

Comment Summary and Responses
San Gabriel River and Impaired Tributaries Metals and Selenium TMDL
July 7, 2006

Commentor	Date
1: Chris Crompton, County of Orange	6/16/06
2: Daniel W. Keeseey, City of La Verne	6/16/06
3: Jack Yoshino, City of Walnut	6/18/06
4: Paul Phillips, City of Covina	6/16/06
5: Shannon A. Yauchzee, City of West Covina	6/16/06
6: Fredrick W. Latham, City of Santa Fe Springs	6/19/06
7: Leo L. Mingle, City of Bellflower	6/19/06
8: Stephen W. Helvey, City of Whittier	6/19/06
9: Francis M. Delach, City of Azusa	6/19/06
10: Craig Bradshaw, City of Claremont	6/19/06
11: John Yonai, City of Commerce	6/19/06
12: Robert Griego, City of Irwindale	6/19/06
13. Kenneth C. Farfsing, City of Signal Hill	6/19/06
14. Gerry Greene, City of Downey	6/19/06
15. Lisa Ann Rapp, City of Lakewood	6/19/06
16: Richard Montevideo, Rutan and Tucker, for the Coalition for Practical Regulation (CPR)	6/19/06
17: Kevin Powers, Charles Abbott Associates, Inc., City of Norwalk	6/19/06
18: Matthew E. Cohen, Richards/Watson/Gershon, Cities of Artesia, La Mirada, Norwalk	6/19/06
19: Mark Pestrella, County of Los Angeles	6/19/06
20: Ivan Karnezis, Caltrans	6/19/06
21: Mark Grey, Construction Industry Coalition on Water Quality	6/19/06
22: Sunil Pillai, Southern California Water Company	6/19/06
23: Robert G. Asgian, County Sanitation Districts of Los Angeles County (LACSD)	6/19/06
24: Mark Gold, Heal the Bay	6/19/06
25: Susan M. Damron, Los Angeles Department of Water and Power	6/19/06
26: Steve Maghy, AES Alamitos, L. L. C.	6/19/06

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1.1	Orange County	The draft Staff Report does not address the fact that Coyote Creek is not listed as impaired on the SARWQCB 2002 Clean Water Act Section 303(d) list, nor is it proposed for listing on the draft 2006 list.	Coyote Creek is listed for metals on the State’s 2002 303(d) list for the segment under the jurisdiction of the Los Angeles Regional Water Quality Control Board (Regional Board). The Regional Boards and the State must develop TMDLs for waters listed as impaired on the 303(d) list. The upper portion of Coyote Creek, which is located in Orange County and under the jurisdiction of the Santa Ana Regional Board, drains to the downstream impaired portion of Coyote Creek. Regional Board staff has proposed TMDLs for the downstream impaired portion and assigns allocations to upstream sources to meet the TMDL downstream. Addressing impairing metals throughout the watershed will ensure that the metals do not contribute to impairments elsewhere in the watershed
1.2	Orange County	The draft Staff Report states: “Once metals are deposited on land under the jurisdiction of a storm water permittee, they are within a permittee’s control.” This is not an accurate statement for those permittees within the jurisdiction of the SARWQCB. Finding 16 of the Santa Ana Regional Water Quality Control Board Municipal National Pollutant Discharge Elimination System Permit R8-2002-0100 states that permittees may lack legal jurisdiction over storm water discharges into their systems and that certain activities, such as operation of internal combustion engines, atmospheric deposition, brake pad wear, tire wear and leaching of naturally	The proposed TMDL assigns waste load allocations to upstream discharges located under the jurisdiction of the Santa Ana Regional Board. The Regional Board is asking the Santa Ana Board for their cooperation in writing permits to implement the allocations. It is expected that Santa Ana Regional Board permit writers will follow the implementation plan and translate waste load allocations into MS4 permit limits in the form of best management practices (BMPs) per the implementation schedule in this TMDL or perhaps under a revised implementation plan developed and adopted by the Santa Ana RWQCB. The implementation plan specifies that permit writers must provide adequate justification and documentation to

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		<p>occurring minerals from local geography may be beyond the ability of the permittees to eliminate.</p> <p>The draft Staff Report should be revised to clarify that, to the extent a permittee or source within the San Gabriel River Watershed is under the jurisdiction of the SWRWQCB, it is subject to that Board's requirements.</p>	<p>demonstrate that specified BMPs are expected to result in attainment of the waste load allocations.</p> <p>The Santa Ana Board is responsible for issuing permits in the Santa Ana Region (with the exception of statewide permits or possible watershed-specific permits) and enforcing those permits.</p>
1.3	Orange County	References to sources not within the jurisdiction of the LARWQCB should be removed from the proposed Basin Plan amendment. Similarly, references to the Orange County MS4 permit should be removed from the proposed Basin Plan amendment. The Orange County MS4 permit and permittees are under the jurisdiction of the SWRWQCB and should not be referenced with the amendment to the LARWQCB Basin Plan.	The proposed Basin Plan amendment has been revised to state, "The regulatory mechanisms used to implement the TMDL will include the Los Angeles County MS4, the City of Long Beach MS4, The Orange County MS4, <u>under the jurisdiction of the Santa Ana Regional Water Quality Control Board...</u> "
2.1 3.1	City of La Verne City of Walnut	It is inappropriate to require cities to plan for El Nino sized storms for wet-weather TMDLs. It would be a greater benefit to instead utilize a "design storm" as a benchmark for measuring TMDL levels.	Through the wet-weather task force, established as part of the Triennial review, Regional Board staff is addressing the issue of a design storm. The design storm technical advisory committee will determine the size of a storm that may be bypassed while still meeting water quality standards (as a function of the water quality consequences of predicted magnitude and frequency of exceedances, natural loading, technological feasibility, conveyance capacity, receiving water assimilation, etc.) This information will be used to help define a design

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			<p>storm for water quality controls. Based on the task force’s recommendation, staff will bring the definition of a storm that will address compliance with multiple TMDLs to the Board for their consideration as a Basin Plan amendment.</p>
<p>4.1 5.1 6.1 7.1 8.1 9.1 10.1 11.1 12.1 13.1</p>	<p>City of Covina City of West Covina City of Santa Fe Springs City of Bellflower City of Whittier City of Azusa City of Claremont City of Commerce City of Irwindale City of Signal Hill</p>	<p>The wet-weather TMDL is partially based on El Nino storms and not average rainfall. The majority of exceedances occurred during the 1997/98 El Nino year or the during the significantly large rainstorms of 2004-05. There is concern that TMDL requirements will take effect prior to Regional Board adoption of any recommendations by the Wet Weather Task Force to give relief from these large storm events.</p> <p>Comment No. 13.1 added that the State Listing Policy does not allow samples collected over a single short-term natural event to be used in a listing decision.</p>	<p>The CTR criteria, against which the assessments were made, apply at all times during wet and dry weather. The wet-weather task force and the design storm technical advisory committee were established to determine the size of a storm that may be bypassed and still meet TMDL allocations and water quality standards. Staff is committed to continuing their work with the task force and expects to bring their recommendation to the Regional Board prior to the implementation of the storm water waste load allocations, which would not take effect until year 6 of the TMDL. See also response to comment Nos. 2.1 and 3.1.</p> <p>The Listing Policy states that data from a short-term natural event (e.g., a storm, flood, or wildfire) shall not be used as the primary data set supporting the listing decision. The exceedances during the 1997/98 storm season occurred over the whole season over several storm events and thus meet the requirements of the listing policy. The two additional exceedances occurred in 2001 and 2005, neither of which were El Nino storm years.</p>
<p>2.2 3.2</p>	<p>La Verne Walnut</p>	<p>The U.S. Forest Service must be involved in the TMDL process because over 20% of</p>	<p>The proposed TMDL assigns load allocations to nonpoint sources of metals, including open</p>

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4.2 5.2 6.2 7.2 8.2 9.2 10.2 11.2 12.2 13.2	City of Covina City of West Covina City of Santa Fe Springs City of Bellflower City of Whittier City of Azusa City of Claremont City of Commerce City of Irwindale City of Signal Hill	<p>the San Gabriel Watershed is located in the Angeles National Forest. There is significant evidence that metals originating from the forest create high metals loads in the region's surface waters, particularly after recent forest fires.</p> <p>Comment Nos. 4.2 to 13.2 added that because the Army Corps of Engineers retains control of portions of the flood control system, they should be involved in the TMDL as well.</p>	<p>spaces in the Angeles National Forest. The Regional Board will regulate nonpoint sources through the authority contained in sections 13263 and 13269 of the Water Code and in conformance with the State Water Resources Control Board's Nonpoint Source Implementation and Enforcement Policy.</p> <p>The sources of metals loading (i.e., the storm drain system) are under the control and jurisdiction of the municipal storm water permittees. The Army Corps of Engineers is not a storm water discharger and is therefore not assigned an allocation.</p>
2.3 3.3 4.4 5.4 6.4 7.4 8.4 9.4 10.4 11.4 12.4 13.4	La Verne Walnut City of Covina City of West Covina City of Santa Fe Springs City of Bellflower City of Whittier City of Azusa City of Claremont City of Commerce City of Irwindale City of Signal Hill	<p>The proposed TMDL assigns responsibility for metals loads arriving to city lands from atmospheric deposition and the National Forest. Recent studies (Sabin et al) reveal that 57%-100% of the metals found in urban runoff are attributed to atmospheric deposition. This makes local government responsible for metals pollution outside their jurisdiction and control.</p> <p>Comment Nos. 4.4 to 13.4 added that the State Water Board suspended metals loads requirements in the Los Angeles River TMDL until 2011 and requested that the Regional Board resolve atmospheric deposition issues prior to reconsideration of the TMDL in 2012. The Regional Board should suspend the metals reduction requirements in this proposed TMDL until studies addressing atmospheric deposition</p>	<p>Although municipalities may not have direct control over indirect atmospheric deposition, they do have control over infrastructures that facilitate pollutant washoff and discharge to the storm drain system and other surface waters. In addition, research suggests that re-suspended road dust is the primary source of atmospheric deposition of metals. It then follows that roads within the cities are the primary source of the metal-laden particulates that comprise the majority of atmospheric deposition loading. Nonetheless, the Regional Boards, State Board, and Air Resources Board have begun to address the issues and will develop appropriate policies or take other actions. The Regional Board and staff are committed to working with stakeholders to confirm recent studies and to further characterize the source and control measures. For example, staff requested \$100,000 of State Contract funds during Fiscal</p>

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		are completed.	<p>Year 2006/07 for atmospheric deposition studies.</p> <p>The proposed TMDL already suspends metals reduction requirements until studies addressing atmospheric deposition are completed. The proposed TMDL shall be reconsidered at year 5 based on the results of special studies and reductions are not required until year 6.</p>
13.3.a	City of Signal Hill	The commentor incorporates by reference the Flow Science report of the technical merits of the TMDL	See response to comments from Flow Science, included as an attachment to the comment letter from Rutan and Tucker, representing CPR.
2.4 3.4 4.3 5.3 6.3 7.3 8.3 9.3 10.3 11.3 12.3 13.3	La Verne Walnut City of Covina City of West Covina City of Santa Fe Springs City of Bellflower City of Whittier City of Azusa City of Claremont City of Commerce City of Irwindale City of Signal Hill	<p>The application of CTR limits to storm water is inappropriate and, in its current form, is unworkable. CTR limits are below municipal drinking water limits.</p> <p>Implementing BMPs targeted to a design storm that treat concentrations in receiving water to the Maximum Extent Practicable is an effective and reasonable solution.</p>	<p>The TMDL will not result in the application of CTR limits as end-of-pipe numeric limits for the municipalities. The TMDL supports the use of an iterative BMP approach. The Basin Plan amendment states, “A combination of non-structural and structural BMPs may be used to achieve compliance with the WLAs. The administrative record and the fact sheets for the MS4 and Caltrans permits must provide reasonable assurance that the BMPs selected will be sufficient to implement the WLAs. Reductions to be achieved by each BMP shall be documented and sufficient monitoring shall be put in place to verify that the desired reductions are achieved. The permits shall also provide a mechanism to make adjustments to the required BMPs as necessary to ensure their adequate performance.”</p>
13.5.a	City of Signal Hill	The Orange County Cities and Los Angeles County cities should be regulated in a similar manner. The Orange County	The Regional Board is asking the Santa Ana Board for their cooperation and expects that they will translate the proposed TMDL’s waste

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		MS4 permit includes “exemptions” for sources out of permittees’ control.	load allocations into revised MS4 permit limits. Presumably, the revised permit would only allow exemptions if waste load allocations could still be achieved. Furthermore, the Los Angeles County MS4 permit is under the jurisdiction of the Los Angeles Regional Board and shall be implemented by the Los Angeles Regional Board to meet any applicable TMDLs.
2.5 3.5 4.5 5.5 6.5 7.5 8.5 9.5 10.5 11.5 12.5 13.5	La Verne Walnut City of Covina City of West Covina City of Santa Fe Springs City of Bellflower City of Whittier City of Azusa City of Claremont City of Commerce City of Irwindale City of Signal Hill	The TMDL develops allocations for unlisted reaches. While the entire watershed contributes flow to the compliance point, it is unreasonable and unlawful to impose significant compliance burden on cities for load areas that are not listed, where no impairment exists, and where metals concentrations are below CTR limits. Mandating that upstream reaches meet numeric targets in order to achieve compliance downstream is contrary to California Water Code Section 13360(a).	Addressing the impairing metals and selenium throughout the San Gabriel River watershed will ensure that they do not contribute to impairments elsewhere in the watershed. Metals and selenium allocations are therefore developed for upstream reaches and tributaries that drain to impaired reaches. Federal law requires that TMDLs include an assignment of load and waste load allocations to all sources of the impairing constituents (including natural background), even if constituents are being discharged to unimpaired tributaries of an impaired water. Water Code §13360(a) refers to prescribing the method or manner of compliance with any requirement or order of the RWQCB. The proposed TMDL does not specify the manner of compliance with the upstream allocations.
2.6 3.6 4.7 5.7 6.7 7.7	La Verne Walnut City of Covina City of West Covina City of Santa Fe Springs City of Bellflower	The Regional Board should be responsible for conducting special studies prior to adoption and implementation of the TMDL. Cities are ill equipped to conduct such detailed scientific and engineering studies. Furthermore, the costs of	The Regional Board will work cooperatively with stakeholders if they chose to conduct the voluntary special studies and has already committed funding for an atmospheric deposition study. A thorough analysis of estimated cost is presented in the Staff Report.

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8.7 9.7 10.7 11.7 12.7 13.7	City of Whittier City of Azusa City of Claremont City of Commerce City of Irwindale City of Signal Hill	implementing a TMDL that will likely include special studies, increased annual storm water programs, and capital improvements are estimated to be in the hundreds of millions of dollars for each community.	In addition, funding is available to municipalities through the State’s Consolidated Grants program.
4.6 5.6 6.6 7.6 8.6 9.6 10.6 11.6 12.6 13.6	City of Covina City of West Covina City of Santa Fe Springs City of Bellflower City of Whittier City of Azusa City of Claremont City of Commerce City of Irwindale City of Signal Hill	The TMDL allocations are inadequate and an iterative BMP approach should be used instead. No allocation is currently provided for holders of individual permits. The application of zero allocations to construction and industrial permits for dry weather will stifle construction and industrial activities. The allocation for open space is wholly inadequate. The proposed allocations will result in much “finger-pointing” within the watershed if compliance is not achieved at the downstream compliance point.	The proposed TMDL includes an iterative BMP approach. See response to comment Nos. 2.4 to 13.3. The TMDL expressly sets allocations for individual storm water permits. The dry-weather allocations of zero for general storm water permits will not stifle construction and industrial activities because authorized non-storm water flows under the exiting general permits are allowed the same concentration-based WLAs as those assigned to the non-storm water permits. The zero dry-weather WLA applies to unauthorized non-storm water flows, which are prohibited by existing permits. The allocation for open space based on the extent of open space in the watershed is adequate. The proposed allocation scheme and the phased reduction based on area specified in the implementation plan were designed to avoid “finger-pointing” among permittees. Permittees may establish jurisdictional groups to further assist in cooperative compliance efforts.
8.8.a 9. 8.a 10. 8.a 11. 8.a 12. 8.a	City of Whittier City of Azusa City of Claremont City of Commerce City of Irwindale	The Regional Board continues to use a dated checklist, which as a result, under-evaluates the impacts of this TMDL on the environment. The cities believe that the Regional Board has chosen this checklist	The Regional Board has discretion with respect to what checklist it is to use. By the express terms of the State Board’s regulations defining its certified regulatory program, the Regional Board is not required to use the checklist that's

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		because it would facilitate evading responsibility to accurately and objectively evaluate obvious adverse impacts.	been adopted by the Office of Planning and Research. The State Board’s regulations have been approved by the Resources Agency. The CEQA checklist selected is based on Appendix A of Title 23 of the California Code of Regulations, Section 3777. It does not under-evaluate impacts. In fact, it has four more categories than the checklist that was adopted by the Office of Planning and Research. Regional Board staff declines to respond to the ad hominem commentary, except to deny the same.
8.8.b 9. 8.b 10. 8.b 11. 8.b 12. 8.b	City of Whittier City of Azusa City of Claremont City of Commerce City of Irwindale	The CEQA checklist fails to fully address impacts on groundwater quality. The checklist states that impacts may be mitigated through proper design and siting, but does not provide detail by what is meant by proper design. For example, how can proper infiltration control prevent the accidental release of BTEX or methyl-ethyl-ketone to an infiltration trench? Further, the Regional Board needs to explain in detail how metals will not impact groundwater quality.	Proper design and siting would include following manufacturers guidelines for infiltration systems, providing adequate groundwater separation with soils suitable for infiltration, and complying with any applicable groundwater permitting requirements. The checklist has been revised to provide this clarification. In addition to proper design and siting, the checklist states that the potential for adverse impacts may be mitigated through pretreatment prior to infiltration and groundwater monitoring. These additional measures would mitigate potential impacts such as groundwater pollution due to accidental releases. The CEQA analysis does not need to explain in detail how metals will not impact groundwater quality. It must analyze the reasonably foreseeable environmental impacts of feasible methods of implementing the TMDL and identify reasonably foreseeable mitigation measures to minimize those impacts, which it does.

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8.8.c 9. 8.c 10. 8.c 11. 8.c 12. 8.c	City of Whittier City of Azusa City of Claremont City of Commerce City of Irwindale	The Regional Board offers minimal attention to potential human health risk of mosquito breeding associated with infiltration devices. Infiltration devices must allow for detention time in order to work properly. According to the San Gabriel Valley Vector Abatement District, mosquitoes can breed in as little as a cup of water in a few days.	The checklist addresses this potential impact and offers reasonable foreseeable mitigation measures such as designing systems that minimize stagnant water conditions and/or requiring oversight and treatment of those systems by vector control agencies. Infiltration is widely used as a means of water replenishment in the San Gabriel watershed. Responsible agencies have decades of experience dealing with vector control issues.
4.8 5.8 6.8 7.8 8.8 9.8 10.8 11.8 12.8 13.8	City of Covina City of West Covina City of Santa Fe Springs City of Bellflower City of Whittier City of Azusa City of Claremont City of Commerce City of Irwindale City of Signal Hill	An Environmental Impact Report or proper functional equivalent must be prepared rather than the negative declaration proposed, given the potentially significant adverse environmental impacts that may result from the TMDL. In the <i>Arcadia</i> case, the Appellate Court ruled that the Regional Board must complete an environmental impact report, or its functional equivalent, for the Los Angeles River Trash TMDL. The impacts of the proposed Metals TMDL will be significantly greater than the impacts of the Trash TMDL due to the difficulty of removing metals. As revealed in the documents provided by CPR, there are few devices that reduce metals in urban runoff to CTR standards. Those that are effective require large retention areas, which will impact residential, commercial, industrial and open space areas.	The CEQA analysis is not a negative declaration. The checklist and the staff report, with the responses to comments, and the resolution approving the amendment (“substitute environmental documents”), fulfill the requirements of Section 3777, Subdivision (a), and the Regional Board’s substantive CEQA obligations, including those described in Public Resources Code section 21159. The term “functional equivalent document” is not derived from CEQA, but from the federal National Environmental Policy Act. As used by the Arcadia court, and other California courts, it is intended to refer to the “substitute environmental documents” that are prepared by those agencies operating under certified regulatory programs. The difficulty of removing metals relative to removing trash is not a CEQA-relevant inquiry. The CEQA inquiry relates to what significant adverse environmental impacts are foreseeably attendant with the reasonably foreseeable means of compliance with the regulation.

