

State of California
California Regional Water Quality Control Board, Los Angeles Region

RESOLUTION NO. R10-003

May 6, 2010

**Amendment to the *Water Quality Control Plan for the Los Angeles Region* to
Revise the Total Maximum Daily Load for Metals for the Los Angeles River and its
Tributaries**

WHEREAS, the California Regional Water Quality Control Board, Los Angeles Region, finds that:

1. On June 2, 2005, the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) adopted, by Resolution No. R05-006, an amendment to the Water Quality Control Plan for the Los Angeles Region (Basin Plan) incorporating a Total Maximum daily Load (TMDL) for metals for the Los Angeles River. The TMDL was subsequently approved by the State Water Resources Control Board (State Board) in Resolution No. 2005-0077 on October 20, 2005 and by the Office of Administrative Law (OAL) on December 9, 2005. U.S. EPA approved the Los Angeles River Metals TMDL on December 22, 2005. The effective date of the TMDL established by Resolution No. R05-006 was January 11, 2006, when the Certificate of Fee Exemption was filed with the California Department of Fish and Game.
2. On September 6, 2007, the Regional Board re-adopted the TMDL by Resolution No. R07-014 in compliance with a writ of mandate issued by the Los Angeles County Superior Court in the matter of *Cities of Bellflower et al. v. State Water Resources Control Board et al.* (Los Angeles Superior Court No. BS101732). The writ directed the Regional Board to consider alternatives to the project before re-adopting the TMDL. The writ was limited to this issue, and the TMDL was affirmed in all other respects. The re-adopted-TMDL replaced the previous implementation deadlines that were tied to "the effective date of the TMDL" with specific dates. The re-adopted TMDL was subsequently approved by State Board in Resolution No. 2008-0046 on June 17, 2008 and by OAL on October 14, 2008. U.S. EPA approved the re-adopted Los Angeles River Metals TMDL on October 29, 2008, which is the effective date of the TMDL. On May 7, 2009, in compliance with the writ, the Regional Board voided and set aside Resolution No. R05-006.
3. The TMDL numeric targets and waste load allocations (WLAs) are based on criteria in the California Toxics Rule (CTR). The CTR allows for the adjustment of certain metals criteria through the use of a water-effect ratio (WER) that accounts for site-specific chemical conditions. A WER represents the correlation between metals that are measured and metals that are biologically available and toxic. A WER is a ratio calculated by dividing an appropriate measure of toxicity of a material in site water by the same measure of toxicity of the same material in laboratory test water. No site-specific WERs had been developed for

the Los Angeles River before the TMDL was adopted. Therefore, for those metals criteria containing a WER multiplier, a WER default value of 1.0 was assumed, as directed in the CTR.

