are listed in the Staff Report, Appendix A and were chosen based on their credentials as fisheries biologists with local knowledge of southern California fisheries.		
1.8	The Districts request that the dry conditions and other barriers to migration be considered as impediments to reproduction as well. Specifically, dry gaps and dams can prevent fish species from migrating to upper reaches of the Santa Clara River and to the Whittier Narrows Dam area and serve as barriers to reproduction that should be considered in determining the ELS present condition.	Of the 9 fish species identified in the Los Angeles Region as spawning at temperatures below 15 degrees Celsius, only two of them are anadromous, ie. Steelhead/Rainbow trout and Pacifica lamprey. The rest including Three-spine sticklebak, Brown trout, Prickly and Staghorn Sculpin, Stiped mullet, Starry flounder and Arrow goby are not anadromous. Therefore, Board staff does not feel that the presence of migration barriers would preclude the successful spawning of the species of focus.	No	
2.1	The proposed alternative “i” would designate 38 water bodies in the region as “ELS Absent,” without sufficient data or evidence as to whether	Board staff relied upon data and expert knowledge regarding the presence or absence of ELS fish, including distribution and movement of	No	

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	ELS fish are in fact present or absent. Heal the Bay is concerned that designating a set of water bodies as "ELS Absent" without actual data or evidence regarding the presence or absence of ELS stage fish compromises the health of the region's already stressed and sensitive freshwater systems. Notably, comprehensive fish surveys of most water bodies do not exist in our region and species-specific information regarding the distribution and movement of ELS fish is not fully known.	ELS fish. A technical advisory committee (see Appendix A for the members of the TAC) made up of ichthyologists from various agencies and academia identified the nine fish species that reproduce in the Los Angeles Region at temperatures below 15 degrees C. It is at temperatures below 15 degrees C that the 30-day average ammonia objective differs depending on whether early life stages are present or absent. These determinations were confirmed by consulting with references, especially: *Moyle, Peter. B. 2002. Inland Fishes of California, University of California Press, Berkeley and Los Angeles, California.* This reference includes spawning temperatures for fish in Southern California. Staff then consulted the TAC to determine where these nine fish are found in local waters. Instead of assuming complete knowledge of all the water bodies in our region, Board staff identified a subset of water bodies, consisting of mainstems of major rivers and major tributaries. Seventy-nine major water bodies were identified for a focused review. Experts with significant field experience and knowledge of local fish distribution studies informed us about the presence/absence of the nine species that reproduce at temperatures below 15 degrees C. Two well-respected ichthyologists were instrumental in completing this evaluation (Jonathan Baskin and Camm Swift). Board staff confirmed these results by looking at literature. The following resources were particularly useful in helping us confirm fish distributions:		

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		• *Swift, Camm C, Haglund, Thomas R., Ruiz, M, Fisher, R., The Status and Distribution of the Freshwater Fishes of Southern California, Southern California Academy of Sciences, p.101-167. 1993.* • *Information Center for the Environment, University of California at Davis. Distribution maps of fishes in California (maps for each fish species present in California). http://ice.ucdavis.edu/aquadiv/fishcovs/fishmaps.html* The rest of the water bodies (257 water bodies out of 336 total) were assumed ELS present without evaluation. This conservative assumption was based on a concern that fish populations present in each individual water body in the region might not be known to a satisfactory degree of confidence, especially in the smaller water bodies. Board staff's recommendation that these 257 water bodies be treated as ELS present absent additional information indicates an environmentally cautious approach. Note that after further evaluation, 41 more water bodies were considered ELS present, for a total of 298 water bodies identified as ELS present and 38 water bodies identified as ELS absent. In sum, Board staff applied a cautious approach by looking at only 79 of 336 named water bodies in our region as potential candidates for the ELS absent condition. Board staff then solicited the consensus opinion of a group of respected ichthyologists on fish distribution, also consulting available literature and web resources. Of the 79 water bodies selected, only 38 were ultimately		