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			<p>The method by which a discharger decides to achieve compliance is a project-level decision that will require an independent subsequent environmental review (Pub. Res. C. § 21159.2) which is beyond the scope of analysis that the Regional Board is required to take (Pub. Res. C. § 21159(d).) However, staff has analyzed the reasonably foreseeable environmental impacts of the TMDL as an overall program, and reasonably foreseeable environmental impacts of the foreseeable methods of complying with the TMDL. If not properly mitigated at the project level, there could be adverse environmental impacts. The CEQA substitute documents identify broad mitigation approaches that should be considered at the project level.</p>
<p>4.9 5.9 6.9 7.9 8.9 9.9 10.9 11.9 12.9 13.13</p>	<p>City of Covina City of West Covina City of Santa Fe Springs City of Bellflower City of Whittier City of Azusa City of Claremont City of Commerce City of Irwindale City of Signal Hill</p>	<p>The proposed Negative Declaration fails to discuss dry-weather implementation impacts, other than those related to dry-weather diversions, which may not be feasible due to County Sanitation Districts requirements. Our City may be required to install tanks or holding ponds for “off-peak” discharges.</p>	<p>The substitute environmental documents are not a “proposed negative declaration”. Nevertheless, they do consider retention and storage as a possible means of compliance and has identified reasonably foreseeable impacts and mitigation measures for these compliance strategies.</p> <p>Notably, the City of Covina is located in the Walnut Creek subwatershed and will not be subject to a dry-weather waste load allocation under the proposed TMDL. The City of Signal Hill is not located in any part of the San Gabriel River watershed and will not be subject to any of the requirements of the proposed TMDL.</p>
4.10	City of Covina	The proposed Negative Declaration fails to	The substitute environmental documents are not

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5.10 6.10 7.10 8.10 9.10 10.10 11.10 12.10 13.9	City of West Covina City of Santa Fe Springs City of Bellflower City of Whittier City of Azusa City of Claremont City of Commerce City of Irwindale City of Signal Hill	discuss likely locations of treatment devices and the high costs of land acquisition. Reasonable assumptions can be made based on community land use patterns and the location of drainage system improvements.	a “proposed negative declaration”. The analysis required by Public Resources Code section 21159 does not require an examination of every site, but a reasonably representative sample of them. To estimate locations of individual projects would be speculative, even with the use of land use patterns or storm drain maps, because the Regional Board is prohibited from specifying the manner of compliance with its regulations (Water Code § 13360). The actual environmental impacts will necessarily depend upon the compliance strategy selected by the local agencies and other permittees.
4.11 5.11 6.11 7.11 8.11 9.11 10.11 11.11 12.11 13.10	City of Covina City of West Covina City of Santa Fe Springs City of Bellflower City of Whittier City of Azusa City of Claremont City of Commerce City of Irwindale City of Signal Hill	The proposed Negative Declaration fails to disclose the impacts on housing by TMDL implementation. Assuming that 30% of the community is covered by sand filters and 30% of the community is covered by infiltration trenches, and assuming that all devices would be installed in single-family residential neighborhoods, land acquisition costs would be significant. The CEQA document fails to discuss the Regional Needs Housing Allocation requirements and the impact of the loss of housing units to urban runoff filters and infiltration trenches.	While it is reasonably foreseeable that the installation of infiltration trenches, sand filters, or other structural BMPs will be necessary to achieve compliance with the TMDL, it is not reasonably foreseeable that the installation of these BMPs would lead to sacrificed housing. Sacrificed housing is not reasonably foreseeable because structural BMPs can be suitable for an ultra-urban setting and can be specifically designed to accommodate limited land area, such as the subsurface Delaware sand filters. The extent to which housing would be affected by implementation of the TMDL would be purely speculative. Furthermore, while much of the area draining to the San Gabriel River is already substantially built out, new housing developments are able to incorporate new structural BMPs that would facilitate compliance with the TMDL. The record in the municipal storm water case demonstrates that SUSMP-type measures can be effective and do

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			not preclude the developing housing.
4.12 5.12 6.12 7.12 8.12 9.12 10.12 11.12 12.12 13.11	City of Covina City of West Covina City of Santa Fe Springs City of Bellflower City of Whittier City of Azusa City of Claremont City of Commerce City of Irwindale City of Signal Hill	The Negative Declaration fails to disclose the impacts on Municipal Services in the proposed Negative Declaration due to the extremely high costs of implementation. Because the City will have to finance the TMDL with general fund money, the City will be required to reduce, eliminate or defer existing critical services to pay for the TMDL.	The substitute environmental documents are not intended to serve as a “negative declaration”. The diversion of resources is an economic impact, which does not contribute to and is not caused by physical impacts on the environment.
4.13 5.13 6.13 7.13 8.13 9.13 10.13 11.13 12.13 13.12	City of Covina City of West Covina City of Santa Fe Springs City of Bellflower City of Whittier City of Azusa City of Claremont City of Commerce City of Irwindale City of Signal Hill	The TMDL fails to discuss financing costs. The City will most likely need to finance capital improvements through municipal bonds, pledged from general fund revenues, resulting in a large debt service.	The staff report takes into account a reasonable range of economic factors in estimating potential costs associated with TMDL compliance. The Regional Board cannot prescribe the method of achieving compliance with the TMDL and is unable to describe the nature of all potential actions to achieve compliance.
4.14 5.14 6.14 7.14 8.14 9.14 10.14 11.14 12.14 13.15	City of Covina City of West Covina City of Santa Fe Springs City of Bellflower City of Whittier City of Azusa City of Claremont City of Commerce City of Irwindale City of Signal Hill	The Regional Board must consider CWC sections 13000 and 13241, especially as the TMDL appears to impose state requirements that are more stringent than federal law (see also <i>City of Burbank v. State Water Resources Control Board</i> (2005) 34 Cal. 4 th 613). The Regional Board’s cost estimates in the proposed TMDL are low. Contrary to Regional Board assertions, the <i>Arcadia</i> case did not decide, one way or another, whether	The proposed TMDL does not establish or alter water quality objectives. Therefore, the analysis set forth in §13241 is not required here, since section 13241 applies when “establishing a water quality objective.” TMDLs are established pursuant to section 13242, to implement existing water quality standards. The Supreme Court’s decision in <i>City of Burbank v. SWRCB</i> has no applicability to this TMDL. First, the TMDL is clearly mandated by

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		<p>section 13241 is implicated when a TMDL is adopted. The refusal of the Regional Board to consider economic is not fair to cities and fiduciary responsibilities to taxpayers.</p>	<p>federal law. Second, the TMDL relies on federal water quality standards established by USEPA, so it clearly does not exceed the federal requirements. Third, in implementing an existing water quality standard under Water Code section 13242 there is no cross-reference to the provisions of Water Code section 13241—as there was in the permitting section (section 13263) which was the subject of <i>City of Burbank</i>. Fourth, assuming that a section 13241 analysis was required and that it would somehow “relax” the TMDL, the provisions of section 303(d) of the Clean Water Act require the establishment of a TMDL to implement existing water quality standards without regard to economic considerations. As such, the more appropriate portion of the City of Burbank decision is that part finding that state law must yield to federal law under the Supremacy Clause of the U.S. Constitution.</p> <p>Despite its position that Water Code section 13241 does not apply, the Regional Board has developed information relevant to the section 13241 factors and considered them where appropriate. For example, the Regional Board has no discretion not to establish the TMDL at a level that will implement CTR. Consideration of economics in establishing the TMDL could not result in a different total maximum daily load; however, the economics are considered in establishing a lengthy and flexible implementation schedule. This is particularly true of municipal storm water dischargers,</p>

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			<p>where the TMDL implementation anticipates the use of BMPs. (See also the economic discussions set out in See Devinny, Kamieniecki, and Stenstrom “Alternative Approaches to Storm Water Quality Control” (2004), included as App. H to Currier et al. “NPDES Stormwater Cost Survey” (2005).</p>
13.14	City of Signal Hill	<p>It is reasonably foreseeable that cities will face extraordinary impacts on municipal services, housing, land uses, parks, street maintenance and public safety as a result of the cumulative impacts of multiple TMDLs in the Los Angeles and San Gabriel watersheds.</p>	<p>The Regional Board is aware of several regulatory actions taking place in the San Gabriel River watershed, each of which will improve the water quality. These projects include the East Fork Trash TMDL, and the upcoming bacteria, toxicity, and algae TMDLs. Any cumulative impact to the cited issues due to diversion of resources is not an environmental impact that involves changes in the physical environment. Implementation of the proposed TMDL and the other TMDL projects will not result in adverse cumulative impacts to the San Gabriel River, in part due to the fact that the MS4 dischargers are already required to implement BMPs to the Maximum Extent Practicable pursuant to the existing MS4 permits.</p>
4.15 5.15 6.15 7.15 8.15 9.15 10.15 11.15 12.15	City of Covina City of West Covina City of Santa Fe Springs City of Bellflower City of Whittier City of Azusa City of Claremont City of Commerce City of Irwindale	<p>Cities in the San Gabriel watershed are given less time to comply with the proposed TMDL than cities affected by the Los Angeles River Metals TMDL.</p>	<p>The compliance dates are different because, first, the area to be treated under the proposed San Gabriel River Metals TMDL is smaller than the area to be treated under the Los Angeles River Metals TMDL. Second, the final compliance date in the Los Angeles River Metals TMDL assumes that municipalities will employ an integrated water resources approach. In response to subsequent Board direction, the</p>

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13.16	City of Signal Hill		use of an integrated resources approach is not implicitly assumed in the proposed San Gabriel River Metals TMDL. However, the proposed TMDL allows additional compliance time beyond 15 years if an integrated approach is used.
4.16 5.16 6.16 7.16 8.16 9.16 10.16 11.16 12.16 13.17	City of Covina City of West Covina City of Santa Fe Springs City of Bellflower City of Whittier City of Azusa City of Claremont City of Commerce City of Irwindale City of Signal Hill	The Regional Board has failed to consider feasible alternatives to the numeric limits proposed in the TMDL. One option is to establish limits higher than the CTR. There is significant evidence that CTR limits are too severe and unnecessary for local water bodies. Another option is to present a source control alternative (e.g., copper in brake pads, zinc in tires). Another option is to work with EPA and the environmental community to change deadlines in the Consent Decree to accommodate time for special studies. The CEQA document has failed to adequately disclose the impacts of other TMDLs on the San Gabriel River and their interrelationship to the Metals TMDL.	CEQA does not mandate an alternatives analysis except with respect to those parts of the project that could result in significant adverse environmental impacts. The commenter has not suggested what impacts might occur as a result of numeric vs. non-numeric limits. The Regional Board has no discretion to establish WLAs that are not derived from the CTR, or that are higher than the CTR would allow. The discretion, for which appropriate alternatives are considered, is contained within the program of implementation. Source control measures are discussed in the implementation plan and permittees are encouraged to pursue source control as a means of compliance. The Regional Board and State Board are working with the Air Resources Board to further address sources of metals loading by air deposition. The TMDL, as proposed, already accommodates time for special studies. Reductions are not required until after the results of special studies are submitted to the Regional Board and the TMDL has been reconsidered. See also response to Comment No. 13.14.
13.18 and 13.20	Signal Hill	There is sufficient confusion in the regional documents on whether Signal Hill is in the San Gabriel River watershed.	As shown in Figure 12 of the staff report, Signal Hill is not located in the San Gabriel River watershed and is not subject to the proposed

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			TMDL. Furthermore, during the public comment period, Regional Board staff provided a list of cities in the San Gabriel River watershed, which did not include Signal Hill, to the consultant who prepared Attachment Three to the Signal Hill comments.
13.21 14.1	Signal Hill Downey	The true environmental impacts of the TMDL are obscured due to the incomplete project description and the proposal by the Regional Board to adopt a "negative declaration" as opposed to preparing a full Environmental Impact Report or its functional equivalent.	See response to comment Nos. 4.8 to 13.8.
13.22 14.2	Signal Hill Downey	The TMDL fails to address the inability of local government to regulate sources beyond their control. Some Regional Boards recognize this hardship by including "exemptions" in their municipal storm water permits, such as the permit for Orange County.	Municipal permittees are responsible for storm water that they discharge to the river. For example, although municipalities may not have direct control over atmospheric deposition, they do have control over infrastructures that facilitate pollutant washoff and discharge to the storm drain system and other surface waters. Once metals are deposited on land under the jurisdiction of a permittee, they are within a permittee's control and responsibility. See also response to comment Nos. 2.3 to 13.4 and 13.5.a.
13.23 14.3	Signal Hill Downey	The TMDL erroneously assumes that a mix of structural and nonstructural BMPs will comply with the CTR objectives, which are lower than the amount of metals in drinking water supply.	The Regional Board cannot prescribe the method of achieving compliance with the TMDL and is unable to describe the nature of all potential actions to achieve compliance. However, staff has indicated reasonably foreseeable methods of implementing the TMDL. The staff report and references in the administrative record demonstrate that a mix of

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			structural and non-structural BMPs will achieve the waste load allocations.
13.24 14.4	Signal Hill Downey	The Regional Board's documents fail to address the significant sources of metal loads that may originate in the Angeles National Forest and other open space areas, especially as the result of atmospheric deposition and deposition from forest fires. The TMDL load allocations make Signal Hill responsible for sources of metals beyond local government jurisdiction.	See responses to comment Nos. 2.2 to 13.2 and 13.22.
13.25 14.5	Signal Hill Downey	The project description includes only a cursory discussion of the methods of compliance. The TMDL fails to discuss the likely locations of structural BMPs. It is reasonably foreseeable that facilities will be built immediately prior to the San Gabriel River, its tributaries and flood control channels, because other factors restrict the location of BMPs.	See response to comment Nos. 4.10 to 13.9.
13.26 14.6	Signal Hill Downey	The cities have estimated that retention basins will be required for filters, trenches and micro-filtration facilities. The vast majority of land where sand filters, trenches and retention basins could be built is developed with single family homes, which will have to be demolished to comply with this TMDL.	See response to comment Nos. 4.11 to 13.10.
13.27 14.7	Signal Hill Downey	The Regional Board's contention that the environmental analysis constitutes the first level "tier" of environmental documents that will be prepared to implement the TMDL does not change the expectation	The environmental review satisfies the requirements of CEQA applicable to a State agency with a certified regulatory program under section 21080.5 of the Public Resources Code. The analysis considers all reasonably

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		that analysis will be performed and impacts discussed with this TMDL. Tiering does not excuse a lead agency from adequately analyzing the reasonably foreseeable significant environmental effects of the project and does not justify deferring the analysis to a later tier EIR or negative declaration.	foreseeable environmental impacts associated with the proposed TMDL, including impacts associated with reasonably foreseeable implementation measures to be developed and deployed by others, at a level of detail appropriate for the first step in a dynamic tiered process of implementation.
13.28 14.8	Signal Hill Downey	The Regional Board has also stated the costs of land acquisition for siting of the infiltration trenches and sand filters were not calculated because the lead agency need not speculate (Page 61). Signal Hill believes that the Regional Board cannot claim that an impact is speculative and then summarily terminate the discussion. This act requires an expanded discussion, investigation and analysis.	See response to comment Nos. 4.10 to 13.9.
13.29 14.9	Signal Hill Downey	The effect of the failure to adequately describe the project limits meaningful public and agency comment and violates one of the basic tenants of CEQA Public participation. The public is ill equipped to understand the science and engineering involved in the TMDL, which requires that their storm water discharges comply with the California Toxic Rule. Due to the Regional Board not specifying the "design storm," it can only be concluded that cities must design treatment works for the largest storm events.	<p>The environmental review documents, including the CEQA checklist, the staff report, and Basin Plan amendment, include a detailed project description and an analysis of all reasonable implementation measures, which has allowed for meaningful public review of the potential environmental impacts of the proposed TMDL.</p> <p>During preparation of the TMDL staff report, staff held a CEQA scoping meeting on December 12, 2005, to receive comments on the appropriate scope and content of the environmental documents. At the request of the scoping meeting participants, staff then held a workshop on March 22, 2006 to present the</p>

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			draft proposed TMDL, responded to stakeholder questions, and received initial comments. The concept of a design storm and its implications for TMDL implementation were discussed at those meetings and in the environmental documents circulated for public review. See also response to comment Nos 2.1, 3.1.
13.30 14.10	Signal Hill Downey	The project description should contain simple and easily understood comparison charts. For example, the Regional Board should display the suite of metals (copper, zinc & lead) found in municipal drinking water in the watershed, as compared to the fresh and marine water California Toxics Rule requirements.	The project description provides an analysis of all reasonable implementation measures and has allowed for meaningful public review of the potential environmental impacts of the proposed TMDL.
13.31 14.11	Signal Hill Downey	Comments on CEQA – Earth 1.a: The project description in the environmental document calls for the construction of additional underground storage vaults and detention basins. These constructed facilities have the potential of uncovering unstable earth conditions and changing geologic substructures. The watershed is underlain by numerous faults and hilltop areas are subject to landslides.	Potential implementation strategies, including underground storage vaults and detention basins require relatively shallow earthwork. Infiltration trenches, sand filters, underground storage vaults are typically less than 10 feet deep and with a footprint of 6500 to 17,500 square feet. Although the San Gabriel watershed is underlain by many faults, these types of facilities are not of the size or scale to cause or accelerate the potential for fault rupture or landslides. The checklist has been revised to provide this clarification.
13.32	Signal Hill	Comments on CEQA – Earth 1.c: Infiltration trenches and sand filters will have to be installed in 5 to 50 acre drainage areas, including on the Hilltop itself. Construction of the sand filters and infiltration have a foreseeable impact on	The City of Signal Hill is not subject to the TMDL so any impacts on the topography and ground surface conditions in Signal Hill are not foreseeable. Nonetheless, the checklist has been revised to provide clarification on the meaning of “size and scale.”

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		the topography and ground surface conditions in Signal Hill.	
13.32. a	Signal Hill	Comments on CEQA – Earth 1.d: The discussion above discloses significant impacts from the covering over or modification of portions of the Hilltop area of Signal Hill.	See response to comment No. 13.32.
13.33 14.13	Signal Hill Downey	Comments on CEQA – Earth 1.e: There is a foreseeable impact on the deposition of silt and sand on the Wetland and beach areas from the implementation of the TMDL. The measures in the TMDL will remove sand and fines from the area, either by direct infiltration of storm water or by filtering processes, which may induce additional erosion downstream or deprive downstream beach areas of nourishment.	This potential impact is analyzed in the environmental documents. The checklist indicates that there may be reasonably foreseeable impacts due to removal of sediment and identifies reasonably foreseeable measures to mitigate any potential impacts.
13.34	Signal Hill	Comments on CEQA – Earth 1.f: It is foreseeable that the anticipated projects may expose people and property to geologic hazards. Excavating infiltration and retention/detention projects in the vicinity of canyon walls has the potential to make walls unstable. Increasing infiltration will increase instability even if the slope in question is already engineered.	The environmental analysis has identified no reasonably foreseeable significant impacts because, although areas of the watershed are subject to geologic hazards, geotechnical studies prepared at the project level would ensure that treatment facilities or structural BMPs were not employed in these areas or that would expose people to those hazards. Potential impacts to slope stability are more appropriately addressed under section Earth.1.b.
13.35 14.15	Signal Hill Downey	Comments on CEQA – Water.3.b: The Regional Board has grossly understated the impacts from the TMDL on the San Gabriel River Estuary. Both power plants discharge over 2.3 billion gallons of water	If zero discharge were chosen as a compliance option, much of the water discharged to the Estuary by the power plants would be replaced by tidally driven ocean water. This would allow the estuary to return to more natural mixing

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		daily into the Estuary. These discharges have been occurring for over forty-years. Removal of this water could adversely impact the water quality in the Estuary and the bay areas.	between freshwater from the San Gabriel River and saltwater from the open ocean.
13.36 14.16	Signal Hill Downey	Comments on CEQA – Water.3.i: Both infiltration trenches and sand filters must be used in conjunction with some type of pretreatment device such as biofiltration strip or gross solids removal device to remove sediment and trash in order to increase their efficiency and service life. These devices can clog during rain events, raising the possibility of localized flooding.	This potential impact is analyzed in the environmental documents. The checklist indicates that there may be reasonably foreseeable flooding impacts and identifies reasonably foreseeable measures to mitigate any potential impacts. The checklist has been revised to add that potential risks of flooding due to clogging of structural treatment devices with debris can be avoided by regular maintenance and inspected prior to storms.
13.37 14.17	Signal Hill Downey	Comments on CEQA – Land Use.8.a: The environmental document fails to analyze the impacts of the loss of land uses in residential, industrial and commercial areas. Filtration devices cannot be installed in existing streets, due to above ground nature of their improvements and the conflicts between standing water and traffic safety. They may be installed in existing municipal parking lots, but would reduce onsite parking. A number of the trenches can be installed in city parks and open spaces, which could render these facilities unusable for recreation purposes during and after rainstorms. The treatment devices would result in substantial changes to residential neighborhoods. In most cases existing homes would have to be	Potential impacts to land use are analyzed in the environmental documents. The analysis considers 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, eliminate, or reduce the identified impacts. Mitigation measures proposed include the design of projects to increase parks and wildlife habitat areas and to improve water quality. Contrary to the commentor’s assertion, many structural BMPs can be designed to provide habitat, recreational areas, and green spaces in addition to improving storm water quality. Furthermore, certain structural BMPs can be suitable for an ultra-urban setting and can be specifically designed to

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		<p>demolished for the construction of filters, storm water conveyances, retention ponds and maintenance areas. It is foreseeable that the City will be required to purchase or condemn private property in the commercial and industrial areas in order to construct these devices. The document fails to discuss the losses in property taxes, sales taxes, utility taxes and other revenues from the rezoning of parcels for the storm water treatment devices.</p>	<p>accommodate limited land area, such as the subsurface Delaware sand filters discussed in the TMDL staff report. Potential conflicts between implementation efforts and other land uses can be resolved by standard planning efforts under which specific projects are reviewed by local planning agencies. It is not reasonably foreseeable that homes would have to be demolished to install structural BMPs. Finally, the loss of tax revenues is an economic impact, which does not contribute to and is not caused by physical impacts on the environment.</p>
<p>13.38 14.18</p>	<p>Signal Hill Downey</p>	<p>Comments on CEQA – Population.11.a: The TMDL will have the foreseeable result of altering the location, distribution, density and growth of the human population in the watershed that must be discussed in the environmental document. Because structural BMPs will have to be installed in residential areas, the TMDL would result in the displacement of numerous people.</p>	<p>It is not foreseeable that implementation of the TMDL would alter the location, distribution, density, or growth rate of the human population of an area, nor is foreseeable that homes would have to be demolished to install structural BMPs. See also response to comment Nos. 4.11 to 13.10.</p>
<p>13.39 14.19</p>	<p>Signal Hill Downey</p>	<p>Comments on CEQA – Housing.12.a: It is reasonable to assume that a portion of the treatment devices will have to be installed in residential neighborhoods. The TMDL will worsen the housing affordability crisis in the watershed. It will remove housing units in a region anticipating 13.7% growth in population by 2020. There was no discussion of the impacts of the TMDL on very-low, low and moderate income residents of our community.</p>	<p>See response to comment Nos. 4.11 to 13.10.</p>

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13.40 14.20	Signal Hill Downey	Comments on CEQA - Transportation.13.a: There is very little vacant land in the urbanized portions of the watershed. The urbanized portions consist primarily of developed properties, including structures and parking lots. This will result in a demand for new parking facilities; including the construction of more expensive parking structures, in areas where land values are high and no suitable replacement parking areas exist.	This potential impact is analyzed in the environmental documents. Structural BMPs can be designed to accommodate space constraints and would not significantly decrease the amount of parking available in existing parking facilities or result in demand for new parking facilities.
13.41 14.21	Signal Hill Downey	Comments on CEQA – Public Services.13.a and b: The TMDL fails to recognize that the California State Constitution and a series of court cases limit municipal funding options for the TMDL. These Constitutional amendments, statutes and case law have a foreseeable indirect impact on local government services. Budget reductions required to fund the TMDL would result in a loss of police and fire protection services.	This potential impact is analyzed in the environmental documents. The diversion of resources is an economic impact, which does not contribute to and is not caused by physical impacts on the environment.
13.42 14.22	Signal Hill Downey	Comments on CEQA – Public Services 13.d: The high costs of the TMDL requirements and the lack of tax funding, will force cities to consider installing treatment device on city parks and open spaces. Many of the cities in the watershed are park deficient. In addition, budget reductions required to fund the TMDL would result in a loss of park maintenance services.	This potential impact is analyzed in the environmental documents. Mitigation measures proposed include the design of structural BMPs to provide habitat, recreational areas, and green spaces in addition to improving storm water quality. The diversion of resources is an economic impact, which does not contribute to and is not caused by physical impacts on the environment.
13.43	Signal Hill	Comments on CEQA – Public Services	This potential impact is analyzed in the

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14.23	Downey	13.e: Budget reductions required to fund the TMDL would result in a loss of street maintenance services.	environmental documents. The diversion of resources is an economic impact, which does not contribute to and is not caused by physical impacts on the environment.
13.44 14.24	Signal Hill Downey	Comments on CEQA – Public Services 13.f: Budget reductions required to fund the TMDL would result in a loss of library, recreation, child-care, transportation, animal control and senior services.	This potential impact is analyzed in the environmental documents. The diversion of resources is an economic impact, which does not contribute to and is not caused by physical impacts on the environment.
13.45 14.25	Signal Hill Downey	Comments on CEQA – Energy.14. a and b: The TMDL has not addressed the potential increase in electrical rates to fund the expenses of upgrading these two power plants or constructing the ocean outfalls. Cities might be required to construct treatment plants, which require large amounts of electrical energy for their operation. Diversion plants will require additional electrical energy to operate pumps. There will also be additional demand electrical demand placed upon the regional wastewater treatment plants, where the dry-weather flows will be diverted. Injection well installations, if chosen, will also require additional electrical power.	The potential impacts to energy by treatment facilities and diversions are analyzed in the environmental documents. The checklist has been revised to specify potential impacts to energy by the use of alternative cooling technologies for the power plants as a foreseeable means of compliance.
13.46 14.26	Signal Hill Downey	Comments on CEQA – Utilities and Service Systems 15: The TMDL may result in the need for additional power, as explained in #14 Energy above. It is also possible that the TMDL will require new telemetry or other communications systems	See response to comment Nos. 13.46 and 14.26. It is not reasonably foreseeable that telemetry or monitoring of facilities would require new communications systems, or substantial alterations to communications utilities because existing communications systems and utilities

