Response to Comments on the March 20, 2007 Draft of the Los Angeles River Trash TMDL
Comment due date: May 4, 2007

No.	Commenter
1.	City of South Gate
2.	City of Commerce
3.	Executive Advisory Committee (EAC) Stormwater Program – County of Los Angeles
4.	Heal the Bay
5.	California Department of Transportation (Caltrans)
6.	U.S. Environmental Protection Agency (USEPA)
7.	Plastics Food Service Packaging Group (PFPG)
8.	Burke, Williamson, & Sorensen, LLP (representing the Cities of Alhambra and Industry)
9.	Rutan & Tucker, LLP (representing the Cities of Downey, Signal Hill, and the Coalition for Practical Regulation
10	City of San Gabriel – Late Comments

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1.1	City of South Gate	The City of South Gate shares the Regional Board's concern for reducing the amount of trash and; litter entering the storm drain system As such, the City has implemented numerous BMPs towards achieving this goal ; Curb face screens or basket style inserts have already ,been installed on ALL city owned catch basins (a total of 63). Litter reduction education is an integral part of the City's public outreach `efforts and during the City's Earth Day celebration; over 200 young volunteers participated in litter pick-up activities. The city has conducted studies of the amount of trash generated by the various land uses within the city in order to investigate the daily generation rate of trash that could potentially enter the storm drain system during rainfall.	The Regional Board commends the City on its trash reduction efforts. This combination of structural and non-structural BMPs should reduce trash discharges to the Los Angeles River while also reducing the amount of trash incorrectly disposed of on City streets.
1.2	City of South Gate	*Basin Plan Amendment Loading Capacity Page 3,* First, a typological error, this appears to be a carry over from an earlier bacteria TMDL template: "the loading capacity is defined in terms of bacterial indicator densities, - - -	Comment noted. This typographical error will be corrected.
1.3	City of South Gate	*Basin Plan Amendment Numeric Target Page 3* The targets set at zero trash and is based on (1) a calculated discharge amount or (2) installation of full-capture systems over 100% of a city. The continued reference to "zero" give the impression is that there will be an actuality of no trash discharged by the end of the TMDL implementation period. Instead, the words "reduction target" should be substituted for	Comment noted. However, the Basin Plan Amendment will retain its numeric target of zero. This is the quantitative interpretation of the narrative standards contained in the Basin Plan. The term “numeric target” is a standard term in the

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		'zero'	federal and state TMDL vernacular. The zero target is modified by at least the definition of "full-capture", which recognizes that some trash could actually be discharged and still meet the target.
1.4	City of South Gate	*Basin Plan Amendment : Attachment, A Implementation Schedule* The implementation schedule as proposed is not feasible on a large scale for several reasons: First, it does not take into account the city's budgeting processes: The city's budget for 2007-08 will have been set well before the effective date of this TMDL. The first compliance point should be no earlier than September 30, 2009. Second, the overall cost of achieving a 40 percent reduction by September 30, 2008 will be extremely high. Estimated to be in the range of $200,000 for installing and maintaining full capture systems in an additional 90 (high and medium) priority catch basins. The achievement of the first compliance point will be	Staff disagrees. The implementation schedule as proposed is both reasonable and feasible. An essentially identical trash TMDL was approved by EPA on August 1, 2002 and in effect at that time. Since then, several cities have increased their litter abatement efforts. This 40% reduction is from the baseline established based on data from the 2002-03 and 2003-04 storm years. Unless it was the intent of a responsible agency not to comply with the TMDLs, there has been ample time to include trash abatement considerations into budgeting processes. The commenter has not explained what evidence supports the contention that there will inadequate full-capture vendors/contractors.

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		much more feasible if spread over several years. And finally, even if unlimited funding was available for the 2007-08 fiscal year, a 40 percent reduction by September 30, 2008 is not realistic as there are not enough full capture vendor/contractors to manufacture and install these systems (on a county-wide basis) within the priority catch basins within that time frame.	In fact, achievement of the first compliance point has been spread over several years. The implementation and compliance schedule is designed to accommodate trash reduction efforts that have already been conducted by several cities and the county throughout the Los Angeles River Watershed, in response to the previously adopted trash TMDL. The calculated baseline waste load allocations are derived from data collected during the 2002/03 and 2003/04 storm years. The initial compliance requirement of a 40% reduction from baseline trash levels translates to a 10% reduction per year in trash discharges from the end of the baseline monitoring period. Again, as several responsible agencies have been proactive in their trash-reduction efforts, meeting a compliance point based on conditions that existed over four years ago should not be a hardship. Finally, while six full-capture systems have to-date been certified, nothing prevents jurisdictions from