4. The Donald C. Tillman (Tillman), Los Angeles-Glendale (LA-Glendale) and Burbank water reclamation plants are the three major publically owned treatment works (POTWs) in the Los Angeles River watershed. The Los Angeles River Metals TMDL assigns WLAs to these POTWs and specifies that compliance schedules may allow up to five years in NPDES permits to meet WLA-based permit requirements.
5. On October 18, 2005, the City of Los Angeles Bureau of Sanitation and the City of Burbank submitted a work plan for a copper WER study in the Los Angeles River downstream of the Tillman, LA-Glendale and Burbank POTWs. The WER study was conducted under the guidance of a technical advisory committee (TAC) and Regional Board staff.
6. On June 3, 2008, the City of Los Angeles Regulatory Affairs Division and the City of Burbank submitted the *Final Report for the Los Angeles River Copper WER Study*. The WER was developed for specific reaches of the Los Angeles River with the intention that it could be used to support development of a copper site specific objective or, in accordance with the "Policy for Implementation of Toxic Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California" (State Implementation Policy or SIP), directly incorporated into the NPDES permits for the three POTWs.
7. After further consideration by Regional Board staff, it was determined that the copper WER developed in the 2008 study could not be incorporated directly into the NPDES permits because there are copper WLAs currently assigned to the Tillman, LA-Glendale and Burbank POTWs as part of the Los Angeles River and Tributaries Metals TMDL. Both state and federal law require that NPDES permits are consistent with any available WLAs (40 CFR 122.44; Cal. Water Code §13263 and §13372). In order to apply the copper WER from the 2008 study, the TMDL would need to be revised to adjust the copper WLAs based on the WER. Because the copper WLAs for all sources in the watershed are interdependent, adjusting the copper WLAs for the three major POTWs would impact the copper WLAs for other sources. And, because the copper WER study was developed using primarily the study design outlined in U.S. EPA's 2001 *Streamlined Water-Effect Ratio Procedure for Discharges of Copper*, which is not applicable for multiple sources, the copper WER cannot be used to adjust the copper WLAs for sources other than the POTWs.
8. On May 20, 2009, the City of Los Angeles Bureau of Sanitation Watershed Protection Division submitted a separate draft work plan for a copper WER to support implementation of the Los Angeles River and Tributaries Metals TMDL. The intention of this study is to complement the 2008 study by developing copper WERs for the entire Los Angeles River and its tributaries in order to revise copper WLAs for all sources in the watershed. The new copper WER study would include additional sampling to create a more extensive data set. The applicable EPA guidance for the proposed copper WER study is the *Interim Guidance on the Determination and Use of Water-Effect Ratios for Metals* (USEPA, 1994).

9. The copper effluent limitations based on the existing copper WLAs will apply to the Tillman, LA-Glendale and Burbank POTWs on January 11, 2011. The POTWs will not be able to meet the existing copper limitations. The 2008 copper WER study demonstrates that the POTWs may discharge copper at a level higher than the copper effluent limitations based on the existing WLAs and still fully protect beneficial uses.
10. An amendment to the TMDL was initially released for public comment on January 5, 2010 to extend the implementation schedule for the Tillman, LA-Glendale, and Burbank POTWs to achieve the final copper WLAs for a period of up to three years from the effective date of the amendment, and to incorporate interim copper WLAs for these POTWs that would apply during the three-year period. The extended implementation schedule would have provided the POTWs with additional time before final copper WLAs applied and would have allowed for adequate time to complete a watershed-wide copper WER study to consider adjusting the final copper WLAs for all sources. The interim copper WLAs were based on the 2008 WER study, which was developed under the guidance of the TAC and Regional Board staff, and would have fully protected water quality and beneficial uses until the final copper WLAs applied. Accompanying the amendment was a CEQA checklist, which analyzed the environmental impacts of the above project description.
11. During the public comment period, Regional Board staff received comments from U.S. EPA staff that U.S. EPA could not approve an extended implementation schedule for the POTWs. As a result, Regional Board staff continued consideration of the amendment to a future meeting in order to revise the TMDL to address U.S. EPA's comments and to allow for application of the 2008 WER study to the POTWs' WLAs without impacting the WLAs and load allocations (LAs) for the other sources in the watershed.
12. This amendment revises the TMDL to adjust the numeric targets for certain reaches and the corresponding WLAs for the POTWs based on the 2008 WER study. Because it is not appropriate to adjust the LAs and WLAs for other sources based on the 2008 WER study, the TMDL revision only adjusts the copper targets for Reaches 1-4 of the River and the Burbank Western Channel and the copper WLAs for the Tillman WRP, LA-Glendale WRP, and Burbank WRP. The copper allocations for other sources remain based on the default WER value of 1.0 and the remaining portion of the loading capacity for Reaches 1-4 of the river and the Burbank Western Channel, which is increased by adjusting the numeric targets with the WER, will remain unallocated. At the time this TMDL is reconsidered, the WER for Reaches 1-4 and Burbank Western Channel may be modified or revert back to a default of 1.0 unless additional data have been collected that support application of a WER to all WLAs and LAs, or confirm continued application of the site-specific WER to the WLAs for the POTWs only. The amendment does not change the implementation schedule contained in the TMDL.
13. Regional Board staff has prepared a technical document that analyzes and describes the specific necessity and rationale for reconsidering this TMDL. The technical document entitled "Revision of the Los Angeles River and Tributaries Metals TMDL" is an integral part of this Regional Board action and was reviewed, considered, and accepted by the Regional Board before acting.