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		<p>to monitor treatment facilities. The TMDL will require new sewer systems improvements in order to deal with the dry-weather nuisance flows. New dry-weather fees will have to voter approved or cities will be forced to reduce or eliminate existing services in order to fund these requirements. The construction of micro-filtration or reverse osmosis facilities will result in the generation of brine, which must be disposed of in special landfill or in deep ocean outfalls.</p>	<p>would be sufficient for these purposes. If diversion of runoff to a treatment plant is chosen as an implementation strategy, it is not likely that such a treatment plant would alter or expand its design capacity to accommodate additional the flow. LACSD has stated this fact in their comment letter on the proposed TMDL. The diversion of resources is an economic impact, which does not contribute to and is not caused by physical impacts on the environment. The construction of microfiltration or reverse osmosis facilities is not a reasonably foreseeable means of compliance because it has been shown that a combination of structural and nonstructural BMPs will meet the storm water allocations.</p>
<p>13.47 14.27</p>	<p>Signal Hill Downey</p>	<p>Comments on CEQA – Given that the above-noted significant effects appear to be unmitigable, CEQA requires the evaluation of alternatives that would lessen the impacts. One such alternative should be provided to set the TMDL to a level less restrictive than the California Toxics Rule. A viable implementation alternative includes an expanded discussion of source controls and deposit fees, including not only the reformulation of brake pads mentioned in the TMDL, but deposits on tires and other products generating metals in the environment.</p>	<p>See response to comment Nos. 4.16 to 13.17.</p>
<p>13.48 14.28</p>	<p>Signal Hill Downey</p>	<p>We believe that we have presented a credible case that the Metals TMDL on the San Gabriel River is likely to have</p>	<p>See response to comment Nos. 4.14 to 13.15.</p>

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		economic, social and housing impacts. The Regional Board should conduct the review under Sections 13200 and 13241 of CWC.	
14.12	Downey	Comments on CEQA – Earth 1.b: Infiltration trenches and sand filters will have to be installed in 5 to 50 acre drainage areas, many of which will be constructed near levees, which could be undermined by ponding water or seepage from retention and detention basins.	A potential impact to levees would not be considered a change in topography or ground surface relief features. See analysis of flood impacts under “3.Water.1.” The checklist indicates that there may be reasonably foreseeable flooding impacts and identifies reasonably foreseeable measures to mitigate any potential impacts.
14.14	Downey	It is foreseeable that anticipated projects may expose people and property to geologic hazards. Treatment and detention facilities may have to be constructed in developed areas, near homes.	These potential construction hazards are discussed in “17.Human Health.a.” The checklist indicates that there may be reasonably foreseeable impacts and identifies reasonably foreseeable measures to mitigate any potential impacts such as installing fencing and barricades around structural BMPs.
15.1	City of Lakewood	The potential cost of land acquisition for infiltration trenches and sand filters is high and the time to accomplish such land acquisition may exceed the timeframe to comply with the TMDL process.	Economics have been extensively considered in developing the TMDL implementation program. The TMDL provides a lengthy implementation period, which reflects the economic considerations so that a cost-effective mix of implementation measures and BMPs can be developed.
15.2	City of Lakewood	The City may have to resort to eminent domain processes to obtain needed land. The potential upcoming eminent domain initiative would change requirements and have an unknown impact on the cost of land acquisition.	It is not reasonably foreseeable that the installation of these BMPs would lead cities to resort to eminent domain. This is because structural BMPs can be suitable for an ultra-urban setting and can be specifically designed to accommodate limited land area, such as the subsurface Delaware sand filters.
16.1	CPR	Water Code sections 13000, 13241, and	The proposed TMDL does not establish or alter

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		<p>13242 were not complied with, as required, in developing the TMDL. CTR does not require municipalities to strictly comply with its terms, and thus the TMDL exceeds the requirements of federal law. The reasonably achievable and similar reasonableness standards under state law must be adhered to. As the California Supreme Court determined in Burbank v. SWRCB, the requirements of State law are to be complied with, even when permits, or in this case State regulations, are being adopted pursuant to federal law, unless such requirements are federal mandates. The November 22, 2002 EPA guidance memo determines that under certain circumstances, BMPs are an appropriate form of effluent limits to control pollutants in storm water. As discussed in the Vassey and Atwater memos, the Regional Board has an affirmative duty to consider economics when adopting TMDLs. The City of Arcadia v. SWRCB Court of Appeals decision did not determine whether 13241 applied. The proposed San Gabriel Metals TMDL’s 13241 analysis is inadequate because it leaves out costs of land acquisition, costs estimates by Caltrans, or nonstructural controls and numerous other reports evidence the exorbitant costs and economic impacts from the TMDL.</p>	<p>water quality objectives. Therefore, the analysis set forth in §13241 is not required, since section 13241 applies when “establishing a water quality objective.” The Supreme Court’s decision in City of Burbank v. SWRCB also does not apply to this TMDL. The TMDL relies on federal water quality standards established by USEPA, so it clearly does not exceed the federal requirements.</p> <p>Regional Board staff believe it is reasonable and necessary to carry out the express requirements of Congress to establish TMDLs at a level that implement existing water quality standards (33 U.S.C. 1313(d)(1)(C)) and to carry out national policy to prohibit the discharge of toxic pollutants in toxic amounts (33 U.S.C. 1251(a)(1)(3).)</p> <p>The Regional Board has considered the November 22, 2002 memorandum in establishing this TMDL. The memorandum explicitly states that WLAs should be expressed numerically. The memorandum continues by noting EPA’s expectation is that the TMDL will include language allowing WLAs to be converted into non-numeric BMPs in individual permits. The TMDL specifically allows this for municipal storm water dischargers.</p> <p>As discussed in Ms. Vassey’s memorandum, economics must be considered when establishing a water quality objective. This TMDL does not establish a water quality</p>

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			<p>objective. Instead, as required by section 303(d)(1)(C) of the Clean Water Act and section 13242 of the Water Code it establishes a waste load allocation to implement an existing water quality objective. Here the objective is the CTR criteria established by USEPA.</p> <p>Economics have been extensively considered in developing the TMDL implementation program. For example, the TMDL recognizes that the use of BMPs will be the anticipated means of compliance for municipal dischargers--which makes clear that costly treatment plants do not need to be pursued initially. The TMDL also provides a lengthy implementation period, which reflects the economic considerations that a longer period of time will allow a cost-effective mix of implementation measures and BMPs to be developed. A shorter timeframe would likely trigger a need for treatment plants.</p> <p>In addition, the economic discussion in the staff report satisfies not only the CEQA requirements described in Ms. Vassey's memo, but that analysis would also satisfy any economic "consideration" required by section 13241. Economics were plainly considered in proposing the TMDL; otherwise, the regional board would not have delayed compliance with the final waste load allocations for more than a decade.</p> <p>See also response to comment Nos. 4.14 to 13.15</p>

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16.2	CPR	<p>The TMDL arbitrarily imposes a dry weather waste load allocation for San Gabriel Reach 1 on storm water permittees. Specifically, the staff report provides that the storm water discharge to San Gabriel River Reach 1 is insignificant.</p>	<p>The intent of this section of the staff report cited by the commentor was to explain that the dry-weather storm drain flow is too low to reliably calculate a mass-based waste load allocation. The discharge from storm drains during dry weather is not insignificant and can impact metals loading downstream. As demonstrated in the source analysis section of the staff report, the contribution of metals loading from storm drains during dry weather is significant and, in some cases, is the major source of loading. This is because although the flow may be low, concentrations of metals can be elevated in urban dry-weather runoff. Storm water permittees that discharge to Reach 1 are therefore assigned concentration-based allocations.</p>
16.3	CPR	<p>TMDLs are wrongly applied to waters not on the 303(d) list waste load allocations are wrongly assigned to unidentified waters that “drain to impaired reaches”. Such TMDLs should be “informational” only under section 303(d)(3). While the Board may identify and impaired water body at the same time as it adopts a TMDL, here, there is no indication that the Board is attempting to designate any new water bodies as impaired nor has the Board given notices of its intention to do so.</p>	<p>The Regional Board has the authority to adopt TMDLs for pollutant-water body combinations not on the 303(d) list. In the recent decision on <i>City of Arcadia et al., Los Angeles Regional Water Quality Control Board et al</i>, the Court of Appeals upheld the Regional Board’s authority to establish TMDLs for the Los Angeles River Estuary before it was formally listed on the 303(d) list. (135 Cal.App.4th at 1418-1420.)</p> <p>The water quality data summary in the staff report clearly demonstrates the finding of impairment and provides adequate justification for assigning a TMDL for copper in the Estuary and selenium in San Jose Creek.</p> <p>Addressing the impairing metals and selenium</p>

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			<p>throughout the San Gabriel River watershed will ensure that they do not contribute to impairments elsewhere in the watershed. Metals and selenium allocations are therefore developed for upstream reaches and tributaries that drain to impaired reaches.</p>
16.4	CPR	<p>The TMDLs are not suitable for calculation and are not actual “daily” loads. The wet-weather TMDLs are defined as a function of the “Daily storm volume”. Thus, regardless of the quantity of the water discharged, the TMDLs regulates discharges based upon the concentration of metals in the effluent, and not based on the total load discharged to the waterbody. Moreover, it is improper for the municipal permittees to share waste load allocations with Caltrans.</p>	<p>The expression of the TMDL and storm water waste load allocations as functions of the daily storm volume are mass-based allocations and the implementation section explains how compliance with these mass-based allocations will be measured. The Regional Board has expressed allocations on both a mass and concentration basis depending on site specific loading and assimilation considerations. Allocations for NPDES-regulated municipal storm water discharges from multiple point sources can be expressed as a single categorical waste load allocation when data and information are insufficient to assign each source or outfall an individual allocation.</p>
16.5	CPR	<p>The Regional Board relies entirely upon CTR in setting numeric targets and failed to use a translator to translate narrative objectives contained in the Basin Plan into the numeric targets contained in the TMDL. See 40 CFR §122.44(d)(1)(vi). It is not clear that the numeric targets adopted have any relation to the narrative objectives in the Basin Plan.</p>	<p>The staff report clearly explains how the numeric targets will attain the Basin Plan objectives and achieve water quality standards. The Regional Board’s narrative toxicity objective reflects and implements national policy set by Congress. The Clean Water Act states that, “it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited.” (33 U.S.C. 1251(a)(3)). The federal water quality criteria established by the CTR serve as the numeric water quality objectives for the Los Angeles Region. Numeric</p>

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			<p>targets for the TMDL are thus based on CTR criteria. The criteria themselves are then converted to total recoverable metals using CTR default conversion factors. Attainment of the numeric targets expressed as total recoverable metals will ensure attainment of the dissolved CTR criteria. 40 CFR §122.44(d)(1)(vi) does not apply to establishing TMDLs. It applies when creating effluent limitations for NPDES permits. It is limited to circumstances where no established numeric criteria exist. It does not apply when implementing a numeric criterion such as those set forth in the CTR.</p>
16.6	CPR	<p>The Regional Board has failed to fully and properly determine the loading capacity of the water bodies to which the TMDLs apply. In addition the Board failed to use an accurate translator in translating CTR criteria for dissolved metals into TMDLs for total recoverable metals. The default translators appear to be significantly lower than necessary to meet CTR criteria for dissolved metals. The lack of a water effects ratio is further evidence of the Board's failure to appropriately determine loading capacity. The Board's conclusion that a TMDL is required for lead in San Gabriel River Reach 2, based on 5 exceedances out of 58 samples, while no TMDL is required for 4 exceedances out of 58 samples for copper, is arbitrary</p>	<p>The staff report contains a complete assessment of the loading capacity. Sufficient data was used, and where data was limited, assumptions were clearly stated. The use of default translators to convert from dissolved CTR objectives to total recoverable numeric targets was applied to the margin of safety, which is required by the CWA (33 U.S.C. 1313(d)(1)(C).) The determinations of impairment are supported by the data assessment in the staff report and in conformance with the State Listing Policy.</p>
16.7	CPR	<p>The TMDL wrongly assigns responsibility for nonpoint sources, such as aerial</p>	<p>The proposed TMDL assigns waste load allocations to all permitted sources in the</p>

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		<p>deposition to the MS4s. The TMDL fails to assign a load allocation to nonpoint sources other than miniscule allocations for direct atmospheric deposition and open space. Under TMDL regulations, storm water discharges from sources that are not currently regulated by an NPDES permit are required to be addressed by the load allocation of a TMDL.</p>	<p>watershed and load allocations to all nonpoint sources. See also response to comment No. 13.22 and 14.2.</p>
16.8	CPR	<p>The TMDL fails to include an implementation plan for nonpoint sources, so that there is little likelihood that any such reductions will occur.</p>	<p>See response to Comment Nos. 4.2 to 13.2.</p>
16.9	CPR	<p>The TMDLs are improperly based on non-uses or potential uses, contrary to State law (Water Code section 13241) and Federal law (33 U.S.C. § 1313(d)(1)(A) & (C), 40 C.F.R. § 130.2(d) and 33 U.S.C. § 1313(c)(2)(A).</p>	<p>Section 303(d)(1)(A) makes clear that the a water body is impaired if existing conditions “are not stringent enough to implement any water quality standard applicable to such waters.” Moreover, section 303(d)(1)(C) requires the TMDL to be “established at a level necessary to implement the applicable water quality standard.” This TMDL is being developed to meet water quality objectives set to protect the past, present, and probable beneficial uses (CWC § 13241) of the San Gabriel River as identified in the Basin Plan, and to specifically implement the numeric water quality standards established in the CTR. These beneficial uses must be protected year-round. (Basin Plan page 2-1) Moreover, the toxicity standards (which are a reflection of national policy prohibiting the discharge of toxic pollutants in toxic amounts) are designed to protect presumptive uses under section 101 of</p>

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			<p>the Clean Water Act. The CTR criteria are set to protect both existing and potential beneficial uses of the water body.</p>
16.10	CPR	<p>The TMDLs impose monetary requirements on the cities without compliance with the cost benefit requirements under water codes sections 13165, 13225, and 13267, and the CWA.</p>	<p>Water Code section 13165 is not applicable to this TMDL because Water Code section 13165 only applies to the State Board. Further, the proposed BPA does not specify a technical monitoring program or report to be provided by local agencies.</p> <p>The TMDL does not contain self-executing monitoring program requirements, and an appropriate analysis of benefits and burdens will be undertaken when the regional board orders the preparation of a monitoring and reporting program. The TMDL is not adopted pursuant to Water Code section-13267, but subsequent orders may be. Those orders would require an analysis under Water Code section 13267 for entities discharging waste—such as municipal dischargers. The regional board does not anticipate relying on the authority in Water Code section 13225, subdivision (c)—which allows it to require cities to investigate the quality of waters, even if the cities did not cause or contribute to the waste.</p> <p>The BPA does not specify a compliance monitoring program or report, but instead anticipates a further order from the Regional Board's Executive Officer. At this time, it is not possible to evaluate the burdens of any such report, because the parameters of the program and reports have not been specified in a Water</p>

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			<p>Code section 13267 order. Moreover, responsible agencies will propose reporting requirements to the Regional Board. As such, the responsible agencies will have a role in determining the actual burden. In developing the 13267 order, the Executive Officer will consider costs in relation to the need for data. With respect to benefits to be gained, the TMDL staff report demonstrates the significant impairment and metals loading. This impairment makes the San Gabriel River toxic to aquatic life, contrary to express national policy and goals. Further documenting success or failure in achieving waste load allocations will benefit the responsible agencies and beneficial uses, so that they know when to scale back or reduce compliance efforts.</p>
16.11	CPR	<p>Local agencies have not been consulted and there has been a lack of intergovernmental coordination as required by law under 40 C.F.R. 130.4 and water code §§ 13240 and 13144.</p>	<p>Numerous municipal stakeholders participated in the process leading to the development of this TMDL. Local and state agencies have been consulted at numerous steps. The Regional Board is not bound by Water Code section 13144, but it takes its outreach efforts to local agencies seriously. These efforts have satisfied the requirements of section 13240 of the Water Code. These consultations have resulted in lengthy compliance schedules for municipal dischargers, and significant adjustments to the TMDL.</p>
16.12	CPR	<p>The metals TMDL will result in unfunded mandates in violation of Article XII B, Section 6 of the California Constitution, as well as Government Code section 17516</p>	<p>The entire TMDL is compelled by federal law, and as such, is not an unfunded state mandate. First, the reductions in loading will be required as part of the NPDES permits. The State Board</p>

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		and federal law.	<p>has previously found that the requirement to reimburse local agencies for state-mandated costs does not apply to NPDES permits. SWRCB Order No. WQ 90-3 (In the Matter of San Diego Unified Port District).-Second, the requirement that states develop TMDLs for impaired waters is clearly set forth at 33 U.S.C. 1313(d)-(e). The proposal includes several years for the affected agencies to conduct planning and implementation activities, and to explore and select any necessary funding options, including loans, grants and revenue increases.</p> <p>Moreover, the TMDL implements the applicable water quality standard, and makes all dischargers (regardless of whether they are private individuals, corporations, or public agencies) responsible for meeting the water quality standard. As a result, the TMDL is generally applicable and not subject to subvention requirements in Article XIII.</p> <p>Finally, whether a USEPA regulatory action is a “federal mandate” is irrelevant to analyzing this TMDL under Article XIII of the California Constitution. USEPA found that the CTR did not meet the specific definitions set forth in the federal “Unfunded Mandates Reform Act of 1995.” Those standards are irrelevant to California law.</p>
16.13	CPR	The TMDLs are overly technical, ambiguous, and impossible to understand and contrary to the administrative procedures acts (Government Code §§	The TMDL is clearly explained in the staff report and other supporting documents. In addition, staff held two public workshops prior to releasing the TMDL for public comment in

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		11340)	order to explain the reasoning behind the TMDL, including the analysis of impairments, the development of numeric targets, and the allocation of the loading capacity among all sources. This process has allowed for meaningful public participation in the development of the TMDL.
16.14	CPR	The environmental analysis does not comply with Public Resources Code section 21159 and CEQA Guidelines section 15187.	See response to comment Nos. 4.8 to 13.8 and 13.27 and 4.7.
16.15	CPR	The Board has failed to prepare a first-tier EIR or its functional equivalent, rather the analysis improperly concludes that all that is required for the project is a functionally equivalent mitigated negative declaration. The perfunctory statement of overriding considerations is defective because it predetermines that any unavoidable impacts are outweighed by project benefits and preempts decisions by local agencies, which are the appropriate bodies to determine whether the impacts are overridden by benefits. This blanket override contradicts the basis of the environmental analysis's ultimate conclusion that significant environmental impacts would be mitigated.	See response to comment Nos. 4.8 to 13.8 and 13.27 and 4.7. The commentor is incorrect in suggesting that the lead agency, the Regional Board, is not the appropriate body to make a statement of overriding considerations, and the commentor cites no authority supporting its position. Furthermore, local agencies are not the appropriate bodies to determine the appropriateness of statewide or region-wide regulations that have been delegated by legislative mandate to the Regional Board. The statement of overriding considerations recognizes that the local agencies may or may not choose to comply with the TMDL in a manner that yields the least significant adverse environmental impacts, and may or may not properly implement compliance measures in a means that actually minimizes adverse impacts. Water Code section 13360 prevents the Regional Board from specifying the manner of

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			compliance. Thus, even if feasible mitigation measures are readily available to avoid or minimize impacts, it is still appropriate for the Regional Board to recognize that the local agencies may not employ them
16.16	CPR	The environmental analysis may not defer the analysis of impacts simply because more than one compliance method is available. See <i>Arcadia v. SWRCB</i> and <i>County Sanitation District No. 2 v. County of Kern</i> .	See response to comment No. 13.27 and 14.7.
16.17	CPR	The environmental analysis fails to analyze the impacts of a design storm, specify load reductions for non-point sources, analyze impacts to upstream reaches and tributaries, and provide analysis of impacts from power plant construction projects.	The TMDL accounts for a design storm through the recognition of the upcoming recommendations of the design storm task force. See also response to comment Nos. 2.1 and 3.1. The proposed TMDL assigns load allocations to all nonpoint sources. The implementation plan and analysis of environmental impacts includes the entire urbanized portion of the watershed, including upstream reaches and tributaries. The environmental analysis also identifies impacts and mitigation measures relating to power plant compliance.
16.18	CPR	Under the category of Earth, the checklist concludes without evidence that there will be “No” impact in four issue areas and “Maybe” impacts in three issue areas. There is no foundational evidence as to the size or scale of the required implementation methods, which is the basis for the “No” response. The analysis does not analyze a reasonable range of	See revised CEQA Checklist, Section IV Discussion of Environmental Evaluation, Subsection 1. See also response to comment Nos. 13.31 to 13.34 and 14.11 to 14.14.