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			proposing additional full-capture systems for certification, and nothing requires jurisdictions to use a certified full-capture system in any event. Jurisdictions may comply in any lawful manner, including via not-certified BMPs, enforcement of litter laws, trash pickup and collection events. Thus even if some evidence did support the existence of inadequate suppliers, they by no means have a "corner" on the trash compliance market.
1.5	City of South Gate	*Staff Report: <u>Compliance Strategies</u> Partial Capture and Institutional controls* The procedures contained within this section require the Daily Generation Rate studies be conducted in the month of July. Based upon real-life experiences, there are not enough street sweepers that can be spared for special studies nor are there enough qualified professionals, to conduct these studies on a county-wide basis solely during July. The trash and litter can be placed .into trash bags for later sorting, but again from real life experience, within a week or two, the contents decompose. into a very offensively odorous and unidentifiable material. For Cities opting to conduct; the DGR- studies. The period must be extended for the entire summer June 22 through September 22.	The purpose of the Daily Generation Rate is to present the status of existing conditions from which trash discharges can be estimated. The greatest potential for littering was assumed to occur in July which is characterized by high outdoor activity. Determination of the DGR was limited to one month so as not to over-burden cities/agencies with excessive monitoring requirements. To allow for more flexibility for responsible parties, The TMDL Staff Report will be modified to reflect that the DGR can be calculated during any 30-day period between

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			June 22 and September 22.
1.6	City of South Gate	The City appreciates the opportunity to comment on this TMDL and suggests a meeting to further discuss these issues prior to' the July 12 2007 hearing.	Regional Board staff discussed these issues with staff of the City of Signal Hill on July 9, 2007.
2.1	City of Commerce	The City's overall impression of the SED is that it contains a detailed analysis of the potential adverse impacts associated with the implementation of the Los Angeles River Trash TMDL. Nevertheless, it still does not address the impact of cost compliance on those City programs and services, which have physical effects on the environment.	The Trash TMDL does not mandate a specific means of compliance. Municipalities are free to choose the most effective means of compliance with the lowest economic impact. It is possible that a municipality could comply with the Trash TMDL with little to no impacts to municipal programs and services, which have physical effects on the environment. The SED is a part of the Regional Board's CEQA analysis, which is directed to examining the physical effects on the environment, not to costs, per se. The commenter has not specified, and staff are not able to discern, what impacts result from the cost of compliance on which City programs and services that have physical effects on the environment. To the extent the commenter is suggesting that City storm water management services will cost more as a result of the TMDL, that point is

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			acknowledged throughout the supporting documents for this regulation. It is not however, a CEQA consideration.
2.2	City of Commerce	The City does not agree with the SED's assertion that "the diversion of fiscal resources is an economic impact, which does not contribute to and is not caused by physical impacts on the environment that are the purview of this SED, and CEQA generally." We strongly disagree with this position for reasons that were explained in previous comments on this subject. Rather than re-hashing it here, we will defer to the law firm of Rutan and Tucker which represents a group of cities known as the Coalition for Practical Regulation (CPR) to provide legal arguments that support our view.	The alleged diversion of fiscal resources is an economic impact, which does not contribute to and is not caused by a change in the physical environment. Further, no evidence has ever been offered to support the claim that any resources would need to be "diverted", much less, how much, why such alleged "diversions" of resources are significant, and why no other funding sources are available to pay for the needed services, considering possible tax assessments, user fees, grants, loans, etc. Notably, CPR city Signal Hill applied and obtained a 100% grant from the State Water Resources Control Board for its Hamilton Bowl project, to comply with the Trash TMDL. Thus TMDL compliance cost Signal Hill virtually nothing. Other such grants, favorable loans, and other funding mechanisms are plainly available.

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			In fact, no specific showing of any sort, much less evidence of any kind, has ever been offered to support the claim that the cost of the TMDL will feasibly prevent any municipality or other jurisdiction from providing basic health and safety services to its constituents. Moreover, no evidence has ever been proffered to support why it is unfair that the cities generating the trash be forced to pay for its disposal rather than downstream communities.
2.3	City of Commerce	Furthermore, the Regional Board should really be supportive of either a CEQA or other analysis that would determine the potential harm its regulation could have on municipal permittees. While receiving water quality is an important environmental issue, so are public health and safety, infrastructure expansion and maintenance, and social services (library, senior citizens, youth, parks and recreation. This is not to suggest, however, that municipal programs and services outweigh water quality. Instead, we would like the Regional Board to be sensitive to the fact that in meeting water quality requirements there is a social cost to pay. Therefore, the Regional Board should make every effort to balance and compromise these important human needs.	The Regional Board has considered the needs of municipalities to provide these valuable services to their constituents. The time schedule to comply is a direct reflection of the Regional Board's recognition of the limits on municipalities ability to obtain and direct resources to water quality. The Regional Board has also considered that downstream communities have the right to provide similar services to their