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		considered ELS absent. To assume the presence of ELS in all water bodies could result in more protection than necessary, since some water bodies clearly do not have the habitat necessary to support spawning at any temperature. Rather than using this presumptive approach, Board staff used a very conservative methodology to select ELS absent waters by drawing upon expert knowledge and literature on local fish distributions and spawning temperatures of local fish species. Finally, board staff would like to emphasize that the ELS provision only affects the 30-day average objective at temperatures below 15 degrees C; at temperatures above 15 degrees C the objective is the same regardless of the presence or absence of ELS. Water temperatures below 15 degrees C occur infrequently in the Los Angeles Region.		
2.2	Both the Clean Water Act and the Basin Plan call for the protection of waters and for preservation of “fishable and swimmable” beneficial uses. Most significantly, the Clean Water Act established, as national policy, an “interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water.” This “interim” goal was to be met by 1983. Similarly, the objective of the Basin Plan is to “preserve and enhance the water quality of all regional waters.” Clearly these very specific goals call for a presumption in favor of protecting water quality in the absence of data or evidence upon which to base a truly informed conclusion.	Board staff does not agree that there is an “absence of data or evidence upon which to base a truly informed conclusion.” See response to 2.1 regarding the process, expert knowledge and literature that Board staff used to identify ELS absent waters.	No	

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2.3	Alternative "e" fully embraces the precautionary principle and ensures a scientifically defensible result by requiring the collection of adequate data regarding fish distribution, spawning periods, nursery periods, and the duration of sensitive life stages found in the water body before designating a water body as "ELS Absent." This is a much stronger and more defensible approach given the currently available data.	Board staff feels confident in the data and expert knowledge that was relied upon to make its determination of ELS absent/present. Staff relied upon expert knowledge and literature to identify which fish species reproduce at temperatures below 15 degrees C, the temperature at which the 30-day average objective is more stringent if ELS are present. US EPA states in the 1999 Federal Register Notice of the 1999 Update of Ambient Water Quality Criteria for Ammonia that: *Expert opinions from fisheries biologists and other scientists should be considered, and where it can be obtained, the consensus opinion from a diverse body of experts may be heavily relied upon.* Understanding the nursery periods or duration of sensitive life stages was not relevant since we are not proposing to apply the ELS absent condition on a seasonal basis. Instead, we propose to apply the ELS absent condition throughout the year because water temperature varies relatively little in the Los Angeles Region compared to other climates where temperature regimes vary more distinctly through the year. Therefore, in the Los Angeles Region, periods of fish reproduction are not necessarily well defined by certain months of the year. This is a more environmentally conservative approach than applying the ELS absent condition seasonally. The US EPA does not require absolute knowledge of the complete presence or absence of early life stages. *To be most protective of aquatic life in a*	No	

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		waterbody being considered for the ELS-absent provision, knowing that there is a ``complete absence'', or ``very low densities'' of sensitive life stages of fish, would provide a high level of confidence in allowing for the adjustment. However, actually measuring the ``complete absence'' of sensitive life stages of fish in a waterbody may be very difficult, if not impossible, even with rigorous, scientifically designed sampling efforts.		
2.4	Permitting relaxed ammonia objectives for upstream water bodies at cold temperatures (<15º C) may result in increased ammonia concentrations in the region's already stressed downstream waters.	Regional Board regulations prohibit the violation of water quality objectives assigned to any water body segment. Therefore, if ammonia levels in downstream reaches violate water quality objectives, the party responsible for the exceedance will be held accountable. It is important to note that most water bodies have some assimilative capacity. Ammonia that is introduced into a water body due to either direct loading or the decomposition of organic nitrogen (ammonification) can be oxidized under aerobic conditions in the process of nitrification to form nitrite (NO2-) and then nitrate (NO3-). Ammonia nitrogen may be lost by volatilization of un-ionized ammonia (NH3) from soil or a water body's surface. Ammonium (NH4+) is biologically available for plant uptake.	No	
2.5	Relaxing the ammonia objectives for Medea and Triunfo Canyon Creeks may worsen the condition of these already algae-ridden streams. Both creeks show evidence of excessive algal growth. … Even absent applying alternative "e", the Board should consider, at a minimum,	It would be inaccurate to identify these creeks as ELS present based on the approach Board staff has employed. Heal the Bay's concerns regarding algae issues in these creeks are important and are being	No	