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		specific sites base don soil types. Finally, the checklist ignores slope stability issues related to faults, liquefaction zones, and hillsides and elevated land masses.	
16.19	CPR	The checklist summarily determines that there will be no impacts, or only mitigatable impacts, in three subcategories under Air Quality and improperly defers evaluation of impacts and erroneously states that any significant un-mitigatable impacts would be short term in duration and/or are outweighed by the necessity of the project. Operation impacts will not be short term, however.	Regional Board staff believe that the CEQA Checklist adequately analyzes potential impacts on air quality. See revised CEQA Checklist, Section IV Discussion of Environmental Evaluation, Subsection 2.
16.20	CPR	Under the heading of Water, the discussion merely states in a conclusory fashion that impacts are considered positive and inappropriately defers any real environmental evaluation to an undisclosed future time.	Regional Board staff believe that the CEQA Checklist adequately analyzes potential impacts on water. See revised CEQA Checklist, Section IV Discussion of Environmental Evaluation, Subsection 3. See also response to comment Nos. 13.35 to 13.36 and 14.15 to 14.16.
16.21	CPR	Under Plant Life and Animal Life, mitigation measures are only discussed in general, conclusory terms. The checklist fails to recognize that unlined portions of the River, which are populated with riparian habitat and migratory shorebird habitat could be impacted by the project due to scouring ad changes in downstream flow.	Regional Board staff believe that the CEQA Checklist adequately analyzes potential impacts on plant and animal life. Please refer to response to comment No. 25.24 and CEQA Checklist, Section IV Discussion of Environmental Evaluation, Subsections 4a-4d, and 5a-5d.
16.22	CPR	Under the category of Land Use, the proposed mitigation measure of review by local planning agencies is vague. It is	Regional Board staff believe that the CEQA Checklist adequately analyzes potential impacts to land use. See revised CEQA Checklist,

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		unclear what is meant by, “projects may be designed to address the need for more parks and wildlife habitat and to improve water quality” or how this statement resolves land use conflicts	Section IV Discussion of Environmental Evaluation, Subsection 8. Also see response to comment Nos. 13.37 and 14.17.
16.23	CPR	Although the checklist finds that there will be no impact to “Natural Resources” it is clear that much of the land suitable for spreading grounds is also suitable or aggregate mining. As such, the checklist should evaluate the potential for the project to affect the availability of mineral resources.	The analysis required by Public Resources Code section 21159 does not require an examination of every site, but a reasonably representative sample of them. To estimate locations of individual projects, such as areas otherwise suitable for mining, would be speculative, because the Regional Board is prohibited from specifying the manner of compliance with its regulations (Water Code § 13360). The actual environmental impacts will necessarily depend upon the compliance strategy selected by the local agencies and other permittees. Furthermore, the TMDL requires load reductions from urbanized portions of the watershed, in areas that are already substantially built out. To site treatment facilities in areas otherwise suitable for mining is not a reasonably foreseeable means of compliance.
16.24	CPR	More evaluation of impacts and mitigation measures under “Human Health” due to exposure to hazardous substances must be conducted.	The environmental analysis has identified reasonably foreseeable impacts and reasonably foreseeable mitigation measures. Please see CEQA Checklist, Section IV Discussion of Environmental Evaluation, Subsection 10a.
16.25	CPR	There will be impacts to “Population” because the majority of the land where structural BMPs could be constructed is already developed, which could result in significant impacts on housing.	Regional Board staff believe that the CEQA Checklist adequately analyzes potential impacts to population. See CEQA Checklist, Section IV Discussion of Environmental Evaluation, Subsection 11. See also response to comment

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16.26	CPR	Under “Transportation/Circulation” the construction of BMPs could adversely affect local traffic conditions over the long term in the vicinity of construction staging areas, street construction, and access shafts. Moreover, nothing in CEQA suggests that short-term effects cannot be of such significance as to require an EIR.	Nos. 4.11 to 13.10 and 13.38 and 14.18. Regional Board staff believe that the CEQA Checklist adequately analyzes potential impacts on Transportation/Circulation. See CEQA Checklist, Section IV Discussion of Environmental Evaluation, Subsection 13. The checklist identifies mitigation methods such as marking and barricading projects and controlling traffic flow with signals or traffic control personnel in compliance with authorized local police or California Highway Patrol requirements.
16.27	CPR	Under “Public Service” the construction of BMPs could adversely impact access to fire stations, police stations, and schools, as well as impact emergency response times. Moreover, implementation could divert resources from other governmental services. Further, because of land needed to construct BMPs, park land could be impacted.	This is not a reasonably foreseeable impact as the lengthy compliance schedule and phased implementation allow responsible agencies to spread specific projects out over time and over the entire urbanized portion of the watershed so as not to impact response times. The diversion of resources is an economic impact, which does not contribute to and is not caused by physical impacts on the environment.
16.28	CPR	Under “Energy” the conclusion that pumps can be avoided by operating gravity flow BMPs does not excuse the analysis of impacts due to the use of pumps.	Regional Board staff believe that the CEQA Checklist adequately identifies mitigation measures to avoid the impacts associated with pumps. Please refer to CEQA Checklist, Section IV Discussion of Environmental Evaluation, Subsection 15.a.
16.29	CPR	Under “Utilities and Service Systems”, none of the impacts associated with changes to storm water drainage are evaluated nor are mitigation measures proposed. There is no evidence as to why	Regional Board staff believe that the CEQA Checklist adequately identifies potential impacts and mitigation measures. Please refer to CEQA Checklist, Section IV Discussion of Environmental Evaluation, Subsections 16.a to

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		there would be no need for additional wells or piping or hazardous waste disposal requirements or alterations to sewers or septic tanks. There is little discussion as to the makeup or the effectiveness of the structural or non-structural BMPs.	16.f. See also response to comment Nos. 13.46 and 14.26.
16.30	CPR	Under “Aesthetics” the analysis is internally inconsistent because it concludes that there would be no impacts, but then offers mitigation measures to reduce or avoid impacts.	The checklist shall be revised to state “Maybe”.
16.31	CPR	Under “Recreation”, because of the high costs involved in complying with the TMDL, municipalities may well have to utilize park, recreational, or open space, which would adversely impact access to those areas.	This potential impact was addressed in the CEQA checklist as a land use impact under section IV, 8.a. Mitigation measures proposed include the design of projects to increase parks and wildlife habitat areas and to improve water quality. Many structural BMPs can be designed to provide habitat, recreational areas, and green spaces in addition to improving storm water quality. Furthermore, certain structural BMPs can be suitable for an ultra-urban setting and can be specifically designed to accommodate limited land area, such as the subsurface Delaware sand filters discussed in the TMDL staff report.
13.32	CPR	Under “Archeological/Historical” impacts, it is reasonable to assume that the construction of thousands of BMPs, which could cover thousands of acres, would impact historical and paleontological resources.	It is not reasonably foreseeable that the installation of these BMPs would impact historical and paleontological resources. This is because structural BMPs can be suitable for an ultra-urban setting and can be specifically designed to accommodate limited land area, such as the subsurface Delaware sand filters.
16.33	CPR	The checklist improperly concludes that	Circumstances giving rise to mandatory

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		there are no Mandatory Findings of Significance. The City of Los Angeles' Integrated Resources Plan environmental documents concluded that the construction of various storm water projects has the potential to have a significant environmental effect in numerous areas.	findings of significance are set forth in section 15065 of the CEQA Guidelines. None of the impacts described in that section are reasonably foreseeable as a result of the TMDL.
16.34	CPR	The environmental analysis fails to evaluate reasonable alternatives to the reasonable foreseeable methods of compliance or to the TMDL itself. Alternative means of compliance include source reduction and control, stricter enforcement of the general industrial permit, regulation of atmospheric sources, a non-numeric, iterative BMP approach, assigning load allocations to the Angeles National Forest, or a no project alternative.	See response to comment Nos. 4.16 to 13.17 and 13.14.
16.35	CPR	The environmental analysis contains an inadequate analysis of mitigation measures. The Board cannot rely on mitigation of unknown efficacy in concluding that a significant effect either will not occur or will be mitigated to insignificance.	See response to comment No. 13.27 and 14.7.
16.36	CPR	The Board has segmented the project in violation of CEQA by deferring review of potential impacts to the project-level stage and by not evaluating the environmental impacts of all TMDLs for the San Gabriel River at the same time.	See response to comment No. 13.27 and 14.7.
16.37	CPR	The environmental analysis fails to identify and evaluate the cumulative impacts and growth inducing impacts of the project.	See response to comment No. 13.14.

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16.38	CPR	The Board has not complied with CEQA's consultation requirements. For example there is no indication that the regional vector control district has been consulted on potential impacts from mosquito breeding in structural controls.	See response to comment Nos. 13.29 and 14.9.
16.39	CPR	The statement of overriding considerations is deficient because it inappropriately predetermines that the undisclosed, unknown, but unmitigable impacts are outweighed by the necessity of implementing the TMDL.	See response to comment No. 16.15.
16.40	CPR	From attached Flow Science Report: For waters not listed on the State's 303(d) list, a state may develop informational TMDLs only. The TMDL is not designated an informational TMDL, and <i>yet</i> several of the waterbody-constituent pairs for which TMDLs are developed are not currently on or proposed for inclusion in the State's current 303(d) list.	See response to comment No. 16.3.
16.41	CPR	From attached Flow Science Report: a dry-weather TMDL is proposed for copper in the estuary despite the fact that this segment-constituent pair was not listed on either the 1998 or 2002 303(d) lists, and was not proposed for listing in the State Board's draft recommendations for the 2006 303(d) list.	See response to comment No. 16.3.
16.42	CPR	From attached Flow Science Report: the Regional Board compared water quality observations to the chronic CTR criterion for lead, and thereby found a sufficient	The comparison to chronic criteria provides a conservative estimate of impairment and is in conformance with the State Listing Policy.

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		number of exceedances to justify TMDL development. However, comparison of data to the chronic criterion for a wet-weather TMDL is inappropriate.	
16.43	CPR	From attached Flow Science Report: the vast majority of reported exceedances for copper, lead, and zinc on San Gabriel River Reach 2 and Coyote Creek occurred during the 1997-98 El Nino wet season.	See response to comment No. 4.1 to 13.1.
16.44	CPR	From attached Flow Science Report: CTR criteria were not intended to apply to storm water discharges, nor were they intended to be applied without consideration of dilution characteristics or as never-to-be-exceeded values. The State Board has not yet formulated policy or provided guidance to address many of the complex scientific and technical issues relevant to the regulation of storm flows. Further, the Regional Board's Design Storm Task Force has not provided relevant guidance on the size of storm or hydrologic conditions suitable for numeric limits. Thus, we believe that the TMDL's application of these criteria to storm flows is premature.	See responses to comment Nos. 2.4 to 13.3, 19.1, and 19.2.
16.45	CPR	From attached Flow Science Report: The development of Draft TMDL concentration targets may not fully account for site-specific considerations. The use of the estimated site specific dissolved to total recoverable conversion factors results in CTR criteria that are roughly 1.6 to 2.0 times greater than TMDL target	See response to comment No. 20.2.

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		concentrations based on default conversion factors.	
16.46	CPR	From attached Flow Science Report: by assuming that the transmission efficiencies for the San Gabriel River watershed are equal to the transmission efficiencies for the Los Angeles River watershed estimated by Sabin et al. (2004), Flow Science estimate the potential storm water load in the San Gabriel River due to the transmission of indirect atmospheric deposition of metals is significant.	Flow Science is misinterpreting the transmission efficiencies reported in the Sabin et al., 2004 study. The transmission efficiency is the ratio of metals in storm water runoff to metals in atmospheric deposition. The amount of deposited metals available for transport to the river (i.e., not infiltrated) is not known. In a separate study (Sabin et al., 2005) it was found that for a small impervious catchment, atmospheric deposition could potentially account for 57-100% of the metals in storm runoff. However, to generate this number, the study assumed that all the metals deposited on the catchment were available for removal. This assumption cannot be applied to the varied land uses of the San Gabriel River watershed.
16.47	CPR	From attached Flow Science Report: open space load allocations are only granted to areas of the San Gabriel River that are not served by storm drains. This places the burden of controlling open space loads largely on the MS4 and Caltrans permittees.	See response to comment Nos. 4.2 and 13.22.
16.48	CPR	From attached Flow Science Report: runoff volumes are not a simple a function of area. They also depend on factors such as impervious area, antecedent soil conditions, slope, and vegetation. Furthermore, concentrations of constituents may vary widely in runoff from different land use types. This is not considered in the	The calculation of open space allocations based on area is simplified, but adequate. This is the same approach that has been used in previously approved TMDLs. Studies are ongoing to assess the contribution from natural sources. These studies will be evaluated when the TMDL is reconsidered.

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		Draft TMDL's calculation procedure.	
16.49	CPR	From attached Flow Science Report: the dry weather model was not used to determine waste-load allocations in the TMDL. Indeed, the model does not seem to have had any significant role in development of the TMDL at all. It is hard to see how the dry weather model could be used in the future without collection of a substantial amount of additional data and significant refinement of the model	Comment noted. Data collected by special studies will allow for refinement of the model.
16.50	CPR	From attached Flow Science Report: on the whole, while the wet weather model was formulated using sound methodology and the best available data, the model is not able to reproduce observed conditions with adequate precision or accuracy, particularly on timescales. of days or hours, and particularly for areas downstream of flow control structures. Therefore, the model appears to be inadequate for establishing fair and accurate waste load allocations.	Comment noted. The wet-weather model was in fact, not used to set allocations. Data collected by special studies will allow for refinement of the model.
16.51	CPR	From attached Flow Science Report: neither USEPA nor ASCE have found that the typical structural BMPs mentioned above can consistently achieve metal reductions to CTR levels	There is ample evidence in the record that a combination of structural and nonstructural BMPs can be used to achieve compliance with the TMDL.
16.52	CPR	From attached Flow Science Report: The final recommendations and conclusions of the Design Storm Task Force are not currently available, and are not expected for at least several months. Nonetheless, the Draft TMDL does not specify a "design	See response to comment Nos. 2.1 and 3.1.

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		storm" or other design criteria that can be used to size and engineer BMPs or other treatment systems. Thus, it seems premature to require compliance with all storm conditions in the Draft TMDL	
16.53	CPR	From attached atmospheric deposition report: Indirect atmospheric deposition is a major factor in metal pollution found in the San Gabriel River Watershed, due the location of the 1-605 freeway, and the landing approach corridor to Los Angeles International Airport in relation to the river and the relative proximity of the Ports of Long Beach and Los Angeles. The Metals TMDL requires that the cities install and operate metal treatment control devised, when the TMDL should instead emphasize regional source control by working with the South Coast Air Quality Management District (AQMD) to reduce atmospheric deposition of copper, lead, and zinc through the development of control measures through the AQMD, the California Resources Control Board, and USEPA.	See response to Comment Nos. 2.3 to 13.4.
16.54	CPR	The proposed TMDL inappropriately applies CTR criteria to storm water discharges.	See response to comment Nos. 2.4 to 13.3 and 19.2.
16.55	CPR	The proposed TMDL inappropriately assigns numeric targets to unlisted water bodies.	See response to comment No. 16.3.
16.56	CPR	The proposed TMDL fails to assign a load allocation for atmospheric deposition.	See response to Comment Nos. 2.3 to 13.4.

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16.57	CPR	The proposed TMDL fails to assign a load allocation for forests and open space.	See response to Comment Nos. 2.2 to 13.2 and 13.22.
16.58	CPR	The assumption that structural BMPs will only need to be installed in 60% of the urbanized portion of the watershed is low. Unless the TMDL assigns a load allocation and a load reduction requirement to atmospheric deposition and includes a regional implementation program to reduce the amounts of copper, lead, and zinc that enter the atmosphere, iterations of non-structural BMPs are unlikely to achieve compliance with the grouped waste load allocation in 40% of the urbanized portion of the watershed.	The cost analysis is based on reasonably foreseeable compliance methods. The estimation of areas that could be was based on the reported removal efficiencies of structural and non-structural BMPs. The staff report clearly states cost assumptions, BMP selection, and sizing assumptions.
16.59	CPR	The assumption that 30% of the San Gabriel River could be effectively treated with infiltration trenches may not be consistent with soil characteristics in the San Gabriel River Watershed. Neither the staff report nor the Wet-weather model report prepared by Tetra Tech, Inc. presents a clear description of soils in the watershed.	See response to comment No 16.58.
16.60	CPR	The cost analysis was based on a design storm that likely would be insufficient to achieve compliance with the grouped waste load allocation proposed in the draft TMDL. Staff based its estimated costs of treating storm water from storms up to 0.5 inches. The draft amendment to the Basin Plan to incorporate the San Gabriel River and Impaired Tributaries Metals and	See response to comment No 16.58.

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		Selenium TMDL does not define "a particular sized storm as the critical condition." However, it does recognize the variability in storm water flows and that wet-weather loading capacities and allocations vary by storm.	
16.61	CPR	It is unlikely that properly functioning infiltration trenches could be sited to serve more than 10% of the urbanized portion of the San Gabriel River Watershed. Therefore, permittees may have to plan on siting sand filters to serve at least 50% of the urbanized watershed. Furthermore, these sand filters would probably have to be sized to treat at least 1 inch of runoff rather than the 0.5-inch assumed by the Regional Board staff.	See response to comment No 16.58.
16.62	CPR	Even though the implementation report is not due until 4 ½ years after the effective date of the TMDL, the MS4 permittees and Caltrans may be forced to install structural BMPs before their implementation plans are fully developed. Furthermore, the TMDL is to be reconsidered 5 years after the effective date to consider the results of special studies that are to be submitted to the Regional Board 4 years after the effective date. It maybe impossible to demonstrate the required compliance in year 6 if the permittees wait to install structural BMPs until the Regional Board has reconsidered the TMDL in year 5	It is important to provide insurance that the cities are moving forward in a thoughtful manner. Staff therefore believes the cities should begin implementation as soon as possible.
16.63	CPR	The cost estimate underestimates the actual	See response to comment No 16.58.

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17.1	City of Norwalk	<p>costs of complying with the TMDL.</p> <p>The timetable in establishing the San Gabriel Metals and Selenium TMDL has occurred too swiftly. No official version of the proposed TMDL was provided until May 5, 2006. This represents less than forty (40) days to provide comments or suggestions. In comparison, the public was provided over 8 months to review, plan, and provide comments for the LA River Metals TMDL. We are concerned that Staff has not considered or accepted public comments.</p>	<p>During preparation of the TMDL staff report, staff held a CEQA scoping meeting on December 12, 2005, to receive comments on the appropriate scope and content of the environmental documents. At the request of the scoping meeting participants, staff then held a workshop on March 22, 2006 to present the draft proposed TMDL, responded to stakeholder questions, and received initial comments. A fact sheet was distributed at the March workshop, which contained a detailed overview of the draft TMDL. The public comment period was 45 days. The public has had ample time to consider the proposed TMDL and provide comments. The comment deadline allows for three weeks prior to the July 13, 2006 Board meeting for staff to consider comments and make necessary changes. Staff does not anticipate that any potential changes will be substantive or require additional public notice.</p>
17.2	City of Norwalk	<p>LACSD data is indistinguishable during the 10-year period as to when the exceedance of the CTR limits for Selenium occurred in San Jose Creek Reach 1. Nor did staff provide an explanation regarding the timing of the 5 of 61 exceedances of copper in the Estuary. The State Listing policy document shows that for 61 samples, a total of 6 exceedances could occur prior to a 303 (d) listing decision. However, there were only 5 exceedances over the entire 10 years. This is improper</p>	<p>A discussion of the timing of the selenium exceedances was not included in the staff report because detection limits were not an issue for the selenium assessment. The staff report explains the timing of the copper exceedances and the weight of evidence approach to determining the impairment. The copper criterion was exceeded in every sample that was analyzed using detection limits below the criterion. Therefore, more weight was given to the recent data with lower detection limits.</p>

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		in finding impairment and setting waste load allocations.	
17.3	City of Norwalk	Over an 8-year period, only 58 samples were obtained from San Gabriel River Reach 2 and a total of 62 samples from Coyote Creek. Staff has not provided any indication of when the exceedances occurred. Staff should provide additional time to address analyze and rebuke this data.	The staff report presents a detailed summary of the data used in the problem identification and lists the source of the storm water data, which is accessible on the Los Angeles County Department of Public Works website. Furthermore, all data used in the development of the TMDL is public record and available upon request.
17.4	City of Norwalk	Staff has not presented any data, reason, or verification for the use of the saltwater criteria under the CTR is more appropriate than the use of the freshwater criteria. By using the saltwater criteria verses the freshwater criteria for Copper, the limitations decrease dramatically.	The copper target for the Estuary is based on the CTR saltwater criterion because the salinity in the Estuary is greater than 10 parts per thousand 95% or more of the time. The staff report shall be revised to make this clarification.
17.5	City of Norwalk	The City is concerned that future findings and decisions may nullify any action taken prior to the re-opener of this TDML in five years. There is too short of a timeframe to meet reduction goals from Year 5 to Year 6. The City therefore suggests that MS4 permittee be provided with at least three to four years between the Year 5 re-opener and the start of reduction measures.	It is important to provide insurance that the cities are moving forward in a thoughtful manner. Staff therefore believes the cities should begin implementation as soon as possible. Cities can revise the plan based upon new information when the TMDL is reconsidered in five years. The TMDL shall be reconsidered at year 5 to re-evaluate the numeric targets, allocations, and the implementation schedule based on the results of special studies.
18.1	Richards/Watson/Gershon	The Draft TMDL Fails to Comply with Relevant Provisions of CEQA. The Regional Board' s checklist does not provide sufficient analysis of the impacts	The environmental review satisfies the requirements of CEQA applicable to a State agency with a certified regulatory program under section 21080.5 of the Public Resources

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		<p>or offer evidence of ways in which the impacts can be mitigated to a level of insignificance. The potential significant environmental effects include, but are not limited to, the following: (i) significant changes in the water quality as a result of the proposed implementation plans including water flow disruptions, soil displacement, an increase in noise and traffic levels, changes in absorption rates, drainage patterns, and the amount of surface water runoff; (ii) significant impacts on public service and facilities such as fire and police protection, schools, parks and other recreational facilities, maintenance of public facilities and roads, and other governmental services; (iii) significant impacts on utilities and service systems for water and storm water drainage; and (iv) significant impacts on the availability of housing in the region. The failure the Regional Board to undertake a proper study of these impacts and consider the feasibility of alternative impacts results in the Draft TMDL' s invalidation. City of Arcadia 135 Cal. App. 4th at 1426.</p>	<p>Code. The analysis considers all reasonably foreseeable environmental impacts associated with the proposed TMDL, including impacts associated with reasonably foreseeable implementation measures to be developed and deployed by others, at a level of detail appropriate for the first step in a dynamic tiered process of implementation. The commentor merely lists the issue areas on the CEQA checklist and provides no evidence to support a fair argument that the listed impacts could occur.</p>
18.2	Richards/Watson/Gershon	<p>The Draft TMDL Fails to Consider Other Sources of Pollution. The Cities believe that the Regional Board's Draft TMDL does not provide sufficient justification or assurances that the imposition of massive infrastructure projects on Cities will have any net positive effect on reducing the</p>	<p>The TMDL Staff Report discusses sources of metals in the San Gabriel watershed extensively. The analyses in the staff report demonstrate that the waste load allocations will be achieved by a mix of structural and non-structural BMPs and not require massive infrastructure projects. All point sources are</p>

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		metal content in the San Gabriel River watershed. Additionally, the Draft TMDL falsely presumes that the Cities can monitor facilities over which neither the Cities nor any of the other named dischargers have jurisdiction, such as school districts, water districts, state entities, and private landowners. The Regional Board could and should feasibly exercise regulatory jurisdiction over these facilities prior to the adoption of the Draft TMDL.	assigned waste load allocations in the proposed TMDL.
18.3	Richards/Watson/Gershon	The Draft TMDL imposes stringent time limits for the coordination, funding, submission, and realization of a TMDL Implementation Plan. Given the size of the project, the number of agencies involved, and the lack of solid data underlying the TMDL goals, such a timeframe is highly unrealistic.	The size of the watershed, the number of municipalities, and agencies and the data needed were all considered as the timeline was developed. In addition, the proposed TMDL will allow additional compliance time beyond 15 years if an integrated approach is used.
18.4	Richards/Watson/Gershon	The Draft TMDL Amount to an Unfunded Mandate. By requiring compliance with the Draft TMDL, the Regional Board has imposed new programs and/or has required a higher level of service of existing programs that are not required or mandated under the Clean Water Act or any federal regulations thereunder. The imposition of unfunded programs and mandates in the Draft TMDL is inconsistent with the provisions of the California Constitution specifically Article XIII B, Section 6.	The TMDL is compelled under federal law, the WLAs are compelled under federal law, and the TMDL generally applies to municipal and non-municipal dischargers by requiring all dischargers to comply with federal water quality standards. As the entire TMDL is compelled by federal law, it is not an unfunded state mandate. Moreover, the TMDL implements the applicable water quality standard, and makes all dischargers (regardless of whether they are private individuals, corporations, or public