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			constituents without using some portion of their resources to dispose of upstream communities' trash. The Regional Board has also considered that while there will be costs associated with meeting water quality requirements, it is up to the responsible agencies to balance the provision of other services with improving water quality. The Regional Board does not dictate the method by which compliance should be attained. Therefore, responsible agencies can select or develop implementation strategies that will take budgetary constraints into consideration while meeting compliance requirements. Finally, the Regional Board has considered its obligation to implement the Clean Water Act and Porter-Cologne Act, and its mission to protect the environment. Additionally, a consent decree between Heal the Bay and USEPA calls for timely establishment of TMDLs at the peril of USEPA establishing them for California,

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			with no compliance schedule. That would require a far greater expenditure of resources.
2.4	City of Commerce	The City continues to maintain that the diversion of fiscal resources could cause physical impacts on the environment and, therefore, does in fact fall within the purview of the SED. The "could" here depends on the mode of compliance and the period over which compliance is required (viz., the number of controls that must be installed in order to meet the annual numeric targets specified in the current Los Angeles River Trash TMDL). If, for example, the City must adhere to the 40% trash reduction target by 2008, the amount of funds required to meet it could have a serious impact on certain programs and services, which in turn could cause physical impacts on the environment. The most obvious of these include police and fire but could extend to other programs and services on which our citizens depend (senior citizens activities, adult and youth recreation programs, library services, street repair, infrastructure maintenance and improvements, emergency preparedness/response for such things as earthquakes). Of course, if the next MS4 contains the requirement that all municipal Permittee must install catch basin debris excluders within 180 days of adoption, as the Regional Board has proposed in the draft Ventura MS4 Permit, then the cost impact will be much more severe.	See response to Comments 1.4, 2.2, and 2.3
2.5	City of Commerce	*Cumulative Effects of All TMDLs on Permittee Programs and Services* If structured properly to minimize the cost impact on the City,	The commenter acknowledges that "If structured properly to minimize the cost impact on the City, the trash

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		the trash TMDL is not likely to adversely effect the environment; but compliance with other TMDLs (e.g., metals, bacteria, nutrients) could very well have adverse environmental impacts in several areas. These include City-specific impacts as well as regional impacts: These issues were raised in comments to the Regional Board previously but were not addressed in the SED. In the public interest the Regional Board should reconsider them.	TMDL is not likely to adversely effect the environment;…" The SED's scope is limited to potential impacts (individual or cumulative) of the trash TMDL. Reconsideration of other TMDLs is beyond the scope of this analysis. The issue of cumulative effects of multiple TMDLs was discussed at length in the SED. See SED pages 234-236.
2.6	City of Commerce	These [impacts to the City] include, but are not limited to: *Public Services and Utilities* because *the magnitude of trash and other* TMDL Implementation *costs, whatever* they might be, could significantly reduce a municipality's ability to: (1) provide adequate police and fire protection (personnel and equipment), (2) maintain streets; (3) maintain traffic signals; (4) create new parks and maintain existing ones (for aesthetics and recreation); (5) maintain play grounds, swimming pools, and bike paths; (6) maintain storm drains and install new ones (to prevent flooding); (7) maintain and replace sewers to prevent sewage releases (a health issue); (8) replace rolling stock (vehicles and equipment), necessary to perform a variety of services including trash collection, tree trimming, park maintenance, catch basin clean outs, sewage spill response, code enforcement inspections, fire and police response; (9) maintain a level of recreation programs for citizens, such as adult, senior, and youth programs (including but not limited to various recreation, education, and health-related activities); (10) maintain adequate library services (maintaining facilities, staffing levels,	See response to Comments 2.2, 2.3 and 2.5. Staff takes issue with the suggestion in the comment that *any* trash implementation costs, "whatever they might be" are too great a burden on the City of Commerce, even though downstream communities such as Long Beach and others must expend massive resources to dispose of trash from Commerce and elsewhere.

