

Comment Summary and Responses
Revision of the Metals TMDL for Los Angeles River and its Tributaries
Comment Deadline: 12pm March 11, 2011

1. City of Los Angeles Bureau of Sanitation
2. Heal the Bay
3. City of Burbank Public Works Department
4. City of Los Angeles Department of Water and Power

No.	Author	Comment	Response
0.1	Multiple	Many of the comments submitted in opposition to the State Board's approval of this BPA were previously submitted to the Los Angeles Water Board and submitted verbatim to the State Board, without further explanation.	<p>Many of the individual comments submitted to the State Water Resources Control Board (State Water Board) on this matter are identical to a comment submitted to the Los Angeles Water Quality Control Board (Los Angeles Water Board) at the time the draft version of this TMDL was under consideration. As part of its consideration process, the Los Angeles Water Board provided written responses to all of the comments it received. These responses to comments are available at http://www.waterboards.ca.gov/losangeles/board/decisions/basin_plan_amendments/technical_documents/77_New/2010_0503/LAR%20Metals%20010%20Revision%20Response%20to%20Comments_042310.pdf.</p> <p>The Los Angeles Water Board's responses either indicated that changes would be made to the regulatory provisions or to the related documentation in response to the comment (in which case corresponding changes were made), or the Los Angeles Water Board's written responses indicated that that changes would not be made, and the response included the reason.</p> <p>Where a commenter merely repeats a comment</p>

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			<p>that was originally tendered to the Los Angeles Water Board on a prior version of a BPA, but fails to disclose what quarrel, if any, the commenter has with the response provided or the action taken by the Los Angeles Water Board in response to the comment, the State Water Board is unable to address the comment. Specifically, in those cases where the Los Angeles Water Board made changes in response to a comment, the commenter has failed to explain how the changes were allegedly inadequate. Likewise, where the Los Angeles Water Board did not make changes, the commenter has failed to explain how the response or explanation that the Los Angeles Water Board provided was allegedly inadequate, or even whether the commenter believes that the response was inadequate.</p> <p>Where a commenter has merely repeated a comment submitted before, the State Water Board cannot divine what the commenter believes has been adequately satisfied and what has not, nor can it determine the reason for any remaining dissatisfaction. State Water Board staff will review the Los Angeles Water Board's responses to ensure that they are thorough and address the specific question presented.</p>
1.1	Enrique Zaldivar	"Given our general support for the Regional Water Board proposal, the Bureau regrets that we must ask the State Water Board to remand the proposed amendment to remove a provision that unnecessarily and ill-advisedly restricts the permit writers in developing future effluent limitations to implement	State Water Board Staff disagrees that this amendment should be remanded. The footnote does not, as the commenter asserts, restrict the permit writers in developing future effluent limitations to implement the TMDL, nor does it impair the ability to use water recycling or

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		<p>the TMDL. Specifically, the proposed amendment includes two footnotes that limit wet and dry weather mass and concentration based effluent limitations to current treatment performance. (See footnote 2, page 8 and footnote 2, page 10.)”</p>	<p>conservation.</p> <p>The amendment requires "<i>effluent limitations do not exceed the levels of water quality that can be attained by performance of this facility's treatment technologies existing at the time of permit issuance, reissuance, or modification</i>" (emphasis added). At such time as the permit is reissued or modified, the permit writer could determine (based on the available data) whether the limit could change. It would be the Discharger's burden to prove that it needs an effluent limitation less stringent than the existing performance as a result of a factor(s) for which an exception exists under federal anti-backsliding provisions. If it can demonstrate these two requirements, it must then comply with anti-degradation requirements. In this manner, recycling and conservation, if they did in fact result in degraded effluent, could be accommodated. This approach complies with all federal and state requirements (CWA section 402(o); Cal. Water Code section 13263(b)). The footnote is necessary to ensure that application of the WER does not allow the degradation of existing water quality.</p>
1.2	Enrique Zaldivar	<p>“Effluent limitations Must be Consistent with Adopted WLAs....It is inconsistent with this fundamental premise to artificially restrict effluent limitations -- without consideration of the specific circumstances and facts--to a performance based rather than water quality based, value.”</p>	<p>See response to comment 1.1. The footnote states that, regardless of the WER, effluent limitations shall ensure that the mass and concentration discharged does not exceed levels of water quality that can be attained by facility performance. This would not result in inconsistency with the TMDL WLAs. The effluent</p>

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			<p>limitations, when set based on facility performance, would still be consistent with the TMDL WLAs in that they would be set at a level to achieve the TMDL WLAs. Effluent limitations must not only be consistent with available WLAs, but must also be consistent with other federal and state requirements. The language is designed to ensure that the effluent limitations comply with all federal and state requirements. The language simply requires that POTWs perform at a level that can be attained by existing treatment technologies at the time of permit issuance, reissuance or modification. The TMDL WLAs are based on the level necessary to protect beneficial uses (the floor) as is required; however, deriving effluent limitations requires other considerations as discussed above.</p> <p>Furthermore, the footnote is consistent with the conditions of the State Policy on Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California, and precedent has been established for this approach -- this language is nearly identical to a footnote to the WLAs in the Calleguas Creek Metals TMDL, adopted by Resolution 2006-012 and effective as of March 27, 2007.</p>
1.3	Enrique Zaldivar	"The Footnotes Restricting Effluent Limitations May Discourage Water Conservation, Water Recycling and Watershed Enhancement."	State Water Board staff disagrees. See responses to comment 1.1. The commenter's assertion that future water conservation or recycling efforts would increase the levels of metals in the influent is speculative. Furthermore, if there were any increases in copper concentrations in influent due to less flow, there is no evidence that this would

