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October 15, 2012

Mr. Samuel Unger, Executive Officer  
Los Angeles Regional Water Quality Control Board  
320 West Fourth Street, Suite 200  
Los Angeles, CA 90013

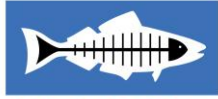
**Re: Comments on the Proposed Amendment to the Water Quality Control Plan for the Los Angeles Region (Basin Plan) to Revise the Total Maximum Daily Load for Nitrogen Compounds and Related Effects in the Los Angeles River**

Dear Mr. Unger:

On behalf of Heal the Bay, we submit 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 Nitrogen Compounds and Related Effects in the Los Angeles River*. As we have stated numerous times in the past, utilizing water-effects ratios (WERs) to modify water quality standards is not a protective approach. Through limited monitoring, it is extremely difficult to capture variability in the system and develop an appropriate WER value. Thus, there is little assurance that the WER will actually be protective of the beneficial uses of the waterbody. Of note, there has never been a WER study pursued that resulted in tougher water quality objectives. The results of the site-specific objectives (SSOs) study for ammonia performed for Los Angeles River, San Gabriel River, and Santa Clara River is no exception. None of the WER values that resulted from the study are below the default value of 1.0 (Staff Report Table 5 at Page 7).

In addition, we are concerned by the lack of consistency in the studies used to set SSOs. To address this, the Regional Board should develop guidelines for performing SSO studies in the Los Angeles Region. In April 2008 the Regional Water Board issued a *Proposed Amendment to the Water Quality Control Plan – Los Angeles Region to Incorporate a Policy for Developing Water Effect Ratios for Metals in the Inland Surface Waters of Los Angeles and Ventura Counties*. The Regional Board pursued this Policy to ensure that SSOs would be protective of water quality and that the procedure to adjust WERs would be consistent throughout the Region. Soon after, staff brought this item before the Regional Board and recommended that the Board not adopt such a policy because the site-specific nature of such studies precludes them from being consistent. We disagree. We believe some basic minimum guidelines for WER studies could be feasibly applied to all sites. For instance, deciding a minimum number of years of data to collect, what type of data to collect, and how to evaluate the data to come up with the appropriate value could be consistent regardless of site. Without such a policy, we are concerned that WERs will result in significant increases in the amount of pollution allowed into our waterways, which in turn, will have serious ramifications on beneficial uses.

Regarding the proposed revision, there are a number of measures staff included to prevent water quality degradation that must be retained if this proposal moves forward. We support the



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inclusion of a 10% explicit margin of safety in the revised limits. This margin accounts for some uncertainties and non-conservative assumptions applied in the development of the limits. There are precedents for applying explicit margins of safety to a TMDL within the Los Angeles Region. Staff also included language within the Basin Amendment that states “Regardless of the SSO and SSO-derived WLAs, for dischargers with concentrations below site-specific water quality objectives, effluent limitations shall ensure that effluent concentrations do not exceed the level of water quality that can be reliably maintained by the facility’s applicable treatment technologies existing at the time of permit issuance, reissuance, or modification.” This language provides an important backstop for water quality protection. At a minimum, these protective measures should be retained in the Basin Plan Amendment.

In addition, we are supportive of the inclusion of confirmatory monitoring of chemistry and toxicity, temperature, and pH within the Basin Plan amendment to ensure that the revised limits would not result in increased toxicity. We support the monitoring frequency of three sample events per year. However, we are concerned that this monitoring can be reduced after the first three-year cycle to one event every three years. The three-sample-per-year frequency should remain in perpetuity. At the very least, this frequency should not be reduced below one sampling event per year. Also, it is critical that species most sensitive to ammonia be used for confirmatory testing of the new limits. It is our understanding that a fish species would be more appropriate than an amphipod for this reason.

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In summary, as we have commented many times in the past, the use of WERs to modify water quality standards is not a protective approach. However, since the Regional Board is proceeding to include WERs in this revision, the Regional Board should retain the requirement for performance-based limits, the explicit 10% margin of safety, and confirmatory monitoring in the Basin Plan Amendment. Also, it is critical that the Regional Board create guidance for consistent and protective SSO studies within our region.

If you have any questions or would like to discuss any of these comments, please feel free to contact us at (310) 451-1500. Thank you for your consideration of these comments.

Sincerely,

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