14. The public has had a reasonable opportunity to participate in the review of the amendment to the Basin Plan. A draft of the TMDL was released for public comment on January 5, 2010. A Notice of Hearing and Notice of Filing were published and circulated 45 days preceding Board action; this notice was published in the Los Angeles Times on January 7, 2010. A notice of continuation was sent to interested persons on February 11, 2010. Revised documents and a notice of hearing date change were sent to interested persons on March 11, 2010. Regional Board staff responded to oral and written comments received from the public; and the Regional Board held a public hearing on May 6, 2010 to consider adoption of the revisions to the TMDL.
15. In amending the Basin Plan to establish this TMDL, the Regional Board considered the requirements set forth in Sections 13240 and 13242 of the California Water Code.
16. Because the revised TMDL implements existing narrative and numeric water quality objectives (i.e., water quality objectives in the Basin Plan), the Regional Board (along with the State Board) has determined that adopting a TMDL does not require the Regional Board to consider the factors of Cal. Water Code section 13241. The consideration of the Water Code section 13241 factors, by section 13241's express terms, only applies "in establishing water quality objectives." Here the Regional Board is not establishing (or modifying) water quality objectives, but is revising a TMDL that will implement previously established objectives that have not been achieved. In making this determination, the Regional Board has considered and relied upon a legal memorandum from the Office of Chief Counsel to the State Board's basin planning staff detailing why TMDLs cannot be considered water quality objectives. (See Memorandum from Staff Counsel Michael J. Levy, Office of Chief Counsel, to Ken Harris and Paul Lillebo, Division of Water Quality: The Distinction Between A TMDL's Numeric Targets and Water Quality Standards, dated June 12, 2002.)
17. Pursuant to Public Resources Code section 21080.5, the Resources Agency has approved the Regional Boards' basin planning process as a "certified regulatory program" that adequately satisfies the California Environmental Quality Act (CEQA) (Public Resources Code, § 21000 et seq.) requirements for preparing environmental documents (14 Cal. Code Regs. § 15251(g); 23 Cal. Code Regs. § 3782). The Regional Board staff has prepared "substitute environmental documents" for this project that contain the required environmental documentation under the State Board's CEQA regulations. (23 Cal. Code Regs. § 3777.) The substitute environmental documents include the TMDL staff report entitled "Revision of the Los Angeles River and Tributaries Metals TMDL", the environmental checklist, the comments and responses to comments, the basin plan amendment language, and this resolution. The project itself is the revision of the Los Angeles River Metals TMDL to revise copper WLAs for the three POTWs based on the 2008 WER study. The amendment will allow increased concentrations of copper in the Los Angeles River downstream of the POTW discharges than the existing TMDL. The CEQA checklist and other portions of the substitute environmental documents contain significant analysis and numerous findings related to impacts.
18. The Regional Board prepared substitute environmental documents for the TMDL adopted by Resolution R07-014 pursuant to Title 23 California Code of Regulation, sections 3775 et seq., and Public Resources Code section 21159. Those documents were filed with the

Resources Agency on October 28, 2008. The TMDL adopted by Resolution R07-014 served as the baseline for analysis of the current project. Because the amendment is limited to the revision of the copper WLAs assigned to the three POTWs and does not require any additional treatment strategies or facilities, all compliance options are established within the baseline and no additional analysis of the potential impacts due to compliance with the TMDL are required with the exception of the revised POTW copper WLAs.