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			<p>agencies) responsible for meeting the water quality standard. As a result, the TMDL is generally applicable and not subject to subvention requirements in Article XIII.</p> <p>See also response to comment No. 16.12.</p>
18.5	Richards/Watson/Gershon	<p>The Draft TMDL is not In Accordance with State Reasonableness Requirements. Regional Board regulations must be "reasonable" (Water Code 13000). Any regulations relating to discharges must be based on water quality objectives that are "reasonably required for that purpose." Water Code § 13263. All water quality objectives adopted by the Regional Board must be reasonably achievable and take into account a variety of factors including, but not limited to, those factors enumerated in Water Code section 13241.</p> <p>Because of the high variability present in the frequency and duration of storm events, numeric limits for municipal storm water discharges should be employed only in rare cases. See EP A Memorandum, Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on those WLAs (November 22, 2002). In the case of this TMDL, the Cities believe that a more reasonable and appropriate approach is one that utilizes an iterative, BMPs technique intended to produce concentrations in the</p>	<p>The TMDL is required to meet the water quality objectives. The proposed TMDL does not establish or alter water quality objectives. Therefore, the analysis set forth in §13241 is not required here, since section 13241 applies when "establishing a water quality objective." The TMDL supports the use of an iterative BMP approach.</p> <p>See also responses to comment Nos. 16.1 and 19.1.</p>

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18.6	Richards/Watson/Gershon	<p>receiving water to the Maximum Extent Practicable ("MEP").</p> <p>The Draft TMDL Does Not Undertake a Cost/Benefit Analysis. The Regional Board has not properly analyzed the cost and economic impact of the draft TMDL in the manner contemplated by the Clean Water Act and Water Code 13241. Section 1251(a)(2) of title 33 Unites States Code sets as a national goal, “wherever attainable,” an interim goal of water quality. Furthermore, section 1313(c)(2)(A) of title 33 United States Code requires consideration of “use and value” when revising or adopting a new standard. These statues obligate the Regional Board to consider economic factors whenever it seeks to alter or adopt water quality standards. <i>See City of Burbank v. SWRCB</i>. Additionally, although the Regional Board may be able to require a local agency to investigate and report on any technical factors involved in water quality, the economic burden, including the costs of such reports, must bear a reasonable relationship to the need for the report and the benefits to be obtained therefrom. Water Code 13165, 13255(c), 13267(b).</p>	<p>The proposed TMDL does not establish or alter water quality objectives so Water Code section 13241 does not apply. However, the staff report takes into account a reasonable range of economic factors in estimating potential costs associated with TMDL compliance.</p> <p>Despite its position that Water Code section 13241 does not apply, the Regional Board has developed information relevant to the section 13241 factors and considered them where appropriate. For example, the regional board has no discretion not to establish the TMDL at a level that will implement the CTR. Consideration of economics in establishing the TMDL could not result in a different total maximum daily load; however, the economics are considered in establishing a lengthy and flexible implementation schedule. This is particularly true of municipal storm water dischargers, where the TMDL implementation anticipates the use of BMPs.</p> <p>See also response to comment Nos. 4.14 to 13.14.</p>
18.7	Richards/Watson/Gershon	<p>The Scientific Methodology Employed is Vague and Incomplete. In many cases, the data that the Regional Board relied on for the purposes of establishing the TMDL is</p>	<p>The proposed TMDL is based on sound science and was based on the input of numerous stakeholders.</p>

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		<p>based on limited knowledge regarding, among other things, the effects of aerial disposition, the appropriateness of the assimilative capacity study conversion factors, and the effectiveness of mandating numeric limitations over MEP compliant BMPs. The Regional Board has provided no evidence that the implementation of the suggested structural and non-structural BMPs will permit the Cities to meet the numeric limitations imposed by the California Toxic Rules standards. By not subjecting the Draft TMDL to scientific peer review, the Regional Board fails to comply with Health and Safety Code section 57004.</p>	<p>While more complete knowledge is always preferable, sufficient understanding of the science including assimilative capacity, aerial deposition and so forth was considered for a complete, reasonable TMDL. Further refinements of the scientific understanding of the functioning of the river may become available with the results of the special studies in this and other TMDLs or other academic studies and refinements of WLAs can be made. The scientific portions of the TMDL have been peer reviewed in conformance with Health & Safety Code section 57004.B</p>
18.8	Richards/Watson/Gershon	<p>The Draft TMDL Does Not Comply with the Administrative Procedures Act. The draft TMDL does not comply with the requirements of the APA, including, but not limited to making a showing of “necessity,” “authority,” “clarity,” “consistency,” “reference” and “non-duplication.” See Gov. Code 11349.1(a). The Draft TMDL fails to comply with the APA with respect to the “necessity” requirement in that it does not provide substantial evidence, including facts, studies, and expert opinion, sufficient to justify the imposition of the effluent limitations and structural BMPs. Gov’t Code 11349(a). Furthermore, the Draft TMDL does not meet the “consistency” aspect of this Act insofar as it is in conflict</p>	<p>The TMDL is clearly explained in the staff report and other supporting documents. In addition, staff held two public workshops prior to releasing the TMDL for public comment in order to explain the reasoning behind the TMDL, including the analysis of impairments, the development of numeric targets, and the allocation of the loading capacity among all sources. For purposes of state law, the authority and reference for the TMDL is expressly spelled out in the draft resolution. The TMDL is a program of implementation for existing water quality objectives and is necessary under Water Code 13242. Moreover, as detailed at length in the TMDL staff report, Basin Plan Amendment and this response to comments, the TMDL is necessary to comply with section 3039D) (1)C of the Clean Water Act. The need and reference</p>

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		with, and contradictory to, existing statutes, court decision, or provisions of law. See Gov't Code 11349(d).	for it to be a Basin Plan Amendment is provided not only by Water Code section 13242, but also by 40 CFR 130.6(c)(1) (requiring incorporation into the state's water quality management plan, of which the Basin Plan is the only portion within the responsibility of the Los Angeles Regional Board). The commentor does not show how, or in what instances, the TMDL is not "consistent."
18.9	Richards/Watson/Gershon	Approval of the Draft TMDL Constitutes a Quasi-Judicial Act Subject to Substantial Evidence Review. The approval of a TMDL is an act disparate from the adoption of a Basin Plan Amendment. As such, approval of the TMDL Report is a quasi-judicial act subject to the substantial evidence requirements of California Code of Civil Procedure section 1094.5. The Regional Board must "bridge the analytic gap between the raw evidence and ultimate decision or order" and its decision must be "clearly disclosed and adequately sustained." Topanga Assoc. for a Scenic Comm v. County of Los Angeles (1974) 11 Cal. 3d 506, 515 – 16 (citing S.E.C. v. Chenery Corp. (1943) 318 U.S. 80, 94 for the second quotation). As described in detail above, this requirement has not been adequately addressed in the current version of the Draft TMDL.	The data analysis confirms impairment of specified reaches within the San Gabriel River and its tributaries. The source assessment and linkage analysis makes the connection between the sources of metals to the river and the impairment clear.
19.1	County of Los Angeles Department of Public	The proposed TMDL, if adopted, would result in the incorporation of numeric	TMDLs are planning tools under section 303 of the CWA that shall be established solely "to

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	Works	effluent limitations into the municipal stormwater permits, contradicting the MEP principle on which the permit is based.	<p>implement the applicable water quality standards with seasonal variations and a margin of safety.” (33 U.S.C. 1313(d)(1)(C).) TMDLs are not limited by the maximum extent practicable technology standard of section 402(p)(3)(B)(iii) of the CWA. Moreover, CWA section 402(p)(3)(B)(iii) requires that MS4 dischargers “shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, <i>and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.</i>” (Emphasis added.) Even if section 402(p)(3)(B) applied to this TMDL, federal and state courts have uniformly held that the italicized portion of section 402(p)(3)(B) allows NPDES permitting authorities (such as the state) to require compliance with water quality standards. (<i>Defenders of Wildlife v. Browner</i> (9th Cir.1999) 191 F.3d 1159 & <i>BIA v. SWRCB</i> (2004) 124 Cal.App.4th 866.) When dealing with an impaired water body, it is not only “appropriate” under section 402(p)(3)(B) to include other water quality-based requirements, but consistent with the Clean Water Act’s purposes of restoring and protecting our nations waters and the national policy to prohibit discharges of toxic pollutants in toxic amounts, the additional water quality-based requirements would be compelled under section 303(d) of the CWA.</p>

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19.2	County of Los Angeles Department of Public Works	There appears to be no support for applying CTR criteria directly to storm water discharges in the context of a TMDL. Adopting the CTR criteria as numerical objectives for wet weather flows in the San Gabriel River watershed, would be clear violation of the rationale for the CTR criteria, without evidence.	<p>See also response to comment Nos. 2.4 to 13.3.</p> <p>The CTR establishes federal, numeric water quality criteria for inland surface waters in California, including the San Gabriel River. As a result, they are a part of the applicable water quality standards and, hence, the TMDL must be established at levels necessary to implement the CTR. (33 U.S.C. 1313(d)(1)(C); see also Response to Comment 2.20.) The CTR criteria are set at levels designed to protect aquatic life and implement Congressional policy prohibiting toxic discharges in toxic amounts. The CTR contains no wet weather exception. The beneficial uses of that receiving water must be protected in wet and dry weather. Given that the CTR criteria are expressed as concentration, the concentrations at which metals are toxic does not change because there is more water (i.e., the toxicity concentration does not change in wet weather) because expressing the metals load as a concentration inherently controls for the volume of water. (Only contact recreational uses are suspended during high-flows, and only under very specific circumstances.)</p> <p>The TMDL does not apply CTR-based effluent limits to permit holders but rather CTR-based waste load allocations. Because the San Gabriel River is impaired due to exceedances of CTR objectives, there is no excess assimilative capacity to provide dilution during critical conditions. Therefore, waste load allocations based on applicable CTR criteria are the least stringent waste load allocations that could be</p>

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			<p>applied. The TMDL acknowledges that waste load allocations for storm water will likely be implemented through MS4 NPDES permits as BMPs.</p> <p>See also responses to comment Nos. 2.4 to 13.3 and 19.1.</p>
19.3	County of Los Angeles Department of Public Works	The proposed TMDL would establish waste load allocations for water bodies that are not listed as impaired or proposed in the 303(d) list.	See response to comment No. 16.3.
19.4	County of Los Angeles Department of Public Works	In support of the comment provided by the Sanitation Districts of Los Angeles County, the County of Los Angeles Department of Public Works does not believe San Gabriel River Reach 2 is impaired for lead.	The data review in the staff report supports the finding of impairment for lead. See also response to comment No. 23.1.
19.5	County of Los Angeles Department of Public Works	Implementation of the monthly monitoring program should be done under the State's Surface Water Ambient Monitoring Program (SWAMP). The reason for only placing the ambient monitoring responsibility on the MS4 and Caltrans NPDES permittees is also not clear. The TMDL does not address, as required by the CWC, the burden, including costs, that this program will have relative to its expected benefits. The dry-weather ambient monitoring requirements should be changed to quarterly, rather than monthly.	The BPA does not specify a compliance monitoring program or report, but instead anticipates a further order from the Regional Board's Executive Officer. At this time, it is not possible to evaluate the burdens of any such report, because the parameters of the program and reports have not been specified in a Water Code section 13267 order. The responsible agencies will propose reporting requirements to the Regional Board and will therefore have a role in determining the actual burden. In developing the 13267 order, the Executive Officer will consider costs in relation to the need for data. With respect to benefits to be gained, the TMDL staff report demonstrates the significant impairment and metals loading.

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			<p>This impairment makes the San Gabriel River toxic to aquatic life, contrary to express national policy and goals. Further documenting success or failure in achieving waste load allocations will benefit the responsible agencies and beneficial uses, so that they know when to scale back or reduce compliance efforts.</p> <p>Staff believes that the ambient monitoring requirements should remain as monthly requirements. Some of the proposed reaches have never before been monitored. The TMDL has been revised to encourage storm water permittees to coordinate with the San Gabriel River watershed-wide monitoring program, managed through the Southern California Coastal Water Research Project (SCCWRP) and the Los Angeles and San Gabriel Rivers Watershed Council, to avoid duplication and reduce costs.</p>
19.6	County of Los Angeles Department of Public Works	<p>The language describing the required special study in the proposed TMDL should be clarified with respect to how to study's result will be used. To clarify the language Table 7-20.1, Monitoring and Special Studies Element, Page 14, should be modified in the following ways. "...are jointly responsible for conducting a <u>studyies to better understand the mixing of fresh and salt waters in the Estuary and assess the effect of upstream freshwater discharges on water quality and aquatic life beneficial uses in the Estuary. The purpose of the study is to refine the assumptions</u></p>	<p>The Basin Plan amendment shall be revised to clarify the intent of the required special study.</p>

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		<u>made in establishing the Waste Load Allocations for those reaches tributary to the Estuary. Results may lead to an adjustment of those WLAs at the time the TMDL is re-considered. Responsible agencies are encouraged to coordinate with the Southern California Coastal Waters Research Project's ongoing effort to model the Estuary's hydrodynamic characteristics and the fate and transport of metals loading to the Estuary."</u>	
19.7	County of Los Angeles Department of Public Works	The proposed TMDL dry- and wet-weather Waste Load Allocations for MS4 and Caltrans Stormwater Permits should be changed from 10 and 15 years, respectively to 18 and 22 years, which is same as Los Angeles River Metal TMDL. Table 7.20-2, MS4 and Caltrans Stormwater Permits Element, Page 18 of the Draft TMDL, should be modified to change the values from 8 to 14 years, 10 to 18 years, and 15 to 22 years.	See response to comment Nos. 4.15 to 3.16.
19.8	County of Los Angeles Department of Public Works	The CEQA Checklist must analyze the entire "project" and cannot split a "project" into segments and avoid discussing the environmental impacts of the split-off segments. This will defer the responsibilities to other agencies who will be legally bound (upon adoption of the TMDL and its incorporation into NPDES permits) to implement that project. Moreover, the Checklist, in the discussion of deferring mitigation, staff has assumed	See response to comment No. 16.36.

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		feasible mitigation measures for every potential adverse impact. Future actions may result in significant unavoidable impacts. Importantly, the lead agency may not base a negative declaration or mitigated negative declaration on the presumed success of mitigation measures that have not been formulated at the time of project approval.	
20.1	Caltrans	The TMDL numeric targets should be changed from total recoverable to dissolved numeric targets for copper, lead, and zinc. The CTR states that water quality objectives should be expressed in dissolved metals, so the numeric targets in the TMDL should be expressed in dissolved metals. The allocations can then be assigned as total recoverable metals if appropriate.	The TMDL targets, and resulting waste load allocations, are expressed in terms of total recoverable metals to address the potential for dissolution of particulate metals in the receiving water. Attainment of numeric targets expressed as total recoverable metals will ensure attainment of the dissolved CTR criteria.
20.2	Caltrans	The translator for wet weather, which is the default CTR conversion factor, needs to be changed because it results in target and associated allocations that are greater by a factor of two. The margins of safety also needs to be revised from 50 percent to between 10 to 20 percent for TMDLs.	The use of the default conversion factor is applied to the margin of safety to account for uncertainties in developing the targets. Uncertainties arise from the translation of the dissolved criteria to the total recoverable target <u>and</u> the use of the 50 th percentile hardness values. The margin of safety must account for both of these sources of uncertainty. While the margin of safety is implicit, an approximate estimate of its explicit value can be made based on calculations with varying hardness values and translators. The estimated explicit margin of safety would be much less than 50 percent and more on the order of 10 to 20 percent. Special

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			studies may be used to refine the assumptions made in the calculation of numeric targets and to calculate site specific translators. The results of special studies will be reconsidered when the TMDL is reconsidered at year 5, before any metals reductions are required.
20.3	Caltrans	The Draft TMDL should not reject the use of environmental data translators because of weak linear relationship on page 19 of the Staff Report. The relationship between dissolved and total metals is not linear, but a function of the Total Suspended Solids (TSS). An appropriate analysis that considers TSS should be conducted using the environmental data to develop wet weather translators to assign wet weather total recoverable allocations.	The use of default conversion factors is required for the margin of safety, not merely because of the weak linear relationship of dissolved to total metals in the data. See also response to comment No. 20.2.
20.4	Caltrans	The calculation of the load allocations for open space overstates the amount of loading from open space and reduces the amount of loading available for other discharges. The open space load allocations need to be adjusted to match the source analysis and the remaining load assigned to the storm water permittees.	The calculation of open space allocations based on area is simplified, but adequate. This is the same approach that has been used in previously approved TMDLs. Studies are ongoing to assess the contribution from natural sources. These studies will be evaluated when the TMDL is reconsidered.
20.5	Caltrans	The waste load allocations (WLAs) assigned to the Storm water permittees should be separated out into WLA for MS4 permittees and a separate WLA for the Department. The language of the BPA should be changed to state that WLAs are to be applied as receiving water limits.	Data does not currently exist to allow for waste load allocations for Caltrans that are separate from the other municipal storm water permittees. However, the Regional Board will consider any reasonably proposed separate implementation measures submitted by the Department (Caltrans) as part of the proposed implementation plan.

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20.6	Caltrans	The language of the BPA should be changed to state that WLAs are to be applied as receiving water limits.	The proposed Basin Plan amendment has been revised to clarify points of compliance for the storm water waste load allocations.
20.7	Caltrans	The economic analysis for the TMDL, that assumes 30 percent of watershed can be treated with infiltration facilities, should be revised. Site constraints affect the feasibility of the facilities. The reliability and sustainability of the facilities are also an issue.	The cost analysis is provided as a general estimate of the costs based on reasonable foreseeable compliance methods with the TMDL. The estimation of areas that could be treated was based on the reported removal efficiencies of structural and non-structural BMPs. The staff report clearly states cost assumptions, BMP selection, and sizing assumptions.
20.8	Caltrans	The TMDL implementation should follow a holistic approach that defines the ultimate performance requirements of any BMP in the beginning to avoid redesign and retrofitting from a sequential development of previous and future TMDL BMPs.	The Regional Board cannot specify the methods by which responsible agencies achieve compliance with the TMDL. However, as the waste load allocations will be implemented through storm water permits, the administrative record and the fact sheets for the MS4 and Caltrans permits must provide reasonable assurance that the BMPs selected will be sufficient to implement the WLAs.
20.9	Caltrans	The five year monthly wet weather monitoring requirements should be changed to first year monitoring due to costs and time consumption. Based on the results, frequency and number of monitoring locations can be modified.	The TMDL does not require five years of monthly wet weather monitoring. The required ambient monitoring is expected to commence approximately two years from the effective date of the TMDL, which results in a three year monthly monitoring requirement. The purpose of this requirement is to provide sufficient data for a robust analysis of conditions within the San Gabriel River, which will assist in charting improvements in water quality, and ultimately lead to a determination of compliance.

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			<p>The Basin Plan amendment has been revised to state that responsible parties are encouraged to coordinate with the San Gabriel River watershed-wide monitoring program, managed through the Southern California Coastal Water Research Project (SCCWRP) and the Los Angeles and San Gabriel Rivers Watershed Council, to avoid duplication and reduce costs.</p>
20.10	Caltrans	<p>The cost estimates of BMP implementation need to be revised to consider additional expenses of construction in built out locations and the cost of purchasing land that is not included in the Department's available land. The assumption of compliance for 40 percent of watershed without structural control needs to be revised.</p>	<p>The cost analysis is provided as a general estimate of the costs based on reasonable foreseeable compliance methods with the TMDL. To estimate locations of individual projects, and thus land acquisition costs, would be speculative because the Regional Board is prohibited from specifying the manner of compliance with its regulations (Water Code § 13360).</p>
21.1	CICWQ	<p>The BPA needs to consider temporary and highly variable nature of construction projects in regards to waste load allocations. The proposed amendment uses one snapshot in time in order to establish waste load allocations for construction. It is unclear how the amount of area covered by construction permits for San Gabriel Reach 2 and Coyote Creek was calculated.</p>	<p>The TMDL recognizes the variable nature of construction projects. The implementation language for the TMDL allows industry-wide BMP effectiveness studies to be submitted to the Board for their consideration. Individual permittees would then be deemed in compliance if they implemented Regional Board approved BMPs.</p> <p>Staff assumed a relatively constant turnover of construction projects in the urbanized portion of the San Gabriel watershed to obtain an approximate estimate of their acreage. This was only done for the purpose of allocating the total storm water load among the storm water</p>

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			<p>permittees. The total area covered by facilities enrolled under the general construction and industrial storm water permits was obtained from the State Board database. The areas associated with each permit type were then divided by the total developed area to obtain the percentages in Table 6-10. The staff report shall be revised to make this clarification.</p>
21.2	CICWQ	<p>The WLA of zero for all construction stormwater permits during dry weather should be changed. Order No. 99-08 DWQ allows certain non-storm water flows which do not cause or contribute to a violation of any water quality standard. This does not equate to the complete prohibition of non-storm water discharges from construction sites consistent with practical realities. Discharge of impure non-storm water from a construction site will not necessarily lead to a violation of any water quality standard.</p>	<p>The implementation section of the TMDL allows authorized non-storm water flows under the exiting general permit the same concentration-based WLAs as those assigned to the non-storm water permits. The zero dry-weather WLA only applies to unauthorized non-storm water flows.</p>
21.3	CICWQ	<p>Atmospheric deposition and natural background levels are not adequately considered in the wet-weather WLA for construction.</p>	<p>Wet-weather load allocations are developed for open space and direct atmospheric deposition. Load allocations are subtracted from the total loading capacity to obtain the storm water waste load allocations. See also responses to comment Nos. 2.2 to 13.2 and 2.3 to 13.4.</p>
21.4	CICWQ	<p>The Draft TMDL should not place unnecessary burden on the construction industry, which could constitute unconstitutional takings or violate substantive due process principles under the Supreme Court's "rough</p>	<p>The WLAs are established to implement existing water quality standards. To the extent a construction site is mobilizing pollutants and discharging storm water containing those mobilized pollutants, the operator is discharging pollutants within the legal ambit of the Clean</p>

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		proportionality” and “rational basis” standards.	Water Act. It is the discharger’s action that is therefore contributing to a violation of water quality standards. No U.S. Supreme Court precedent supports a conclusion that the Regional Board’s establishment of WLAs would rise to a constitutional taking.
21.5	CICWQ	The implementation proposals are devoid of statutorily-required consideration of economic factors.	See responses to comment Nos. 4.14 to 13.15 and 16.1.
21.6	CICWQ	The Draft TMDL has a temporal and spatial disconnect between allocations for construction activities and any such effluent limitation. The Proposed Amendment’s implementation suggests the imposition of effluent limits on construction activities. These effluent limits are seemingly proposed to be measured at the construction sites – many, many miles and perhaps many days away from jurisdictional receiving waters. Construction projects should only need to implement additional BMPs (above and beyond those already required) if it is found that; 1) existing requirements are not sufficient to keep MS4 dischargers from being able to comply with their WLA downstream; and 2) truly representative sampling indicates that construction activities contribute substantially to the exceedances.	The proposed implementation plan, in no way, suggests the imposition of effluent limits on construction sites. The amendment language, which was developed upon recommendation by and with the input of CICWQ, states: “Within six years of the effective date of the TMDL, the construction industry will submit the results of BMP effectiveness studies to determine BMPs that will achieve compliance with the final WLAs assigned to construction storm water permittees. Regional Board staff will bring the recommended BMPs before the Regional Board for consideration within seven years of the effective date of the TMDL. General construction storm water permittees will be considered in compliance with final WLAs if they implement these Regional Board approved BMPs. All permittees must implement the approved BMPs within eight years of the effective date of the TMDL. If no effectiveness studies are conducted and no BMPs are approved by the Regional Board within seven years of the effective date of the TMDL, each