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	designating both of these creeks as "ELS Present" under alternative "i" due to potential impacts of higher levels of both nitrogen and algae on downstream water bodies.	addressed through the TMDL process. Board staff is in the process of developing a nutrient TMDL for the Malibu Creek watershed to address algae impairments. Staff approach in the TMDL is to set allocations for total nitrogen, which must be achieved to address the algae impairments. Applying the ELS absent condition to these creeks will not change the TMDL allocations for total nitrogen.		
2.6	According to staff, the use of lower criteria at cold temperatures is motivated solely by the difficulty dischargers experience controlling and treating ammonia effluent at cold temperatures. Following this logic, streams which have no dischargers present should not be subject to relaxed criteria under any circumstances, and particularly in the absence of full data or information. Instead, where no dischargers are present, these streams should be designated "ELS Present" to provide the highest level of protection.	While it is true that a less stringent 30-day average ammonia objective will be helpful to discharges because it is at cold temperatures that ammonia is harder to control, this is not the sole reason for the amendment. This amendment is an outgrowth of the amendments incorporating US EPA's updated ammonia objectives for freshwater ("1999 Update of Ambient Water Quality Criteria for Ammonia," December 1999), which the Board adopted in 2002. At the Board hearing in April 2002, Heal the Bay raised concerns about the approach to implementing the ELS provision. In response to these concerns, the Regional Board directed staff to re-evaluate the ELS approach originally set forth under the amendments to the freshwater ammonia objectives adopted in 2002.	No	
2.7	The proposed amendment applies the "ELS Absent" designation to certain upstream reaches of the Los Angeles River watershed (Pacoima Wash, Tujunga Wash, Burbank Western Channel, and Arroyo Seco). Do any natural and soft-bottom sediment stretches exist downstream of these water bodies? The	In evaluating the major water bodies in our Region where we determined one or more of the nine species were present, Board staff used three criteria to determine whether the water body has the physical characteristics suitable to enable fish spawning in significant numbers. These were:	No	

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	downstream characteristics of this watershed must be considered and be described in the record in order to determine whether these streams qualify for the relaxed ammonia objectives.	1. Does the water body segment have concrete lined bottom or sides? 2. Is the water body segment in the middle or lower part of its watershed? 3. Is the water body contiguous with an earthen bottom tributary? Criteria two and three (above) do require an examination of the characteristics of adjacent stretches. Board staff considered whether adjacent water bodies had suitable spawning habitat. If so, staff considered assigning the ELS present condition to the water body if it was known to have one or more of the nine species of concern, even though it did not provide good spawning habitat. The rationale for this approach was that early life stages could travel into an adjacent water segment and therefore we need to ensure suitable water quality for ELS in adjacent segments. Specifically, none of the nine species mentioned above were present in Pacoima Wash, Burbank Western Channel or the two lower reaches of the Arroyo Seco. The Tujunga Wash and the uppermost part of the Arroyo Seco had ELS species present but did not have the habitat necessary to support spawning.		
2.8	The EPA has recently acknowledged that its established ammonia objectives – used in the Basin Plan and affected by this proposed amendment – may not actually be protective of threatened and endangered species. EPA currently is in formal consultation with the U.S. Fish and Wildlife Service ("FWS") under the federal Endangered Species Act on this issue.	The Staff Report for the Basin Plan Amendment updating the freshwater ambient water quality objectives for ammonia (adopted in April 2002) states that: *A National Consultation between U.S. EPA and U.S. Fish and Wildlife Service will take place in the next few years to determine if threatened and endangered*	No	

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	The FWS will issue a Biological Opinion, which will direct any future action by EPA, (including a possible reconsideration and revision of the current objectives). This raises a huge concern and highlights the need for the Regional Board to choose the most protective approach on ammonia standards at this juncture. That approach is alternative "e," which presumes that all water bodies are "ELS Present" at all times unless proven otherwise.	*(T&E) species are adequately protected by various U.S. EPA 304(a) criteria. The outcome of this consultation could result in the reconsideration of the freshwater ammonia objectives Region 4 adopted in April 2002 and this Basin Plan Amendment. However, U.S. EPA advised us to proceed with the proposed Basin Plan Amendment. If the national consultation determines that the "1999 Update of Ambient Water Quality Criteria for Ammonia" is not adequately protective of T&E species, the Services' Biological Opinion would provide the groundwork for what EPA should do to ensure that T&E species are protected.*		
2.9	The proposed amendment (alternative i) is not sufficiently protective of rare, threatened, and endangered species. Specifically, twelve of the 38 proposed "ELS Absent" designated water bodies are listed with the beneficial use RARE (Calleguas Creek 403.11, Arroyo Conejo 403.64, Arroyo Simi 403.62, Medea Creek 404.23, Triunfo Creek 404.25, Dominguez Channel to Estuary 405.12, Rio Hondo 405.41, Compton Creek 405.15, Arroyo Seco S. of Devils Gate (U) 405.31, San Gabriel River: Whitter N-Firestone (2) 405.15, San Gabriel River 405.42, and Coyote Creek to Estuary 405.15). The RARE designation is intended to protect	States are required to protect all beneficial uses, and therefore should protect for the most sensitive uses in a given water. Because ambient criteria are generally designed to protect 95% of all fish and aquatic invertebrate taxa, there remains a small possibility that the criteria will not protect all listed or threatened species. Where endangered or threatened species may be more sensitive to a pollutant than the species upon which the criteria are based, more stringent, site-specific modifications of the objectives may be necessary. Modifications may include the adjustment of pH and temperature to match the conditions used to develop the objectives. One of two methods can be used to	No	