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			<p>occur within the term of a given permit. However, If the Los Angeles Water Board determines sufficient evidence is presented, it has the authority to modify effluent limitations at the time or permit issuance, reissuance, or modification. If a need for change in an effluent limitation is demonstrated, due to changing influent concentrations or other factors, it must be shown that the changed effluent limitation meets the exception requirements under federal anti-backsliding laws, including a consideration of water quality standards and anti-degradation laws.</p>
1.4	Enrique Zaldivar	<p>“The Footnotes Restricting Effluent Limitations Could Have Unintended Averse Effect of de-rating the capacity of the City’s treatment plants with no corresponding water quality benefit.”</p>	<p>State Water Board staff disagrees. See response to comment 1.3. There are numerous guidance documents available to permit writers to use when developing effluent limitations to ensure no degradation of existing water quality (e.g., SIP, TSD). Whatever approach permit writers take must be supported, but it may not necessarily be the use of 95th percentile of performance. The comment that restrictions of effluent limitations could de-rate the capacity of the treatment plants is not supported by any evidence.</p>
1.5	Enrique Zaldivar	<p>“The Footnotes Restricting Effluent Limitations Do Not Allow Sufficient Operational Flexibility to Ensure the Highest Quality Effluent.”</p>	<p>Permit writers may consider the variability of copper concentrations in effluent post-nitrification/de-nitrification implementation when developing effluent limitations. Permit writers may also consider how operational changes are predicted to affect copper concentrations in effluent. The City of Los Angeles should submit data on the variability of copper concentrations in source water, the variability in copper uptake since operation of nitrification/de-nitrification facilities, and predictions of the effect of</p>

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			operational changes on copper concentrations in effluent to the Los Angeles Water Board so that the ultimate approach for assigning effluent limitations is supported.
2.1	Kirsten James and Susie Santilena	“In general, we are opposed to this amendment. The proposed amendment is a perfect example of why a statewide WER guidance document from the State Board is desperately needed. Although we do not support the pursuit of WERs or their incorporation into TMDLs, we believe a WER policy is needed to outline methods for performing WER studies in a more protective fashion. Also, if WERs are incorporated into TMDLs, it must be done in a consistent fashion in order to adequately protect beneficial uses of waterbodies within the state instead of in the piecemeal fashion we have seen to date.”	Comment noted. The WERs developed and presented in this Basin Plan amendment were performed in accordance with U.S.EPA guidance and guidelines (exceeding minimum requirements), and were overseen by a Technical Advisory Committee comprised of individuals with extensive experience and knowledge of copper toxicity and the derivation of WERs. State Water Board staff finds that in doing so, the WERs were developed in a consistent and protective manner. A Draft Compilation of existing guidance for the development of site-specific water quality objectives in the state of California is available online at: http://www.waterboards.ca.gov/publications_forms/publications/general/docs/sitespecificwqo.pdf
2.2	Kirsten James and Susie Santilena	“Incorporating this WER into the TMDL is not protective of water quality.”	See response to comment 0.1. The Los Angeles Water Board Staff responded to this comment in their response to comments number 2.1.
2.3	Kirsten James and Susie Santilena	“The WER was developed using inappropriate methods and reasoning.”	See response to comment 0.1. The Los Angeles Water Board Staff responded to this comment in their response to comments number 2.2.
2.4	Kirsten James and Susie Santilena	“The Regional Board should pursue other alternatives to incorporating a WER into this TMDL. “	See response to comment 0.1. The Los Angeles Water Board Staff responded to this comment in their response to comments number 2.3.
2.5	Kirsten James and	“The determination of existing performance of treatment technologies should be outlined.”	See response to comment 0.1. The Los Angeles Water Board Staff responded to this comment in

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	Susie Santilena		their response to comments number 2.4.
2.6	Kirsten James and Susie Santilena	“The TMDL should include an explicit margin of safety.”	See response to comment 0.1. The Los Angeles Water Board Staff responded to this comment in their response to comments number 2.5.
3.1	Daniel Rynn	<p>“We are writing in support of Los Angeles’ comment letter for the Proposed Approval of an Amendment to the Water Quality Control Plan: Los Angeles Region Basin Plan for the Costal Watersheds of Los Angeles and Ventura Counties (Basin Plan) to revise the TMDL for Metals in the Los Angeles River and its Tributaries. In their letter, Los Angeles states the following:</p> <p><i>Given are general support for the Regional Water Board proposal, the Bureau regrets that we must ask the State Water Board to remand the proposed amendment to remove a provision that unnecessarily and ill-advisedly restricts the permit writers in developing future effluent limitations to implement the TMDL.</i></p> <p>The City of Burbank requested similar changes during the adoption of the Amended TMDL at the May 6, 2010 Regional Board Hearing. We agree with the City of LA’s concerns that footnote 2 on page 8 and 10 of the Basin Plan Amendment should be eliminated, or as an alternative, modified as follows:</p> <p><i>The WER for this constituent is 3.96. When effluent limitations are adopted for these treatment plants, those limits will be set based on the requirements of 40 C.F.R. sections 122.44(d)(1)(vii)(B) (requiring consistency with any available wasteload allocations for the discharge) and other applicable provisions of</i></p>	See responses to comments 1.1 to 1.5.

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		<i>state and federal law and regulation.</i>	
4.1	Katherine Rubin	“The Los Angeles Department of Public Works supports the continued work to develop WERs that can apply to all non-stormwater discharges to the Los Angeles River watershed.”	Comment Noted.