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			<p>general construction storm water permit holder will be subject to site-specific BMPs and monitoring requirements to demonstrate compliance with final WLAs.”</p>
22.1	Golden State Water Company	<p>Golden State Water Company was not formally notified of the proposed TMDL and subsequent developmental processes and public hearings.</p>	<p>Notice of the December 12, 2005 CEQA scoping meeting, March 22, 2006 workshop, and the public hearing on July 13, 2006 were submitted to all interested parties on the Basin Planning and San Gabriel River watershed mailing lists. Notice of the hearing was posted in the newspaper and all TMDL documents were posted to the Regional Board website. Upon hearing of Golden State’s interest in the proposed TMDL during the public comment period, staff immediately forwarded all information to Golden State, added them to the mailing list, and worked with Golden State staff to quickly explain the proposed TMDL requirements.</p>
22.2	Golden State Water Company	<p>The Staff Report only indicates three discharges are enrolled under Los Angeles Regional Board Order Nos. R4-2004-0058 and 95-055 for non-process wastewater. GSWC has over seven permitted discharges to the San Gabriel River enrolled under R4-2004-0058 listed on the website.</p>	<p>The source assessment of the staff report presents a summary of point and nonpoint sources in the watershed and is used to estimate sources of metals loading. The Basin Plan amendment clearly defines the applicability of the TMDL and waste load allocations to all NPDES permits in the watershed.</p>
22.3	Golden State Water Company	<p>The Draft TMDL only indicates two types of permitted discharges that are likely to incur additional charges. The Draft TMDL fails to consider that background concentrations of groundwater within the watershed may exceed TMDL or WLA</p>	<p>The staff report recognizes that background sources of selenium are present in the watershed and allows for special studies to further characterize those sources. The results of special studies will be evaluated when the TMDL is reconsidered.</p>

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23.1	LACSD	<p>limits.</p> <p>Three of the five exceedances of the lead criteria for which a TMDL is now being proposed occurred in the three-month period of November 1997 through January 1998, during EI Nino storm events. Since that time, 55 wet-weather measurements have been taken, and only two exceedances of the dissolved chronic lead CTR criteria were detected. The Listing Policy states that data from short-term natural events, such as an individual EI Nino storm, should not be used as the primary data to determine a listing. The Districts believe the listing for lead for San Gabriel Reach 2 is not a valid listing and does not reflect an actual impairment of the water body. The Districts request that the lead impairment be delisted from the 303(d) list and that no TMDL for lead in San Gabriel River Reach 2 be adopted at this time.</p>	<p>Staff believes that the listing for lead in Reach 2 is valid. The Listing Policy states that data from a short-term natural event (e.g., a storm, flood, or wildfire) shall not be used as the primary data set supporting the listing decision. The exceedances during the 1997/98 storm season occurred over the whole season over several storm events and thus meet the requirements of the listing policy. The two additional exceedances occurred in 2001 and 2005, neither of which were EI Nino storm years. Furthermore, the CTR criteria, against which the assessments were made, apply at all times during wet and dry weather. There are no exceptions for very large storm events.</p>
23.2 23.21 23.26	LACSD	<p>The Districts request that the Regional Board allow for ten years instead of four years for the general industrial dischargers to meet their final wet-weather wasteload allocation for lead. Landfills have specific requirements not to allow water infiltration. The proposed Compliance schedule would not allow a phased incremental approach. Due to the variability introduced by different sites, variations in rainfall intensity, and since we have never designed BMPs specifically for lead removal (or to meet a specific lead load), it is highly conceivable it could take</p>	<p>The Basin Plan amendment shall be revised to allow for the same 9 years to meet final waste load allocations as is currently proposed for copper. Interim waste load allocations for lead will be added based on a percent reduction in load.</p>

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		<p>several wet seasons (several years) to evaluate the performance of various BMPs. The TMDL should also identify a Design Storm. Without a phased approach or the allowance of a design storm, the districts would have to design a retention pond that would treat a 100-year, 24-hour storm, which would be very expensive.</p>	
23.3	LACSD	<p>The environmental documents do not meet the minimum requirements of CEQA. The Regional Board failed to adequately characterize the entire environmental setting, project description, and all of the impacts associated with the implementation of the Metals TMDL at the Districts' landfills. Specifically, the Districts may need to build large-scale sedimentation basins at the Puente Hills Landfill to comply with the numeric effluent limitation for lead in the case of a large storm. This would certainly have a significant impact on many of the resources discussed in the CEQA analysis and for which no potential or likely impact was identified. These include Earth, Air, Water, Plant Life, Animal Life, Noise, Land Use, Population, Housing, Transportation/Circulation, Public Service, Utilities and Service Systems, Aesthetics, Recreation, and Archeological/Historical.</p>	<p>The environmental documents fulfill the requirements of Section 3777, Subdivision (a), and the Regional Board's substantive CEQA obligations. The method by which a discharger decides to achieve compliance is a project-level decision that will require an independent environmental review (Pub. Res. C. § 21159.2) which is beyond the scope of analysis that the Regional Board is required to take (Pub. Res. C. § 21159(d).) However, staff has indicated reasonably foreseeable environmental impacts of the TMDL as an overall program, and reasonably foreseeable environmental impacts of feasible methods of implementing the TMDL. The CEQA substitute documents identify broad mitigation approaches that should be considered at the project level. The CEQA analysis considers construction of structural BMPs or storage, diversion or treatment facilities for storm water, which would include sedimentation basins, as possible means of compliance and has identified reasonably foreseeable impacts and mitigation measures under all of the categories cited by the commentor.</p>
23.3.a	LACSD	<p>The Districts need more time to evaluate</p>	<p>See response to comment No. 23.2. With the</p>

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		<p>wet-weather data to determine to what extent BMPs will help the landfill comply with the requirements of the TMDL. Ideally, the TMDL could be postponed until another wet season has occurred and the BMP performance can be further evaluated. Consequently, the Districts request that the Regional Board do <i>not</i> adopt the TMDL at this time and reconsider this TMDL in 2007.</p>	<p>proposed revisions, general industrial dischargers will have until year 9 to meet final WLAs and to employ an iterative BMP approach.</p>
23.4	LACSD	<p>Compliance with the TMDL will be simplified after landfill closure, The Puente Hills Landfill will stop accepting solid waste near the end of 2013. Once vegetation is established on the final cover (after 2 years), the potential for fine soil to be mobilized by runoff will be significantly reduced. If compliance is required prior to 2015, the Districts may have to implement large structural BMPs (including sedimentation basins). The need for large structural BMPs is not nearly as great after 2015, and the known permanent loss of the environmental resources would only be for a very short-term potential gain.</p>	<p>See response to comment No. 23.2.</p>
23.5 23.23 23.24	LACSD	<p>The TMDL allocations should be based on dissolved not total metals concentrations. The Staff Report contends the basis for giving total allocations in the TMDL is there is a potential for the suspended fraction of the metal to become dissolved. However, the low solubility of lead compounds and irreversible sorption of</p>	<p>Sorption coefficients are variable and subject to local conditions. In the absence of certainty about the partitioning between the sorption/desorption of metals in the receiving water, the targets are based on the total recoverable fraction. The CTR states that it is important that permitting authorities and other authorities have the ability to translate between</p>

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		<p>dissolved lead serve to effectively mitigate against the hypothesis of dissolution of lead from suspended particulate matter. To obtain an appropriate correlation, the Districts request that a special study be included in the TMDL, to determine appropriate conversion factors from total to soluble lead, considering assimilative capacity, before the implementation of the proposed TMDL waste load allocations.</p>	<p>dissolved metal in ambient waters and total recoverable metal in effluent. If effluent limits were expressed in the dissolved form, additional particulate metal could dissolve in the receiving water causing the criteria to be exceeded. The proposed TMDL sets WLAs that will be translated into effluent limits (which will most likely be in the form of BMPs for storm water permittees). The WLAs must therefore be expressed as total recoverable metals to facilitate the development of effluent limits as total recoverable metals.</p> <p>Dischargers are allowed to conduct special studies to propose alternative conversion factors. These special studies will be considered prior to the implementation of final waste load allocations</p>
<p>23.6 23.25</p>	<p>LACSD</p>	<p>Beyond the Districts contention that a design storm should be identified, as discussed above, the TMDL should explicitly provide relief from fire related runoff from natural areas. Such an action will encourage permittees to preserve precious undeveloped open space, which serves multiple critical functions in the environment.</p>	<p>The development of the storm water waste load allocations excludes the contribution from natural sources. In addition, storm water permittees are required to demonstrate compliance in the urbanized portion of the watershed served by storm drains.</p>
<p>23.7</p>	<p>LACSD</p>	<p>For both dry and wet weather allocations, the Basin Plan Amendment is potentially very confusing and hard to interpret. The Districts request that the following language be added to the Implementation Element of the Basin Plan Amendment: "If</p>	<p>The requested language shall be added to the proposed basin Plan amendment.</p>

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		<p>the WLAs are translated to permit limits with different time frequencies, the wet-weather WLAs will not be used to determine a monthly limit, but will only be used in the determination of a daily limit."</p> <p>As an additional comment, the "daily storm volume" needs to be defined in the body of the Basin Plan Amendment as the daily flow in either San Gabriel River Reach 2 or Coyote Creek (depending on the corresponding impairment).</p>	
23.8	LACSD	The Regional Board should revise this proposed TMDL and not include diversion to a wastewater collection system as a treatment strategy for diverted storm flows.	The proposed strategy is not required, but only discussed as a potential means of compliance. If LACSD could not accept diverted flow, municipalities might divert flow to another treatment facility.
23.9	LACSD	<p>The cost analysis fails to assess the cost and adverse economic impacts of implementing the wet-weather waste load allocations applicable to general industrial stormwater discharges from the Puente Hills Landfill, in contravention to Water Code section 130005 and the California Administrative Procedures Act (APA). (See Cal. Gov't Code §§ 1 1346.3 (a), 11346.5, 11349.1(d)(1) and (2), as required under section 1 1353(b)). Furthermore, since cost considerations were largely omitted from consideration by U.S. EPA when promulgating the CTR criteria, upon which the Metals TMDL is based, the Regional Board should be critically</p>	<p>The staff report takes into account a reasonable range of economic factors in estimating potential costs associated with TMDL compliance. The Regional Board cannot prescribe the method of achieving compliance with the TMDL and is unable to describe the nature of all potential actions to achieve compliance.</p> <p>Under the express terms of Government Code subsections 11353(a) and (b), sections 11346.3, 11346.5, and 11349.1(d) do not apply to the Regional Boards' basin planning functions.</p> <p>See also responses to comment Nos. 4.14 to 3.15 and 16.1.</p>

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		<p>analyzing compliance costs in this arena, to ensure compliance with Water Code sections 13240, <i>et seq.</i></p> <p>The cost analysis only generally reviewed estimated costs of implementing several structural and non-structural BMPs using U.S. EPA and Federal Highway Administration estimates. These estimates are not accurate portrayals of the actions that will be required by the Districts to comply, or the cost that will be incurred to comply.</p>	
23.10	LACSD	<p>The Consent Decree does not require the Metals TMDL for any reach in the San Gabriel River Watershed (including San Gabriel River Reach 2 and Coyote Creek). Consent Decree Analytical Unit 39 includes three listings for metals in the San Gabriel Watershed: arsenic in fish tissue for the Estuary; silver in fish tissue in Coyote Creek and lead (in the water column) for Sari Jose Creek Reach 2. The fish tissue listings were de-listed for the 2002 303(d) list and the original listing basis for the remaining listing has never been established. Furthermore, the data assessment presented in the Staff Report establishes there is no lead impairment for San Jose Creek. Therefore. The development of this TMDL should no longer be bound by the schedule in this consent decree.</p>	<p>TMDLs are required for impaired water bodies. The Regional Board is not limited to considering the analytical unit 39 of the Consent Decree. While that analytical unit indicates what USEPA must adopt in order to avoid sanctions, the development of TMDLs for impaired water bodies remains a legal obligation of the regional board. The proposed TMDL addresses the 2002 metals listings in the San Gabriel River and Coyote Creek as well additional impairments found in the Estuary and San Jose Creek Reach 1 based on more recent data. The proposed TMDL facilitates coordinated control of water quality problems and ensures the attainment of water quality standards in impaired water bodies. Finally, as an implementation program for an existing water quality objectives, the TMDLs are clearly permissible at any time under Water Code section 13242. Addressing all known impairments in a comprehensive action makes</p>

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		<p>The Districts request the Regional Board obtain confirmation in writing from U.S. EPA that the adoption of this TMDL is, in fact, required by the Consent Decree prior to proceeding. Orders not supported by the findings or findings not supported by the evidence in the record constitute an abuse of discretion.</p>	<p>the best use of state and local agency resources.</p>
23.11	LACSD	<p>The Regional Water Board is taking an iterative approach to compliance with copper WLAs in the proposed TMDL, allowing testing and monitoring of BMPs for the first four years of implementation and nine years for full compliance. (Basin Plan Amendment at 16-17.) Facilities face the same challenges with regard to achieving lead reductions, and therefore a longer compliance schedule should also be applied to the WLAs for lead.</p>	<p>See response to comment No. 23.2.</p>
23.12	LACSD	<p>The proposed Metals TMDL contains numeric limits for storm water in the form of loading capacities (which are the CTR-derived wet-weather numeric target multiplied by the daily storm flow). Given that the results from the State Board's technical panel will have fundamental outreaching effects on this and other proposed and adopted TMDLs, this TMDL should not be adopted until the technical panel has concluded if and when numeric limits are appropriate for storm water discharges.</p>	<p>CTR imposes water quality standards that apply to all surface waters in the Region. The TMDLs in turn prescribe waste load allocations required to achieve these standards. Because the San Gabriel River is impaired due to exceedances of CTR objectives, there is no excess assimilative capacity to provide dilution during critical conditions. Therefore, waste load allocations based on applicable CTR criteria are the least stringent waste load allocations that could be applied. The proposed Basin Plan amendment reflects the expectation that waste load allocations will be complied with in the form of BMPs, if it is demonstrated that BMPs will</p>

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			<p>meet waste load allocations. Through the wet-weather task force, staff is addressing the issue of a design storm. Based on the task force's recommendation, staff will bring the definition of a storm that will address compliance with multiple TMDLs to the Board for their consideration as a Basin Plan amendment.</p>
23.13	LACSD	<p>Finding Number 9 in the resolution states that the TMDL is being established to protect the aquatic life and water supply beneficial uses of the San Gabriel River and its tributaries. This statement is misleading. Except for San Gabriel River Reaches 4 and S, which are upstream from any impairments in the watershed, the only existing water supply use is for industrial water supply use in the estuary. This finding should be reworded to only address aquatic life or should otherwise clarify that this TMDL will have no impact on existing water supply beneficial uses in the watershed.</p>	<p>There are groundwater recharge beneficial uses throughout the watershed in Reach 2 and above.</p>
23.14	LACSD	<p>The TMDL is based on the assumption that the metals loading in wet weather is the same from every type of land use in the watershed. This assumption is an oversimplification. Beyond the area of a site, runoff volumes also depend on factors such as impervious area, antecedent soil conditions, slope, and vegetation. Furthermore, concentrations of constituents may vary widely in runoff from different land use types. The Regional Board should</p>	<p>The calculation of open space allocations based on area is simplified, but adequate. This is the same approach that has been used in previously approved TMDLs. Studies are ongoing to assess the contribution from natural sources. These studies will be evaluated when the TMDL is reconsidered.</p>

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		address that runoff concentrations may be different from different land uses in a special study if not before TMDL adoption.	
23.15	LACSD	The Districts request that the Regional Board include the reference to copper with relation to the required special study as it was clearly intended in the TMDL.	The Basin Plan amendment shall be revised to incorporate this change.
23.16	LACSD	The Regional Board should not assert that the implementation costs of this TMDL will address other impairments in the watershed. It is very likely that the implementation of the Metals TMDL will not have a significant impact on the toxicity or bacteria impairments in the watershed.	The supporting EPA and FHWA fact sheets show that many of the structural BMPs designed to remove metals remove bacteria and pollutants associated with toxicity as well. It is likely that implementation costs of this TMDL will apply to other TMDLs as well.
23.17	LACSD	The Staff Report claims that reducing the metals concentrations in the water column is intended to address the fish histology impairments in the watershed. The Regional Board has no basis to claim that reduced metals concentrations in the water column will address the fish histology impairments.	The staff report shall be revised to make this change.
23.18	LACSD	<p>The Staff Report incorrectly refers to Coyote Creek in the conclusion of the Problem Identification section.</p> <p>Table 4-10 of the Staff Report is incomplete. The Regional Board staff should complete this table and distribute it as soon as possible.</p>	The Introduction section of the staff report will be revised to remove the sentence regarding the fish histology listing.
23.19	LACSD	Compliance with the TMDL is based upon flow measurements at the specified gauging stations and the metal	Specific monitoring requirements will be proposed by responsible agencies in response to an order from the Executive Officer.

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		concentrations in samples collected at the specified gauging stations. The Staff Report should include a description of specifically how the flow measurements are made and how the samples are collected and analyzed.	
23.20	LACSD	Facilities covered under the General Industrial permit may have multiple sampling locations where storm water runoff leaves the site. Samples collected at these different locations will likely have different concentrations of constituents. The Metals TMDL should provide guidance regarding how compliance will be determined in this situation.	Waste load allocations for the general industrial storm water permits will be incorporated into the State Board general permit upon renewal or into a watershed-specific general permit developed by the Regional Board. Specifics of the monitoring and reporting shall be determined by the permit writer at the time of permit renewal.
23.22	LACSD	It is unclear whether data sets are appropriate for determining a lead wet-weather TMDL because comparisons were made to the chronic lead criterion.	The comparison to chronic criteria provides a conservative estimate of impairment and is in conformance with the State Listing Policy.
24.1	Heal the Bay	The Draft TMDL should include dry-weather <i>and</i> wet-weather numeric targets for each waterbody-pollutant combination included on the 303(d) List. The 303(d) List does not distinguish between impairments occurring in dry- weather and wet-weather. Also other TMDLs in Region 4 such as the Calleguas Creek Metals TMDL include dry-weather and wet-weather numeric targets for each impaired waterbody.	While the 303(d) list does not distinguish between dry and wet weather impairments, the listings were primarily based on LACDPW storm water data. The TMDL data review confirmed this and showed that there were different impairments in different reaches for wet and dry weather. Staff evaluated both dry and wet weather data collected by LACDPW for San Gabriel Reach 2 and Coyote Creek. The data showed no impairments during dry weather. This is consistent with previous studies which show that the majority of metals loading to rivers in the region occur during storm events. For San Gabriel River Reach 2, a lack of

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			<p>dry-weather impairment is consistent with the use of various groundwater recharge facilities in the upper and middle portions of the watershed.</p> <p>However, Regional Board staff understands that excluding dry-weather numeric targets for these pollutant-waterbody combinations could be considered “pocket de-listings” and the importance of setting dry-weather numeric targets. Therefore, staff proposes to revise the Basin Plan amendment to state that within 1 year of the effective date of the 2006 303(d) list, the Regional Board shall reconsider this TMDL to include dry-weather numeric targets for lead in San Gabriel River Reach 2 and lead and zinc in Coyote Creek.</p>
24.2	Heal the Bay	<p>The Draft TMDL should include dry-weather and wet-weather numeric targets based on <i>chronic</i> aquatic life criteria. The Staff Report does not provide an analysis of storm data to justify the use of wet-weather numeric limits based on acute criteria. Rain events can last longer than 4 days, thereby warranting wet-weather numeric targets based on chronic criteria.</p>	<p>The rainfall data used in the modeling effort shows that storms are generally shorter than 4 days. However, staff acknowledges that some rain events can last longer than 4 days. The use of dry-weather targets based on chronic criteria will ensure that beneficial uses are protected at all times. The proposed change to the Basin Plan amendment to include dry-weather numeric targets for lead in San Gabriel River Reach 2 and lead and zinc in Coyote Creek should address this issue.</p>
24.3	Heal the Bay	<p>The Regional Board should include numeric targets based on sediment quality guidelines and consider developing numeric targets based on bird egg targets as was done in the Calleguas Creek Metals and Selenium TMDL that was recently</p>	<p>The implementation schedule in the proposed Basin Plan amendment has been revised to state that the Regional Board re-evaluate numeric targets (including, if necessary, the addition of alternative targets based on sediment quality guidelines to protect benthic sediments in the</p>

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		adopted by the Regional Board and supported by watershed stakeholders and Heal the Bay.	Estuary), when the TMDL is reconsidered.
24.4	Heal the Bay	It is more appropriate and protective to use the 10th percentile hardness in calculating numeric targets for metals. Using the 50th percentile hardness is a non-conservative assumption, as it allows that about half-of-the-time higher levels of pollutant will be bioavailable in the waterbody than accounted for in the target.	<p>Because of the variability in hardness values during wet weather, the 10th percentile of hardness data would not accurately represent the hardness values during storm water conditions. Instead, the 50th percentile of the hardness values is used in calculating the wet weather numeric targets.</p> <p>The use of default translators provides an adequate margin of safety to account for any uncertainties in the use of hardness values to calculate the targets.</p> <p>Regional Board staff is currently working on a Basin Plan amendment to adopt implementation provisions for CTR criteria that will determine the appropriate use of hardness values in determining site specific objectives. These implementation provisions will be applicable to multiple TMDLs.</p>
24.5	Heal the Bay	The Regional Board should not prematurely dismiss the current 303(d) listings for zinc in San Gabriel River Reach 2 and selenium in Coyote Creek. The implementation schedule should include an item directing Regional Board staff to develop WLAs and LAs for these pollutant-waterbody combinations if an impairment is maintained on the final 2006 303(d) List.	<p>The proposed Basin Plan amendment has been revised to include an item directing Regional Board staff to develop WLAs and LAs for these pollutant-waterbody combinations if an impairment is maintained on the final 2006 303(d) List.</p> <p>The 1998 303(d) list, upon which the Consent Decree is based, does not include an impairment for lead in San Jose Creek Reach 2. The 1998</p>

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		<p>In addition, the Consent Decree requires that a TMDL be developed for lead in San Jose Creek. Yet the draft TMDL Staff Report states that this was likely a typo in the Consent Decree, and the Regional Board will not develop a TMDL for lead in San Jose Creek. Pursuant to the Consent Decree, the agencies must give Heal the Bay and BayKeeper advance notice that they are not going to do this TMDL.</p>	<p>303(d) list does include an impairment for lead in <i>San Gabriel</i> Reach 2, which is not reflected in the Consent Decree. Staff therefore deduced that the two reaches were switched on the Consent Decree.</p> <p>Staff will work with U.S. EPA to ensure that U.S. EPA submits notification of the proposed de-listing to the Consent Decree plaintiffs prior to EPA approval. In the future, staff will contact the Consent Decree Plaintiffs earlier in the data review and decision making process.</p>
24.6	Heal the Bay	<p>The use of the CTR default translators does not provide an implicit margin of safety. First, Los Angeles River dry weather data should not be used to draw conclusions about metal availability in the San Gabriel River Watershed as these are two separate systems. Also, the Los Angeles County Department of Public Works storm water data set for the San Gabriel River Watershed is extremely limited and may not provide a complete picture of variability in the system. Finally, the graphs of total versus dissolved metal storm water data and the CTR default acute conversion factors provided in Figures 6-9 of the Staff Report show that several of the data points are above the acute conversion factor curve. Plainly, the plots show that the system is highly variable and that there are periods of time when the default translator does not overestimate the fraction of copper in the dissolved form.</p>	<p>The use of default conversion factors provides an implicit margin of safety in dry and wet weather.</p> <p>The Los Angeles and San Gabriel river systems are separate systems, but they have similar hydrogeological characteristics, land uses, and sources of flow and pollutant loading. They are adjacent to one another and hydrologically connected via the Rio Hondo. Applying information about metals availability during dry weather in the Los Angeles River to the San Gabriel River is simplified, but defensible.</p> <p>In wet weather, Figures 6-9 demonstrate that most of the data points (dissolved/total) fall below the acute conversion factor line. (3/58 data points fell above the lead line in San Gabriel Reach 2. In Coyote Creek, 1/62 data points fell above the lead line and 3/62 data points fell above the zinc line.) Furthermore, literature supports the conclusion that the</p>

