

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

**RESOLUTION NO. 2006-022
November 9, 2006**

**Amendment to the Water Quality Control Plan for the Los Angeles Region to Incorporate
Water-Effects Ratios (WERs) for Copper in Lower Calleguas Creek and Mugu Lagoon
located in the Calleguas Creek Watershed, Ventura County**

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

1. The Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura Counties (Basin Plan) designates beneficial uses of the Region's water bodies, establishes water quality objectives for the protection of these beneficial uses, and outlines a plan of implementation for maintaining and enhancing water quality.
2. On May 18, 2000, the US EPA promulgated numeric criteria for certain "priority pollutants" for the State of California, known as the California Toxics Rule (CTR), codified as 40 CFR section 131.38. Federal water quality standards under section 303 of the Clean Water Act consist of designated uses and criteria to protect those uses. (40 C.F.R. 131.3(i).) Designated uses are beneficial uses under state law, and criteria are water quality objectives under state law. The CTR establishes the numeric water quality objectives for various toxic pollutants. These objectives apply "without exception" to all inland surface waters within the State of California, including the Los Angeles region. (40 C.F.R. 131.38(d)(1)-(2).)
3. The CTR establishes numeric water quality criteria for copper to protect aquatic life, which are expressed as a function of a water-effect ratio (WER). A WER is an appropriate measure of the toxicity of a material obtained in a site water divided by the same measure of the toxicity of the same material obtained simultaneously in a laboratory dilution water. In the CTR, the US EPA has provided for the adjustment of these water quality objectives through the application by States of the WER procedure.
4. The WER in the CTR has a default value of 1.0 unless a study is conducted consistent with US EPA's WER guidance and adopted by the Regional Board, establishing the ratio that represents the difference between toxicity in laboratory test water and toxicity in a specific water body based on ambient conditions.. US EPA's guidance on the derivation of a WER is established in "*Interim Guidance on the Determination and Use of the Water-Effect Ratios for Metals*" (US EPA, 1994) and "*Streamlined Water-Effect Ratio Procedure for Discharges of Copper*" (US EPA, 2001).
5. The Regional Board's goal in establishing implementation provisions for the metals criteria established in the CTR, and specifically incorporating water-effect ratios to modify the copper criteria, is to take into account site specific conditions in local waterbodies that alter the toxicity of copper to aquatic life, while still being as protective of aquatic life as the CTR criteria are intended to be.

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6. The modification of objectives using site-specific WERs for copper is part of a comprehensive strategy for addressing metals impairments in the Calleguas Creek watershed, which includes development and implementation of Total Maximum Daily Loads and corresponding effluent and receiving water limitations in NPDES permits.
7. Implementation actions to achieve applicable copper objectives in Calleguas Creek must also result in compliance with downstream standards in Mugu Lagoon.
8. Regional Board staff has prepared a detailed technical document that analyzes and describes the specific necessity and rationale for the development of this amendment. The technical document entitled "Proposed Amendments to the Water Quality Control Plan to Incorporate Water Effect Ratios (WERs) for Copper in Lower Calleguas Creek and Mugu Lagoon" (Staff Report) is an integral part of this Regional Board action and was reviewed, considered, and accepted by the Regional Board before acting. Further, the technical document provides the detailed factual basis and analysis supporting the amendment. The Staff Report relies upon the scientific background and data collection and analysis documented in the Technical Report, "Calleguas Creek Watershed Copper Water-Effects Ratio (WER) Study," prepared by Larry Walker Associates, Inc. (LWA) on behalf of the Calleguas Creek Watershed Management Plan, a stakeholder group in the Calleguas Creek Watershed. The technical report prepared by Larry Walker Associates, Inc. contains the scientific basis for the proposed Basin Plan amendment. The technical report is distinguished from the Regional Board's staff report in that it does not present the recommendations of Regional Board staff.
9. The WER study, conducted in accordance with U.S. EPA guidance document entitled "Interim Guidance on Determination and Use of Water-Effect Ratios for Metals," February 1994, EPA-823-B-94-001, demonstrated that site specific conditions in lower Calleguas Creek and Mugu Lagoon have been shown to reduce the toxicity of copper to aquatic life. Based on the above, the Regional Board staff finds it appropriate to adopt a copper WER for the lower Calleguas Creek and Mugu Lagoon at this time. The *Policy for Implementation of Toxic Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (known as the State Implementation Plan or SIP) sets forth: "A [Regional Board] may develop site-specific objectives whenever it determines, in the exercise of its professional judgment, that it is appropriate to do so." Though not a precondition to the Regional Board's exercise of its professional judgment, the Regional Board notes that the WER study demonstrates that the dischargers cannot be assured of achieving the criterion or objective and/or effluent limitation through reasonable treatment, source control, and pollution prevention measures. The proposed WERs recommended in "Proposed Amendments to the Water Quality Control Plan to Incorporate Water Effect Ratios (WERs) for Copper in Lower Calleguas Creek and Mugu Lagoon" (Staff Report) modify the water quality objectives for copper applicable to these waters such that the objectives are designed to be as protective of the aquatic life in these waterbodies as the criteria set forth in the CTR.
10. The scientific basis for the basin plan amendment was subjected to an independent, external peer review pursuant to the requirements of Health and Safety Code section 57004.
11. The public has had reasonable opportunity to participate in review of the amendment to the Basin Plan. A public workshop was held on February 23, 2006 at the Regional Board offices at 320 West 4th Street, Los Angeles, CA 90013. A notice of the workshop was sent to interested parties including cities and/or counties with jurisdiction in or bordering the Calleguas Creek watershed. A draft of the proposed basin plan amendment was released for public comment on August 29, 2006. A Notice of Hearing / Notice of Filing was published in accordance with the