19. The current activity revises copper WLAs for the Tillman, LA-Glendale, and Burbank POTWs based on the site-specific copper WER developed in 2008. The copper WLAs based on the site-specific WER will allow higher levels of copper in the Los Angeles River downstream of the POTWs than the copper WLAs in the existing TMDL. However, because of site-specific conditions that reduce the bioavailability and, thus, toxicity of copper to aquatic life, the same level of protection of beneficial uses as was intended with the California Toxics Rule is maintained. The development of the copper WER takes into account the site-specific differences that affect toxicity between site water and the lab water used to develop the national criteria. The resulting copper WLAs, based on the site-specific WER developed per EPA protocols, are deemed to be as protective of the local site water as the CTR criteria on a national basis. Therefore, the project will not have a significant effect on the environment, and no alternatives or mitigation measures are proposed.
20. In response to comments from U.S. EPA, the project description has changed since the TMDL revisions were noticed on January 5, 2010. As described in Finding No. 10, the previously noticed TMDL revisions included interim copper WLAs based on the 2008 WER study and an extended implementation schedule for the three POTWs. The new project description in the currently noticed TMDL revisions eliminates the extended implementation schedule and changes the proposed interim copper WLAs to final WLA for the three POTWs based on the 2008 WER study. Since the environmental impacts of the project as described immediately above are the same as the environmental impacts of the project as described when the revisions were originally noticed (see Finding No. 10), no recirculation of the CEQA documents is necessary as the same CEQA analysis that was conducted for the revisions noticed on January 5, 2010 applies for the current revisions. In other words, the environmental impacts associated with the new project descriptions are fairly and adequately analyzed in the previously circulated environmental documents (Title 14, California Code of Regulations, section 15088.5). Therefore, no additional CEQA analysis is required.
21. The amendment is consistent with the State Antidegradation Policy (State Board Resolution No. 68-16), and the federal Antidegradation Policy (40 CFR 131.12), in that it does not allow degradation of water quality and ensures that beneficial uses are fully protected. The amendment includes language requiring that effluent limitations based on WER-adjusted WLAs shall ensure that effluent concentrations and mass discharges do not exceed the levels of water quality that can be attained by performance of a facility's treatment technologies existing at the time of permit issuance, reissuance, or modification.
22. Considering the record as a whole, this Basin Plan amendment will result in no effect, either individually or cumulatively, on wildlife resources.

23. The regulatory action meets the "Necessity" standard of the Administrative Procedures Act, Government Code, section 11353, subdivision (b).
24. The Basin Plan amendment revising the TMDL must be submitted for review and approval by the State Board, OAL, and U.S. EPA. The Basin Plan amendment will become effective upon approval by OAL and U.S. EPA. A Notice of Decision will be filed following these approvals.
25. Occasionally during its approval process, Regional Board staff, the State Board or OAL determines that minor, non-substantive corrections to the language of the amendment are needed for clarity or consistency. Under such circumstances, the Executive Officer should be authorized to make such changes, provided she informs the Board of any such changes.

THEREFORE, be it resolved that:

1. Pursuant to Sections 13240 and 13242 of the California Water Code, the Regional Board, after considering the entire record, including oral testimony at the hearing, hereby adopts the amendments to Chapter 7 of the Water Quality Control Plan for the Los Angeles Region as set forth in Attachment A hereto.
2. The Regional Board hereby approves and adopts the CEQA substitute environmental documentation, including all findings contained therein, which was prepared in accordance with Public Resources Code section 21159 and California Code of Regulations, title 14, section 15187, and in accordance with section 3777 of title 23.
3. The Executive Officer is directed to forward copies of the Basin Plan amendment to the State Board in accordance with the requirements of section 13245 of the California Water Code.
4. The Regional Board requests that the State Board approve the Basin Plan amendment in accordance with the requirements of sections 13245 and 13246 of the California Water Code and forward it to OAL and the USEPA.
5. If during its approval process Regional Board staff, the State Board or OAL determines that minor, non-substantive corrections to the language of the amendment, this resolution, or other relevant documentation are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Board of any such changes.
6. The Executive Officer is authorized to request a "No Effect Determination" from the Department of Fish and Game, or transmit payment of the applicable fee as may be required to the Department of Fish and Game.

I, Samuel Unger, Interim Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Los Angeles Region, on May 6, 2010.


Samuel Unger
Interim Executive Officer