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			<p>conversion factors greatly underestimate the portion of metals in the particulate form.</p> <p>The ambient monitoring program will contain robust monitoring requirements for both total recoverable and dissolved metals, as well as sediment monitoring requirements, to refine the assumptions made in the development of numeric targets. Based on the ambient monitoring data obtained, the targets will be reevaluated at year 5.</p>
24.7	Heal the Bay	<p>The Regional Board should incorporate an explicit margin of safety into numeric target calculations. The assumptions made in developing targets are not conservative. Furthermore, CTR criteria themselves have associated uncertainties. For instance as described in the Federal Registry, “[a]n aquatic life criterion derived using EPA’s CWA section 304(a) method ``might be thought of as an estimate of the highest concentration of a substance in water which does not present a significant risk to the aquatic organisms in the water and their uses.” EPA’s 1985 Guidelines attempt to provide a reasonable and adequate amount of protection with only a small possibility of substantial overprotection or underprotection.” 40 CFR part 131, emphasis added.</p> <p>The Regional Board has been very inconsistent in applying a margin of safety to TMDLs in Regional 4. Several metals</p>	<p>Because models were used to set load and waste load allocations for certain metals in the Calleguas Creek and Marina del Rey TMDLs, those TMDLs contained more uncertainty than the proposed San Gabriel River Metal TMDL and therefore needed to include an explicit margin of safety. Because the numeric targets in the San Gabriel TMDL are based on CTR, there is little uncertainty that the targets will implement the water quality standards. There is uncertainty in translating the dissolved criteria to total targets. However, as stated in the previous response, there is an adequate implicit margin of safety to account for uncertainties in the translation.</p> <p>The ambient monitoring program will contain robust monitoring requirements for both total recoverable and dissolved metals, as well as sediment monitoring requirements, that will further diminish the uncertainties in the development of numeric targets. Based on the ambient monitoring data obtained, the targets</p>

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		TMDLs such as the Calleguas Creek Metals TMDL and Marina del Rey Toxicity TMDL include an explicit margin of safety as high as 15% while this Draft TMDL has no explicit or implicit margin of safety.	will be reevaluated 5 years from the effective date of the TMDL.
24.8	Heal the Bay	Final compliance milestones in the Implementation Plan should ensure that numeric water quality standards are met – the Waste Load Allocations should not be used as the sole compliance endpoint. An explicit statement to this effect should be included in the Implementation Schedule. <i>See e.g.</i> , Calleguas Creek Metals and Selenium TMDL at 23 (6/8/06) (defining the final compliance point as “[a]chievement of Final WLAs and attainment of water quality standards for copper, mercury, nickel, and selenium.”).	The proposed Basin Plan amendment has been revised to incorporate the proposed change to clarify the intent of the TMDL.
24.9	Heal the Bay	The Interim Implementation Targets should be enforceable and based on percent reduction of waste load. The Regional Board provides no data to support its assumption that waste loads of the toxic pollutants at issue are proportional to the identified drainage areas. Moreover, this type of approach provides an inappropriate incentive to focus on low-contributing land uses first, such as single family residential, mixed urban, and open space, thereby preventing any meaningful progress for the first few years of the TMDL and resulting in the prolonged impairments at current	The implementation plan in the proposed TMDL is correct in allowing phased compliance by drainage area. The linkage analysis supports the assumption that reducing metals loading from contributing drainage areas will meet in-stream numeric targets. The TMDL does not provide incentive to focus on low-contributing land uses first. The TMDL specifies that compliance must be shown in the portion of the drainage area served by the storm drain system (i.e., the urbanized portion of the watershed). Permittees will not be able to demonstrate compliance based on open space areas.

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		<p>levels. Similarly, assessing progress and attainment of beneficial uses with interim targets based on total drainage areas may prove to be extremely difficult and is a compliance-assurance nightmare. The interim compliance targets must be enforceable in order to ensure steady progress towards the final numeric targets. Basing interim targets on percent reductions in waste load allocations is a much more direct, enforceable and effective way to structure the TMDL.</p>	<p>Staff believes that by focusing on reductions by area, there will be less argument among municipalities over which municipality is responsible for metals loading. If targets are exceeded, there will be less investigation required to determine the area responsible for any exceedances.</p>
24.10	Heal the Bay	<p>The implementation schedule for the MS4 and Caltrans storm water NPDES permittees is unreasonably long. Final compliance with the TMDL should be no longer than 10 years from the effective date of the TMDL unless the permittees meet criteria for using an integrated resources approach. The only mention of an integrated resources approach is in a footnote in the MS4 and Caltrans Storm Water Permits section of the Implementation Plan that states “[the] implementation schedule may be extended, upon Regional Board approval, if an integrated resources approach is employed and permittees demonstrate the need for an extended schedule.” Draft TMDL at 18. Does the Regional Board contend that the use of an integrated resources approach would merit a compliance deadline greater than 15 years from the effective date of the San Gabriel Metals TMDL? We believe</p>	<p>At the March 22 workshop, municipalities commented that they should have the same amount of time as the Los Angeles River municipalities (22 years) to comply with the San Gabriel TMDL. While there is less area to be treated in the San Gabriel River watershed, municipalities argued that the BMP technologies are the same and that the TMDL affected some of the same cities. Staff therefore agreed to allow municipalities in the San Gabriel watershed additional time to meet final waste load allocations, if an integrated resources approach is pursued.</p>

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		that an implementation schedule of 15 years is warranted <i>only</i> if a fully integrated, comprehensive water resources approach is used. Under no circumstances should the compliance period exceed 15 years.	
24.11	Heal the Bay	The MS4 and Caltrans storm water permittees should have a maximum of 15 months to submit a coordinated monitoring plan to the Executive Officer <i>and</i> begin monitoring efforts. While we acknowledge that there are many responsible parties in the San Gabriel River Watershed, a 15 month timeframe to simply develop a monitoring plan appears excessive, especially since watershed monitoring discussions amongst stakeholders were initiated well over two years ago. We suggest a maximum of 12 months for responsible parties to develop a monitoring plan <i>and</i> an additional three months after Executive Officer approval to begin monitoring efforts.	It seems reasonable to shorten the amount of time to prepare a monitoring plan because of the existing monitoring program already in place in the watershed. However, permittees specifically asked for six months to commence monitoring and staff agrees that the time is needed to coordinate efforts. The proposed Basin Plan amendment has been revised to require a plan in 12 months and monitoring to commence within 6 months of Executive Officer approval of the plan. The Basin Plan amendment and staff report shall also be revised to more clearly explain the potential role of the San Gabriel watershed wide monitoring program.
24.12	Heal the Bay	The Draft TMDL outlines that compliance will be determined at the effectiveness monitoring locations or “[a]lternatively, effectiveness of the TMDL may be assessed at the storm drain outlet based on the numeric target for the receiving water.” Draft TMDL at 14. Does the Regional Board really mean to imply that all storm drains would need to be monitored under this alternate approach? Compliance determination at the end of the storm drain	The commentor has accurately captured the intent of the alternative effectiveness approach. In response to comments, the monitoring plan shall be made available for public review and comment prior to Executive Officer approval.

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		outlet would necessitate sampling at each storm drain outlet as certain drains may be sources of metals and selenium while others may not. The Regional Board should provide appropriate guidance on compliance assurance expectations as in the past there have been problems with monitoring programs when the Regional Board did not provide explicit expectations.	
24.13	Heal the Bay	Semi-annual sediment monitoring should be included in the ambient monitoring program.	Staff agrees that the suggested change will greatly improve the monitoring program. The proposed Basin Plan amendment has been revised to incorporate the suggested change.
24.14	Heal the Bay	The San Gabriel River Metals and Selenium TMDL Monitoring Program should be made available for public review and comment before Executive Officer or Regional Board approval.	The proposed Basin Plan amendment has been revised to incorporate the suggested change.
24.15	Heal the Bay	The Regional Board should remove the first line of reasoning for applying more stringent waste load allocations in the Estuary to account for upstream waste load allocations that are based on freshwater criteria. as it could be <i>extremely</i> problematic for future TMDL planning efforts. On its own, the fact that power plants have a significantly greater contribution to the Estuary provides sufficient justification for Regional Board staff's decision.	The staff report shall be revised to incorporate the suggested change.

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24.16	Heal the Bay	<p>The Staff Report explains that a portion of the San Gabriel Watershed is within the jurisdiction of the Santa Ana Regional Board. How is the Los Angeles Regional Board coordinating efforts with the Santa Ana Regional Board? Will the Santa Ana Regional Board adopt a Basin Plan Amendment as well? Will the Santa Ana Regional Board issue permits with the allocations developed in this TMDL? Will the LA Region be the lead for all compliance-assurance activities in the watershed?</p>	<p>LA Regional Board staff's intent is for the Santa Ana Regional Board to issue permits incorporating the allocations for this proposed TMDL. LA Regional Board staff has been in communication with Santa Ana Board staff and looks forward to their cooperation.</p> <p>LA Regional Board staff does not intend that the LA Regional will be the lead for compliance assurance activities in the Coyote Creek watershed. The Santa Ana Board would be responsible for issuing permits in the Santa Ana Region (with the exception of statewide permits or possible watershed-specific permits) and enforcing those permits.</p>
24.17	Heal the Bay	<p>The Draft TMDL provides wet-weather load allocations and waste load allocations based on the "daily storm volumes." How does the Regional Board define the daily storm volume?</p>	<p>The proposed Basin Plan amendment has been revised to include a definition of daily storm volume. The daily storm volume is equal to the maximum daily flow in the river. For the general industrial and construction storm water permittees, the daily storm volume is measured at USGS station 11085000 for discharges to Reach 2 and above and at LACDPW flow gauge station F354-R for discharges to Coyote Creek. For the MS4 and Caltrans permittees, the daily storm volume is measured at TMDL effectiveness monitoring locations. The final TMDL effectiveness monitoring locations are the LACDPW storm water mass emission stations at Coyote Creek and San Gabriel River Reach 2.</p>
25.1	LA DWP	<p>The development of a TMDL for the lower San Gabriel River is inappropriate because</p>	<p>It is appropriate for the Regional Board to adopt a TMDL for copper in the Estuary. The water</p>

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		<p>it is not on the 303(d) list. Changing the listing procedure violates TMDL laws and regulations and deprives interested parties of the opportunity to comment on the listing decision. Since the lower reach of the San Gabriel River is not on the 303(d) list, the Regional Board's only option is to adopt an informational TMDL. Had the Regional Board properly undertaken a listing process, data and information could have been presented indicating a lack of impairment.</p>	<p>quality data summary in the staff report clearly demonstrates the finding of impairment and provides adequate justification for assigning a TMDL for copper in the Estuary. Based on LACSD Estuary monitoring data, the copper criterion was exceeded in every sample that was analyzed using detection limits below the criterion.</p> <p>The Regional Board has the authority to adopt TMDLs for pollutant-water body combinations not on the 303(d) list. In the recent decision on <i>City of Arcadia et al., Los Angeles Regional Water Quality Control Board et al.</i>, the Court of Appeals upheld the Regional Board's authority to establish TMDLs for the Los Angeles River Estuary before it was formally listed on the 303(d) list. (135 Cal.App.4th at 1418-1420.)</p> <p>The TMDL has met the administrative requirements for listing the San Gabriel River Estuary for copper. The TMDL public notice process, in addition to scoping meetings and stakeholder workshops, have allowed the public ample opportunity to comment on finding of impairment for copper in the Estuary and to provide additional data that might support or contradict this finding. Staff appreciates the fact that the Haynes plant submitted additional influent water quality to the Regional Board after the March 22, 2006 stakeholder workshop. Staff used this data to determine that Haynes would not likely meet the TMDL by replacing copper condensers alone and made this finding</p>

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			<p>in the TMDL staff report.</p> <p>The reasonable potential (RPA) data submitted by the commentor does not contradict the finding of impairment for copper in the Estuary. Please see further discussion below.</p>
25.2	LA DWP	<p>The Haynes and Alamitos RPA data show that while 13 out of 13 upstream values are above the CTR criteria, zero out of 12 downstream values are below the CTR criteria. Also, the average intake and effluent copper concentrations are approximately the same. The Regional Board should delete the incorrect WLAs for copper in the lower San Gabriel River and state in the BPA that copper WLAs will be recalculated when an assessment of contributing sources of copper is complete. In addition, the copper implementation schedule should not start until USEPA approves the 303(d) listing.</p> <p>The Regional Board should consider that if an implementation option with zero power plant discharge is chosen, then the burden for compliance would be upon the upstream dischargers whose WLAs would have to be recalculated using saltwater criteria.</p>	<p>The copper data provided by the commentor confirms the copper impairment in the Estuary. 13 out of 25 total samples exceed the copper criterion. This data clearly shows that regardless of the source, there is an impairment of copper in the Estuary. All sources discharging to the Estuary must therefore receive an allocation. Furthermore, although the upstream monitoring location (RW10) is above the power plant discharges, it is not above the influence of the power plant discharge. Because the receiving water is an Estuary, the direction of flow is subject to tidal influence. The power plant effluent can flow both upstream and downstream in the Estuary, therefore RW10 can be influenced by power plant discharges, especially at high tide.</p> <p>Comment noted. Depending on the implementation strategy chosen by the power plants, waste load allocations for upstream discharges may need to be revised. However, it should be noted that without the power plant discharge, the ocean water, which has lower background concentrations of copper, would likely provide assimilative capacity for the upstream discharges.</p>

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25.3	LA DWP	<p>Data gaps and missing information make development of a TMDL for the lower San Gabriel River is inappropriate at this time. The results of SCCWRP's watershed modeling study, to be released later in 2006, will be necessary to develop accurate WLAs for the upstream sources. The Regional Board should use this data to develop a more accurate TMDL document. In addition, the LADWP's hydrodynamic study will provide a better understanding of the conditions in the lower San Gabriel River with continuous flow provided by the power plants.</p>	<p>Staff acknowledges the complex nature of the Estuary and the simplification of the allocation approach. However, there is clear evidence of a copper impairment in the Estuary and we must move forward with the TMDL to address these impairments. The proposed allocations, based on the assumption of complete mixing in the Estuary are simplified, but technically sound. Furthermore, even if the allocation scheme were changed, and upstream sources were to receive saltwater-based allocations, the power plants would still be required to meet WLAs approximately equal to the numeric target of 3.7 µg/L, based on the relative volume of the power plant discharge.</p> <p>Once the Estuary model is completed, the results will be used to re-evaluate the TMDL and waste load allocations, if necessary, when the TMDL is reconsidered.</p>
25.4	LA DWP	<p>The receiving water monitoring data conducted by the power plants over the last two decades has shown that the beneficial uses of the lower San Gabriel River are being protected and are not impaired. Toxicity tests of effluent have shown a lack of toxicity and measurements of copper concentrations in sediment are below screening levels. The Regional Board should acknowledge the evidence that there is no urgent need to develop a TMDL at this time.</p>	<p>The CTR criteria are set to protect the beneficial uses of the water body. The CTR water column criteria are exceeded in the Estuary; therefore, the uses are impaired. The staff report acknowledges that there is no evidence of sediment impairment in the Estuary and proposes no targets for sediment. Please note that sediment targets will be evaluated when the TMDL is reconsidered.</p>

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25.5	LA DWP	<p>The RWQCB staff has assigned a lighter burden to upstream sources (see TMDL p. 41) on the grounds of their "reasonable expectations." This scheme of allocating loads is irrational and unfair because it puts the greatest burden on those who contribute least to the copper load. As discussed below, the data indicates that the Haynes is not a significant source of copper in the flood control channel.</p>	<p>Staff agrees that the line of reasoning based on upstream dischargers expectations should be removed. The staff report shall be revised to make this clarification. However, the reasoning for assigning the majority of the responsibility for reductions to the power plants based on their relative contribution of metals loading is adequately justified in the staff report. See source assessment section, page 32, which demonstrates that, based on effluent concentrations and flow, power plant loading is the overwhelming source of metals loading to the Estuary.</p>
25.6	LA DWP	<p>It seems that the only reason the RWQCB performed the linkage analysis was to find that the plant discharge does not merit a dilution credit. Certainly, the vast majority, of water in the lower San Gabriel River during dry weather is effluent discharged from the DWP and AES power plants. However, the RWQCB's conclusion that the power plants should thereby not obtain a dilution credit for their discharge does not necessarily follow for several reasons. First, it is unclear that the lower San Gabriel River in fact, constitutes an "estuary" (See comment 7 addressing this point) and it does not make sense to evaluate the merits of a dilution credit based on the volume of the "estuary." Second, the relevant water body to which this effluent discharge volume should be compared is San Pedro Bay (i.e., the ocean). In fact, the discharge has always</p>	<p>The linkage analysis demonstrates that even with tidal influence, due to the volume of power plant discharge, the ocean provides no assimilative capacity and the power plants should receive allocations directly based on CTR-based numeric targets. In fact, the linkage analysis and source assessment show that the power plants should receive allocations less than the CTR-based numeric targets based on their relative contribution of loading.</p> <p>The San Gabriel River Estuary is an estuary because it is defined in the Basin Plan as such. Discharges to the Estuary are subject to provisions of the CTR, the SIP, and 40 CFR, Appendix A, part 423. Furthermore, under the TMDL, the Estuary is impaired for copper, and the power plants must be assigned waste load allocations to meet the TMDL regardless of how their discharges are defined.</p>

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		<p>been regulated as an ocean discharge, and Haynes has been granted a dilution credit of 4.5 on this basis in the past.</p>	<p>With respect to the dilution credits, the upstream dry weather flows are relatively minor (100 MGD) compared to the discharges (2,300 MGD combined). The linkage analysis shows that even with tidal flushing, the effluent would dominate the water body and severely limit any dilution available from marine inputs. Dilution credits are therefore not applicable.</p>
25.7	LA DWP	<p>Federal law, if not state law, allows for "intake credits" to account for pollutants in intake water. The basis of the NPDES permit requirement is that the discharger must "add" a pollutant to a water of the United States; this does not occur when the discharger merely passes on pollutants that were already present in the intake water. In the case of Haynes, the data show decisively that much of the copper in the effluent is present in the intake water. It appears that copper in the influent is very near and sometimes greater in concentration than in the effluent. Since the concentrations of the influent and effluent are similar, intake credits should be allowed for the power plants.</p>	<p>The power plant intake is from Alamitos Bay, which is in the vicinity of and influenced by discharges from the San Gabriel Estuary. Because tidal influence causes power plant discharges to mix with the intake water in Alamitos Bay, the power plant discharge alters the intake water chemically in a manner that adversely affects water quality in the receiving water. Thus, intake water credits can't be granted.</p> <p>Furthermore, the power plants discharge wastes into the San Gabriel River Estuary and are therefore subject to regulations in the Basin Plan, the CTR, the SIP and CWA.</p> <p>The power plant discharges do not meet the SIP requirements for intake credits. The intake water is not from the same waterbody as the receiving water body. The intake water is from Alamitos Bay and the receiving water is the San Gabriel River Estuary. The fact that the power plants' cooling water intake structures connect these two waterbodies via the Pacific ocean does not make them the same waterbody.</p>

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			<p>The CWA requirement to protect and enhance water quality is not conditioned on factors such as intake water quality, and it would be inappropriate for the impaired water body to be subject to such a condition. The CWA does not make special allowances for intake pollutants. Use of intake water as cooling water by an industrial facility and the subsequent discharge of that cooling water is an “addition” subject to CWA regulation. The fact that the pollutants were withdrawn by the facility so that they were no longer in waters of the United States means that the subsequent release of those pollutants into receiving water is an addition of pollutants from the facility. It is irrelevant that the pollutants are originally from the Pacific Ocean, Alamitos Bay, or from the San Gabriel River Estuary. Dischargers do not have a right to discharge intake water pollutants since the discharge of intake pollutants by a point source constitutes an “addition.” Intake pollutant relief cannot be reconciled with the requirement to establish limits that implement water quality standards, even if the pollutant of concern can be characterized as ubiquitous.</p>
25.8	LA DWP	<p>The lower San Gabriel River is not an estuary, and in fact an estuary does not exist anywhere within the San Gabriel River. LADWP challenges the legitimacy and legality of any supposed redefinition or reclassification of the power plant discharge based solely on the exchange of memorandum between the RWQCB and the SWRCB. Finding 19 of the permit</p>	<p>The lower San Gabriel watershed has not been "reclassified" as an estuary, rather it was more appropriately named in order to fit into the State regulatory framework for regulating toxic pollutants in California waters. The term tidal prism generally is defined in terms of volume, i.e., the volume of water exchanged in an estuary between high and low tides. In the 1994 revisions to the Basin Plan, the Regional Board</p>

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		<p>modifications adopted by the Regional Board on June 10, 2004 discusses a discharger-proposed study to examine the existing receiving water classification to “determine whether changes are merited to the receiving water classification or beneficial uses.” It is LADWP's interpretation, therefore, that the purported discharge classification is still pending and that no determination should properly be made until the study has been submitted to and reviewed by the RWQCB. Until then, the current classification as an ocean discharge prevails.</p>	<p>properly revised the name of the lower San Gabriel area to San Gabriel Estuary - which properly names it with a waterbody type (river, lake, estuary) rather than referring to a volumetric term (tidal prism).</p> <p>Also, during the same timeframe that the Regional Board was working on revisions to the Basin Plan (early 1990s), the State Board embarked upon developing state standards (California Inland Surface Waters Plan and Enclosed Bays and Estuaries Plan) to address the federally mandated requirement to adopt criteria for toxic pollutants for all surface waters (CWA section 303(c)(2)(B)). Before California could complete its Plans, the EPA promulgated the California Toxics Rule and SIP (2000), which established water quality objectives (criteria) and a State Implementation Policy for inland surface waters, enclosed bays, and estuaries.</p> <p>State Board issued a memorandum on July 18, 2001 to absolutely confirm that the State Board intended for these regulations to apply to the San Gabriel River Estuary.</p> <p>Your NPDES permit, Order No. R4-2004-0089, adopted on June 10, 2004, amending Order No. 2000-081, adopted on June 29, 2000, required LADWP to comply with CTR, SIP, Thermal Plan and Basin Plan. Finding 19 of this order allows a discharger-proposed study, to evaluate the feasibility of developing site specific</p>