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requirements of Water Code section 13244. This notice was published in the Ventura County Star. Regional Board staff responded to oral and written comments received from the public; and the Regional Board held a public hearing on November 9, 2006 to consider adoption of the amendment.

12. The basin planning process has been certified by the Resources Agency as an exempt regulatory program because its process adequately fulfills the purposes of the California Environmental Quality Act (CEQA). The Regional Board is therefore exempt from CEQA's requirement to prepare an environmental impact report, negative declaration, or initial study (Public Resources Code, Section 21000 et seq.), and as such, the required substitute environmental documentation (including the CEQA environmental checklist) have been prepared. The detailed technical report entitled "Proposed Amendments to the Water Quality Control Plan to Incorporate Water Effects Ratios (WERs) for Copper in Lower Calleguas Creek and Mugu Lagoon" prepared by staff to address comments raised during the development of the amendment, this resolution, and the Environmental Checklist, together with the responses to comments, serve as the substitute documents for this project. The project itself is the incorporation of water-effect ratios, which will modify the applicable copper water quality objectives set forth in 40 CFR 131.38 for Lower Calleguas Creek and Mugu Lagoon. A CEQA Scoping meeting was conducted on February 23, 2006 at the Regional Board offices at 320 West 4th Street, Los Angeles, CA 90013. A notice of the CEQA Scoping hearing was sent to interested parties including cities and/or counties with jurisdiction in or bordering the Calleguas Creek watershed.
13. In preparing the accompanying CEQA substitute documents, the Regional Board has considered the requirements of Public Resources Code section 21159 and California Code of Regulations, title 14, section 15187, and intends the substitute documents to serve as a tier 1 environmental review. Consistent with CEQA, the substitute documents do not engage in speculation or conjecture and only consider the reasonably foreseeable environmental impacts of the methods of compliance, the reasonably foreseeable feasible mitigation measures, and the reasonably foreseeable alternative means of compliance, which would avoid or eliminate the identified impacts. Nearly all of the compliance obligations will be undertaken by public agencies that will have their own obligations under CEQA. Project level impacts will need to be considered in any subsequent environmental analysis performed by other public agencies, pursuant to Public Resources Code section 21159.2. The Publicly-owned Treatment Works (POTWs), agriculture and urban areas discharging to these waterbodies are expected to be the primary entities involved in compliance with the modified objectives. If approved, the copper WERs would be reflected in revised TMDL numeric targets and allocations as well as revised effluent and receiving water limitations for the affected POTWs and urban dischargers and waterbody reaches, subject to antidegradation and antibacksliding requirements. It is not foreseeable that the amendment would instigate new or different compliance measures other than those required to comply with the current objectives. Therefore, the additional economic cost of this amendment should be negligible to all involved parties.
14. Comments were received on the substitute environmental documentation and the CEQA checklist was revised in response to comments.
15. These modifications will not lower the water quality of the candidate water bodies, relative to existing conditions because additional loadings of copper are not anticipated. Therefore, the modifications are consistent with the State's anti-degradation policy (State Board Resolution 68-16) and federal anti-degradation requirements.