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	"habitats necessary, at least in part, for the survival and successful maintenance of plant or animal species established as rare, threatened or endangered." It is inconsistent with this designation to simply assume that these waters are ELS Absent. Many aquatic species, such as the southern steelhead, are extremely sensitive to elevated ammonia levels in the ELS. For suitable protection of these sensitive species, we encourage the Regional Board to either adopt alternative "e" and designate all water bodies as "ELS Present" unless shown otherwise, or at a minimum to designate these 12 waterbodies with the RARE designated use as "ELS Present" under the current proposal to ensure adequate protection in the absence of conclusive information.	modify the objectives to protect threatened and endangered species.[1] Tests to determine site-specific objectives for threatened and endangered species can be conducted in site water or laboratory water. Staff identified nine fish species that reproduce at temps below 15 C, one of which was the steelhead trout. At temperatures above 15 C, EPA found that invertebrates were the most sensitive. Therefore, other fish species should be adequately protected by the objectives. Rainbow/steehead trout were one of the test species the U.S. EPA used to develop the chronic objectives. Therefore, the objectives should be adequately protective of rainbow/steelhead trout.		
2.10	The Regional Board's mission is to "preserve and enhance water quality in the Los Angeles Region for the benefit of present and future generations." Making a presumption that a set of water bodies is "ELS Absent" without sufficient evidence or support goes against this mission by compromising the future health and restoration potential of our region's water	Please see the response to 2.1.	No	

1 1) If the CMC is greater than 0.5 times the Species Mean Acute Value (SMAC) for a threatened or endangered species, or a surrogate (see glossary for definition) for such species, then the CMC should be reset to 0.5 times the SMAC. If the CCC is greater than the Species Mean Chronic Value (SMCV) of a threatened or endangered species, or surrogate, then the CCC should be reset to that SMCV. If the SMCV is not available, then the CCC can be reset by dividing the SMAC by the Acute to Chronic Ration (ACR) in accord with EPA's "Guidance for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and their Uses" (1985). 2) More stringent, site-specific modifications may be calculated to protect a listed endangered of threatened species by using the recalculation procedure described in Chapter 3 of the "U.S. EPA Water Quality Standards Handbook, Second Edition – Revised" (1994).

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	bodies.			
2.11	Programs such as the Los Angeles River Revitalization Master Plan, Compton Creek Watershed Management Plan, and other restoration plans and measures are already in place to restore parts of our region's degraded river and stream systems. Some of this restoration even includes the removal of concrete and barriers from many of these rivers and streams. We thus encourage the Regional Board to support the future of these programs by listing all water bodies in the region as "ELS Present" until the likely presence of ELS fish is fully considered, including plans for habitat restoration.	Board staff strongly supports restoration and naturalization efforts in the Region's water bodies. The proposed amendment is not intended in any way to discourage these efforts. Therefore, Board staff proposes to add language to the amendment to address this concern. The language will emphasize that should restoration efforts take place that result in the removal of concrete lining of a water body, and one of the nine fish species that reproduces below 15 degrees C is known to be present, then the water body shall be considered ELS present.	Yes	Proposed Basin Plan Amendment
2.12	The proposed amendment does not delineate a standardized method to measure temperature for "ELS Absent" streams which leaves these methods open to interpretation in each individual discharge permit. This open-ended approach may result in inconsistent methods for determining temperature in these water bodies and a haphazard allowance of the less stringent criteria.	Generally, setting monitoring requirements for discharge permits is under the purview of the Regional Board's permitting staff. Basin Planning staff work with permitting staff to recommend appropriate monitoring requirements that will support an assessment of water quality and achievement of water quality standards.	No	