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			<p>objectives or evaluate the beneficial uses and possibly conduct a special study as well as use attainability analysis. The discharger can also pursue a water effect ratio. Upon completion of the proposed study, it must be submitted to Regional Board staff and stakeholders for evaluation.</p>
25.9	LA DWP	<p>The lower San Gabriel River does not satisfy the regulatory or biological definition of an estuary (detailed by Flow Science attachment to comment letter.) An estuary is characterized by an interface between freshwater flow from the land and tidally driven ocean water, with the attendant tidal exchange. However, net flow from the lower San Gabriel River to San Pedro Bay occurs only in the downstream direction. The cooling water flows through the generating stations prevent ocean water from San Pedro Bay from entering the lower San Gabriel River. Because net flow is always to the sea, even on a rising tide, there is no interface between tidally driven ocean water and freshwater from upstream. Rather, the saltwater-freshwater interface is an interface between the cooling water effluent and the reclaimed water from upstream wastewater treatment facilities during dry weather conditions. Therefore, the lower San Gabriel River is more accurately described as an embayment. Historically, flows from the San Gabriel River did not meet the ocean during dry</p>	<p>There is exchange between ocean water and freshwater in the Estuary. As your discharge modifies a normal estuarine condition, there are both exchanges between freshwater and open ocean water and freshwater and ocean water transported to the Estuary via cooling water intake. As the commentor states, and as preliminary data collection for development of the SCCWRP model shows, there is tidally influenced transfer between ocean water and freshwater, as the saltwater wedge moves upstream with the rising tide. At high tide, the power plant discharges may migrate upstream of the discharge points. At low tide, the plumes of discharge from power plants will shift downstream of the discharge points.</p> <p>Based on the definitions found in the SIP, estuaries are waters, including coastal lagoons, located at the mouths of streams that serve as areas of mixing for fresh and ocean waters. Coastal lagoons and mouths of streams that are temporarily separated from the ocean by sandbars shall be considered estuaries. Estuarine waters shall be considered to extend from a bay or the open ocean to a point upstream where there is no significant mixing of</p>

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		weather conditions. Further, the historical wet weather estuary ceased to exist when extensive channelization occurred, prior to the construction of the Haynes plant.	fresh water and seawater. Haynes generating station is subject to the CTR/SIP as explained in the State Board memo dated the July 18, 2001. The location of the wastewater discharge is the determining factor.
25.10	LA DWP	The 1994 Basin Plan contains the following footnote for the San Gabriel River Estuary: <i>"These areas are engineered channels: All references to Tidal Prisms in Regional Board documents are functionally equivalent to estuaries."</i> There is, in fact, no tidal prism, in the generally accepted sense of the words, within the lower San Gabriel River because there is no tidal exchange in the flood control channel. Thus, in this sense, there is no functionally equivalent estuary.	See response to comment No. 25.9.
25.11	LA DWP	The environmental impacts that might result from relocating the outfalls have not been adequately considered. The RWQCB should update the CEQA analysis with the details provided in Attachment 11.	See response to specific CEQA comments below (comment Nos. 25.16 – 25.35)
25.12	LA DWP	There are antidegradation concerns related to any implementation plan that would stop existing once through cooling water usage and discharge by the power plants.	If zero discharge were chosen as a compliance option, much of the water discharged to the Estuary by the power plants would be replaced by tidally driven ocean water. This would allow the Estuary to return to more natural mixing between freshwater from the San Gabriel River and saltwater from the open ocean and would not raise antidegradation concerns. The proposed TMDL will not degrade water quality, and will in fact improve water quality as it is designed to achieve compliance with existing,

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25.13	LA DWP	The costs estimate fails to account for or underestimates costs of relocating outfalls, installing cooling alternatives, constructing sewer lines for process wastewater, replacing copper condensers and heat exchangers, conducting WER and translator studies, and loss of economic value of an alternative pumping regime. It is likely that a more cost-effective and less environmentally damaging alternative would be source control, such as addressing copper loading from antifouling paint in Alamitos Bay rather than requiring treatment via the cooling water system of the power plants. These costs, information, and alternative project analyses should be incorporated into the CEQA analysis.	<p>numeric water quality standards.</p> <p>The Regional Board cannot prescribe the method of achieving compliance with the TMDL. Staff is therefore unable to describe the nature of all potential actions which are necessary to achieve compliance with the TMDL. As set forth in the TMDL documents, the reasonably foreseeable means of compliance and the costs associated with compliance have been documented to satisfy CEQA requirements.</p>
25.14	LA DWP	The BPA should state that the EO should comply with CWC §13267 by presenting to the affected stakeholders an analysis of the necessity for any study the EO deems necessary.	In developing the 13267 order, the Executive Officer will consider costs in relation to the need for data. With respect to benefits to be gained, the TMDL staff report demonstrates the significant impairment and metals loading. This impairment makes the San Gabriel River toxic to aquatic life, contrary to express national policy and goals.
25.15	LA DWP	It is not appropriate to evaluate a water body based on total recoverable metals by applying a translator value to calculate dissolved metal concentration. The CTR intended translators should be used only to calculate permit limits or to calculate the criteria per USEPA. The use of a translator	In the absence of dissolved ambient monitoring data, it is appropriate to analyze impairments using a translator. The monitoring program will require sampling for dissolved metals. The results of the ambient monitoring program will be evaluated when the TMDL is reconsidered.

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		to evaluate a water body using total recoverable metals data introduces error due to ambient suspended solids. The RWQCB should reconsider impairment decisions for this TMDL based solely on dissolved metals data. Further, monitoring requirements for the reaches of any river should include dissolved metals.	
25.16	LA DWP	Comments on CEQA – Wet cooling towers can contribute to particulate matter emissions, thereby increasing air emissions and/or deterioration of ambient air quality. Furthermore, using closed, cycle cooling, either wet or dry cooling towers, requires increased fuel consumption and produces an increased level of NOx, CO2, and PM10 emissions.	Alternative cooling technologies were identified in the staff report. The reasonably foreseeable air quality impacts arising from this potential means of compliance were discussed in relation to other compliance measures, such as operation of storm water treatment facilities. The checklist has been revised for clarity to specify alternative cooling technologies as a reasonably foreseeable means of compliance.
25.17	LA DWP	Comments on CEQA – The elimination of once through cooling water discharge to the San Gabriel River can cause water to become stagnant and create objectionable odors in areas of Alamitos Bay. There have been many instances where, due to significantly reduced flows in the area from circulating water pump outages for maintenance or repair, restaurant owners and other Long Beach Marina clients have complained to power plant operators about the foul odors emanating from the Marina.	The reasonably foreseeable air quality impacts arising from this potential means of compliance were discussed in relation to other compliance measures, such as operation of storm water treatment facilities and best management practices. The checklist has been revised for clarity to specify the elimination of once through cooling water intake as a reasonably foreseeable means of compliance.
25.18	LA DWP	Comments on CEQA – Wet cooling towers can cause drift and fogging, both foreseeable long term negative impacts, and would result in an alteration of air	Alternative cooling technologies were identified in the staff report. The reasonably foreseeable air quality impacts arising from this potential means of compliance were discussed in relation

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		movement moisture or temperature, or change in local climate.	to other compliance measures, such as operation of storm water treatment facilities. The checklist has been revised for clarity to specify alternative cooling technologies as a reasonably foreseeable means of compliance.
25.19	LA DWP	Comments on CEQA – Achieving zero discharge in the San Gabriel River would substantially alter currents, course of direction and water movements in the San Gabriel River, Long Beach Marina, Marine Stadium, Alamitos Bay, and Naples canals. The process of drawing water into Alamitos Bay and Long Beach Marina contributes to better water circulation, reduces stagnation and improves water quality.	<p>The checklist states, “If relocation of the power plant discharge outfalls were chosen as a compliance strategy, it would significantly decrease flow in the Estuary. This could be considered a positive impact, as it would return the Estuary to more natural flow conditions.”</p> <p>The resulting change in currents and the course of direction or water movements by eliminating the intake of once through cooling water would also be considered a positive impact, as it would return the Estuary, as well as the San Pedro Bay, to more natural flow conditions. Any loss of circulation due to the current intake and discharge scheme could be mitigated by alternative recirculation projects or other regulatory requirements in Alamitos Bay.</p>
25.20	LA DWP	Comments on CEQA – Achieving zero discharge in the San Gabriel River would significantly alter the amount of water within the river, and quite possibly the distribution of that water across the riverbed, thereby potentially eliminating existing plant and animal species that inhabit the soil, rocks, and water. For example, green sea turtles, which are known to frequent the river, would not be	If zero discharge were chosen as a compliance option, much of the water discharged to the Estuary by the power plants would be replaced by tidally driven ocean water. This would allow the estuary to return to more natural mixing between freshwater from the San Gabriel River and saltwater from the open ocean and to provide a calm refuge for aquatic and plant life. The possible effects of decreased habitat are thus not reasonably foreseeable.

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		present. Many of the existing beneficial use designations for the river would be altered or eliminated.	
25.21	LA DWP	Comments on CEQA – Achieving zero discharge in the San Gabriel River would result in an alteration of surface water quality. A shallow water body could lead to increased solar heating contributing to algal blooms. Currently, the power plant effluent, which consists of 99.9% once through seawater, effectively dilutes the pollutants contained in the upstream freshwater flows (e.g., POTW effluent, storm water flows, and point and non-point non-storm water flows).	If zero discharge were chosen as a compliance option, much of the heated water (up to 100°F) discharged to the Estuary by the power plants would be replaced by cooler tidally driven ocean water. The possible effects of increased solar heating are not reasonably foreseeable. It is also likely that ocean water, having much lower background concentrations of copper (total copper values were 0.391 ug/l to 0.146 ug/l in offshore waters of San Pedro Bay based on samples collected by the Port of Los Angeles) would dilute any contribution from upstream freshwater flows. Nonetheless, the upstream allocation scheme shall be reconsidered based on the results of Estuary modeling and the possible effects of zero power plant discharge when the TMDL is reconsidered.
25.22	LA DWP	Comments on CEQA – Certain construction activities, such as trenching for new pipelines (e.g., reclaimed water and sewer connection pipelines for wet cooling towers) would disrupt soils at depths sufficient to require dewatering, which could result in the alteration of the direction or rate of groundwater and/or change in the quality of groundwater.	To the extent that trenching for connection pipelines would require dewatering, such activities would be subject to NPDES permit requirements. The commentor has cited no specific examples of how dewatering could alter the direction or rate of groundwater flow or cause a change in groundwater quality. Based on current discharges enrolled under the Regional Board general permit for construction dewatering, the amount of dewatered groundwater from such a construction activity would be insignificant. The possible effects on

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25.23	LA DWP	<p>Comments on CEQA – A zero discharge scenario could result in substantial reduction in the amount of water otherwise available <i>for</i> public water supplies. Wet cooling towers, a reasonably foreseeable, compliance strategy not addressed here, could require a considerable amount of potable water. A review of the required amount of available reclaimed water indicates there is insufficient supply.</p>	<p>groundwater cited by the commentor are thus not reasonably foreseeable.</p> <p>Alternative cooling technologies were identified in the staff report. The commentor has not specified how much water would be required for wet cooling towers if this was chosen as a compliance option. However, according to EPA, steam electric generating facilities using once-through salt water can reduce water usage by 70 to 96% by converting to closed-cycle, recirculating cooling systems. If the power plants were unable to fully supply wet cooling towers with existing reclaimed water supplies, they could look to alternative sources, such as the reuse of captured storm water. Staff encourages the power plants to work with other responsible agencies to pursue an integrated water resources approach. To the extent that potable water would be used in wet cooling towers, the amount of required water could be mitigated through the installation of flow reduction technologies such as combining reclaimed and potable water, recirculating cooling lakes, cooling canals, or hybrid wet-dry cooling towers. The checklist has been revised to clarify these additional impacts and mitigation measures.</p>
25.24	LA DWP	<p>Comments on CEQA – Achieving zero discharge from both power: plants in the San Gabriel River could significantly change the diversity and/or number of planktonic or vascular aquatic plant species and terrestrial plants that currently inhabit</p>	<p>If zero discharge were chosen as a compliance option, much of the heated, turbulent water discharged to the Estuary by the power plants would be replaced by cooler, calmer, tidally driven ocean water. This would allow the estuary to return to more natural mixing</p>

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		<p>the river within the footprint area of the power plant effluent. This impact could affect the animal life that depends on the existing plant life composition for food or habitat. A zero discharge scenario could also significantly reduce the numbers of unique, rare or endangered plant species, to the extent they exist, that might currently exist within this stretch of the river. Lastly, a zero discharge scenario in the San Gabriel River could result in the introduction of new species of plants into the area and become a barrier to the normal replenishment of existing species.</p>	<p>between freshwater from the San Gabriel River and saltwater from the open ocean and to provide a calm refuge for aquatic and plant life. The possible effects on the diversity and/or number of plant and animal species in the Estuary by removing the discharge are thus not reasonably foreseeable. The commentor offers no support for the claim that achieving zero discharge in the Estuary could result in the introduction of new species of plants into the area and become a barrier to the normal replenishment of existing species. To the extent that there could be any project-level impacts to plant or animal life, the checklist specifies mitigation measures to be implemented by the responsible agencies at the project level.</p>
25.25	LA DWP	<p>Comments on CEQA – A change in the salinity and volume of water within the "estuary" reach of the San Gabriel River will change significantly with a zero discharge power plant scenario. The fish species, benthos, and hard substrate aquatic life will significantly vary from its current-composition without the seawater input to the river from the power plants. For example, an exposed river bottom would permanently impact the sediment infauna. These changes will alter the current ecosystem and could also permanently impact the ability to sustain existing beneficial use classifications (e.g., marine habitat) and deter and/or eliminate the presence of certain existing marine species (e.g., green sea turtles).</p>	<p>See response to comment No. 25.24.</p>

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25.26	LA DWP	<p>Comments on CEQA – The Haynes Generating Station is located adjacent to a large retirement community and across the street from a residential community. It is doubtful that the potential increase in noise from alternative cooling technologies could be mitigated to insignificant levels through the use of "standard noise abatement techniques." Mitigating noise from dry or wet cooling towers by "siting these facilities away from" receptors is infeasible due to the proximity between these towers and the community. Installing sound barriers and insulation to reduce noise levels may be-feasible to a certain extent for wet cooling towers, but would not likely work for dry cooling technology. This is largely due to the fact that dry cooling towers are very tall structures and there are building restrictions and height limits for sound barriers.</p>	<p>The checklist identifies numerous noise mitigation measures for a list of reasonably foreseeable means of compliance with the TMDL, including alternative cooling technologies. The checklist has been revised for clarity to identify mitigation measures for noise impacts from cooling towers, specifically.</p>
25.27	LA DWP	<p>Comments on CEQA – A zero discharge scenario into the San Gabriel River would eliminate the withdrawal of waste from the Long Beach Marina, thereby causing a reduction in water circulation. The water would become stagnant and fetid, and trash would be dispersed throughout the Long Beach Marina, the Naples canals, and other areas of Alamitos Bay. Objectionable odors and excessive trash could adversely impact these land use areas and associated businesses.</p>	<p>This comment seems more applicable to air quality/odor impacts than land use. To the extent that there is a link between odors and land use, see response to comment 25.19.</p>

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25.28	LA DWP	<p>Comments on CEQA – The implementation of cooling towers, as a reasonably foreseeable compliance strategy, would result in an increase in the rate of use of natural resources. Specifically, there would be an increase in the- use of natural gas as a result of the energy efficiency penalty. Also, as previously noted, the amount of available reclaimed water is insufficient to supply even one of, the two power plants and therefore, potable water resources for use as makeup water for wet cooling towers would be consumed.</p>	<p>Alternative cooling technologies were identified in the staff report. It is reasonably foreseeable that the conversion to cooling towers would result in decreased efficiency and that power plants would need to increase natural gas consumption to increase onsite electricity generation. The checklist has been revised for clarity to identify impacts from cooling towers, specifically. However, the extent of this potential impact and its comparison with existing energy and fuel consumption impacts is unknown at this point and will be subject to a project-level CEQA analysis.</p> <p>See also response to comment No. 25.23.</p>
25.29	LA DWP	<p>Comments on CEQA – The use of sound barriers and insulation may be insufficient mitigation for cooling technologies, particularly with regards to dry cooling. Therefore, noise emanating from cooling towers could adversely affect the Leisure World retirement community to the east, and the Island Village residential community to the south.</p>	<p>See response to comment No. 25.26.</p>
25.30	LA DWP	<p>Comments on CEQA – Construction of a reclaimed water pipeline to supply a small portion of reclaimed water that would be required for wet cooling towers, a reasonably foreseeable compliance strategy not addressed in this section, could result in an increase in hazards to bicyclists or pedestrians, particularly if that pipeline is constructed in the bike path that runs</p>	<p>The checklist identified the reasonably foreseeable impacts associated with construction on transportation/circulation and proposed measures to mitigate these impacts at the project level. The checklist has been revised for clarity to identify construction of pipelines for cooling towers, specifically.</p>

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		parallel to the San Gabriel River. While these potential impacts would be short term, they could be significant and unmitigatable Construction of an ocean outfall would most certainly disrupt traffic for an extended period, including street closures.	
25.31	LA DWP	Comments on CEQA – Construction of a reclaimed water pipeline for wet cooling towers, a reasonably foreseeable compliance strategy, could result in an alteration of recreational facilities, particularly if the pipeline is constructed in the bike path that runs parallel to the San Gabriel River.	The checklist identified impacts to recreational facilities and described mitigation measures that should be implemented at the project level. Construction impacts are discussed in other areas of the checklist.
25.32	LA DWP	Comments on CEQA – The implementation of cooling towers, as a reasonably foreseeable compliance strategy, would result in a substantial increase in electricity demand leading to the consumption of substantial amounts of natural gas.	Alternative cooling technologies were identified in the staff report. It is reasonably foreseeable that the conversion to cooling towers would result in decreased efficiency and that power plants would need to increase natural gas consumption to increase onsite electricity generation. The checklist has been revised for clarity to identify impacts from cooling towers, specifically. However, the extent of this potential impact and its comparison with existing impacts to energy and fuel consumption is unknown at this point and will be subject to a project-level CEQA analysis.
25.33	LA DWP	Comments on CEQA – The implementation of cooling towers, as a reasonably foreseeable compliance strategy, could result in a need for new	See response to comment No. 35.32. Construction impacts related to construction of pipelines are discussed in other sections of the checklist.

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		<p>systems and/or substantial alterations to water and power utilities, as electricity and auxiliary equipment would be required to operate cooling units. In addition, the construction of a reclaimed water pipeline and possibly a potable water pipeline would be needed at the plant for wet cooling towers. Absent a once-through cooling water system, inplant process wastewater, including cooling tower blowdown would likely need to be discharged to a sewer system. No sewer connection currently exists at the Haynes Generating Station and therefore, the need for a new sewer connection and possibly construction of a new sewer line would be required.</p>	
25.34	LA DWP	<p>Comments on CEQA – The implementation of cooling towers, as a reasonably foreseeable compliance strategy, could result in the obstruction of a view open to the public and could result in the creation of an aesthetically offensive site open to public view. Dry cooling towers are very tall structures (approximately 110 feet tall), and could impact public views, as well as be viewed as aesthetically unappealing to the public. In addition, wet cooling towers can create large vapor plumes which can be viewed as aesthetically unappealing.</p>	<p>The checklist identified the reasonably foreseeable impacts associated with aesthetics and proposed measures to mitigate these impacts at the project level. The checklist has been revised for clarity to identify impacts do to cooling towers, specifically.</p>
25.35	LA DWP	<p>Comments on CEQA – A zero discharge scenario for the San Gabriel River could</p>	<p>This comment was addressed in relation to air quality/odor impacts. See response to comment</p>

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		<p>cause trash to accumulate and water to become stagnant and fetid in the Long Beach Marina, the Naples canals, San Gabriel River, and other areas of Alamitos Bay. Moreover, the lack of water in the river could be aesthetically unappealing. The potential adverse impacts to these recreational and other uses could be significant and unmitigatable.</p>	<p>25.19.</p>
26.1	AES Alamitos	<p>AES disagrees with the redefinition of the Alamitos generating station as falling under the jurisdiction of the Policy for Implementation of Toxic Standards for Inland Surface waters, Enclosed Bays, and Estuaries of California as an Estuarine Discharger. <u>If</u> there were to be any reclassification of the Alamitos discharge it should have been to an Enclosed Bay Discharger and not an Estuarine Discharger. AES Alamitos LLC was not however allowed to participate in the decision to reclassify, and as such AES has to object to <u>any</u> reclassification which represents an abrupt and unsupported departure from nearly 50 years of settled regulatory interpretation by all of the state and federal agencies with jurisdiction over this facility.</p>	<p>The lower San Gabriel watershed has not been "reclassified" as an estuary, rather it was more appropriately named in order to fit into the State regulatory framework for regulating toxic pollutants in California waters. The term tidal prism generally is defined in terms of volume, i.e., the volume of water exchanged in an estuary between high and low tides. In the 1994 revisions to the Basin Plan, the Regional Board properly revised the name of the lower San Gabriel area to San Gabriel Estuary - which names it as a waterbody type (river, lake, estuary) rather than referring to a volumetric term (tidal prism).</p> <p>Also, during the same timeframe that the Regional Board was working on revisions to the Basin Plan (early 1990s), the State Board embarked upon developing state standards (California Inland Surface Waters Plan and Enclosed Bays and Estuaries Plan) to address the federally mandated requirement to adopt criteria for toxic pollutants for all surface waters (CWA section 303(c)(2)(B)). Before California could complete its Plans, the EPA promulgated</p>

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			<p>the California Toxics Rule and SIP, which established water quality objectives (criteria) and a state implementation policy for inland surface waters, enclosed bays, and estuaries.</p> <p>State Board issued a memorandum on July 18, 2001 to absolutely confirm that the State Board intended for these rules to apply to the San Gabriel River Estuary.</p> <p>Finally, there is no difference between a Bay and an Estuary regarding the applicability of CTR. If the Alamitos plant were classified as an Enclosed Bay Discharger as proposed by the commentor, CTR would still apply.</p> <p>See also responses to comment Nos. 25.6, 25.8 and 25.9.</p>
26.2	AES Alamitos	<p>AES Alamitos LLC has very recently completed a sampling program as required by the Los Angeles Regional Board under a Water Code Section 13267 request. After several years and hundreds and thousands of dollars this study, in addition to sampling the effluent and receiving waters, identifies and quantifies the contaminants present in the intake waters. AES should not be held responsible for the quality of water outside its area of affect, and thus should be allowed to continue to apply intake credits to the facility discharges.</p>	<p>See response to comment No. 25.7.</p>

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26.3	AES Alamitos	<p>The potential economic impact of this amendment on the operation of the AES Alamitos power plant needs to be considered. The Alamitos facility produces over 2,000 megawatts of electricity, more than the output of Hoover Dam, but in recent years the role of this facility has generally evolved from a base loaded generating station into one of supplying electricity primarily during episodes of extreme electrical demand, the remainder of the time it is a low capacity facility utilizing only a fraction of its historical cooling water requirements. Given the facility's low capacity factors it is economically infeasible to retrofit this power plant to utilize alternative cooling system or replace the existing copper/nickel condenser tubes. With the expanding demand for electric power, California is struggling to develop new sources of power to maintain an adequate supply. Imposition of this amendment as currently proposed has the potential to effect the operation of a critically needed power plant.</p>	See response to comment No. 25.13.