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16. Pursuant to section 711.4(d)(1) of the California Fish and Game Code, it is hereby determined that the proposed amendment will result in not more than a de minimis adverse effect on fish and wildlife.
17. The regulatory action meets the "Necessity" standard of the Administrative Procedures Act, Government Code, section 11353, subdivision (b).
18. The Basin Plan amendment to incorporate water-effect ratios (WERs) for copper, which will modify the CTR objectives applicable to lower Calleguas Creek and Mugu Lagoon located in Calleguas Creek Watershed, Ventura County, must be submitted for review and approval by the State Water Resources Control Board (State Board), the State Office of Administrative Law (OAL), and the United States Environmental Protection Agency (US EPA). The Basin Plan amendment will become effective upon approval by OAL and US EPA. A Notice of Decision will be filed.
19. Occasionally during its approval process, Regional Board staff, the SWRCB or OAL determine 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 he informs the Board of any such changes.


THEREFORE, be it resolved that

1. Pursuant to sections 13240 and 13241 of the California Water Code, the Regional Board, after considering the entire record, including oral testimony at the hearing, hereby adopts the amendment to the Water Quality Control Plan for the Los Angeles Region as set forth in Attachment A hereto, to incorporate water-effect ratios for copper, which will modify the applicable CTR objectives in lower Calleguas Creek and Mugu Lagoon.
2. As part of its triennial review process, the Regional Board shall reconsider the continued appropriateness of the water-effect ratios for lower Calleguas Creek and Mugu Lagoon in Ventura County.
3. The Regional Board directs staff to propose, as Board staff deems appropriate, additional monitoring and reporting requirements in subsequent Conditional Waiver and NPDES permitting actions for dischargers to lower Calleguas Creek and Mugu Lagoon. This additional monitoring and reporting is necessary to evaluate 1) whether the objectives as modified by the site-specific WERs are as protective of beneficial uses as the CTR objectives are intended to be; 2) to ensure that downstream standards are being achieved; and 3) to support the Board's reconsideration of the modified objectives and the WERs upon which they are based, during the triennial review process. To the extent possible, proposed monitoring and reporting requirements should be coordinated with any Executive Officer approved Calleguas Creek Watershed TMDL Monitoring Plan (CCWTMP). The Regional Board directs the Executive Officer to ensure that, at a minimum, the following monitoring is included in either an Executive Officer approved watershed monitoring plan for Calleguas Creek or in individual NPDES permits for dischargers subject to the site specific WERs for Mugu Lagoon and lower Calleguas Creek. Monitoring shall include four sampling events per year in Mugu Lagoon (Reach 1) and lower Calleguas Creek (Reach 2). Three of the four events shall be conducted during critical conditions, as defined by Regional Board staff. Following review of the monitoring data, Regional Board staff shall determine if the adopted WERs are still appropriate.

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4. The Regional Board directs staff, when implementing the WER through TMDLs and permits, to ensure that beneficial uses are being protected. If impacts to beneficial uses are identified Regional Board directs staff to bring the WERs to the Board for reconsideration.
5. The Regional Board directs staff when proposing permit requirements to consider downstream objectives and ensure that any requirements to achieve applicable objectives, as modified by site-specific WERs, also ensure that downstream standards will be achieved.
6. The Regional Board hereby certifies the final CEQA substitute environmental documentation prepared in accordance with Public Resources Code section 21159 and California Code of Regulations, title 14, section 15187.
7. The Executive Officer is directed to forward copies of the Basin Plan amendment to the SWRCB in accordance with the requirements of section 13245 of the California Water Code.
8. The Regional Board requests that the SWRCB 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 US EPA.
9. If during their approval process Regional Board staff, the SWRCB or OAL determines that minor, non-substantive corrections to the language of the amendment are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Board of any such changes.
10. The Executive Officer is authorized to sign a Certificate of Fee Exemption.

I, Jonathan Bishop, 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 November 9, 2006.


 Jonathan Bishop *Chief Deputy E.O.*
 Executive Officer *for*

12-11-06
 Date