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		and purchasing books, magazines, etc.); (11) refuse collection and disposal (including recycling); (12) street sweeping; (13) tree trimming; and (14) emergency preparedness and response (earthquakes and other natural or man-made disasters, including acts of terrorism). Utilities/Services because the magnitude of trash and other TMDL implementation costs, whatever they might be, could significantly reduce a municipality's ability to: (1) produce adequate supply and quantity of potable water to its customers; (2) if it-provides electricity. the ability to provide a consistent and adequate supply of electric power; (3) if it owns/operates a sewer treatment facility, to provide adequate sewage treatment capacity, including treating dry weather discharges; and (4) if it owns and operates a landfill to provide adequate capacity to dispose of solid waste. *Transportation/Traffic* because the magnitude of trash and other TMDL implementation costs, whatever they might be, could significantly reduce a municipality's ability to: (1) provide adequate public transportation (fixed and non*fixed routes) for the* general population and *senio*^{r} *citizens* which depend *on* city-sponsored public transportation: and to (2) adequately manage traffic congestion. *Housing/Population because the* magnitude *of trash and* other TMDL implementation *costs,* whatever they might *be,* could significantly reduce a municipality's ability to provide an adequate supply of affordable housing to keep up with population growth. Municipalities do this through re-	

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		development programs, which include the purchase of old and/or blighted property or uses that are is no longer viable and replace them with housing and mixed-use developments.	
2.7	City of Commerce	Regional Impacts Also absent from the SED are the potential "regional" adverse impacts associated with the Project. It was mentioned previously municipalities face potential adverse impacts on programs and services resulting from enormous expenditures of general funds on trash and other TMDL compliance. Compliance costs are likely to have an adverse impact on the region in terms of air quality, housing, population growth, employment, transportation, and flood control. The expenditure of billions of dollars on TMDL compliance by subject municipalities and Caltrans are bound to affect other sectors of the regional economy. For example, a reduction in street maintenance would affect businesses that would depend on this municipal activity, such as street materials (e.g., asphalt and gravel) production and sales; the manufacture and sale of specialized road construction equipment; civil engineering consultants; and firms that perform road construction work. Loss of business would likely result in an increase in unemployment, which would cause a rippling effect through out the economy. Requiring Caltrans to spend millions of dollars of its budget on TMDL compliance could adversely Impact regional transportation, As population grows so does the need to	Trash removal and disposal is an existing service being provided by responsible agencies. The TMDL simply requires that this service be conducted more effectively in order that trash ceases to be a source of impairment to the waterbodies in the Los Angeles River Watershed. Compliance costs are wholly dependent on the method by which agencies choose to comply with the TMDL. The implementation strategy selected should take cost into consideration. The diversion of fiscal resources is an economic impact, which does not contribute to and is not caused by physical impacts on the environment that are the purview of this SED, and CEQA generally. It is the responsibility of any municipality to take budgetary

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		construct new freeways or expand existing ones. If Caltrans is prevented from keeping-up with regional transportation infrastructure needs, the result would be an increase in traffic congestion and, therewith, an increase in vehicle-related air pollution. Beyond this, requiring the County of Los Angeles to allocate a substantial portion of funds that it generates from its flood control assessment to pay for trash and other TMDLs, could have, a serious impact on' the flood control system. Fewer storm drains may not be constructed and other components of the flood control system could fall into disrepair.	constraints into consideration when selecting or developing implementation strategies to comply with the Trash TMDL. See response to comment 2.2.
2.8	City of Commerce	The City recommends that Regional Board include SCAG as a stakeholder asset -- and as the region's principal planning agency -- in determining how TMDL compliance costs could impact air quality, population, housing, employment, transportation, and the local economy.	The Southern California Association of Governments (SCAG) was notified of the public hearings for this and earlier Los Angeles River Trash TMDLs. Comments from SCAG were submitted on the July 7, 2006 version of the TMDL which were addressed in the responsiveness summary dated September 8, 2006 that is currently available on the Los Angeles Regional Board‘s website at http://www.waterboards.ca.gov/losangeles/html/bpaRes/bpa_td/50_New/06_0908/Response%20to%20Comments.pdf . No further comments from SCAG were received on the March

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			20, 2007 draft of the TMDL TMDL development is an open process that allows input from all interested parties and stakeholders. It is the responsibility of the Regional Board to notice its actions. It is the option of stakeholders to participate. Regional Board records showed that SCAG has been receiving electronic notifications of matters relating to the Trash TMDL since October 9, 2002. While staff welcome any comments by any stakeholder, including SCAG, the Regional Board is not authorized to delegate its planning functions to an association of governments, or any other entity.
2.9	City of Commerce	*SED Should Discuss Compliance Alternatives to Minimize Impact on Municipal **Programs** and Services* To avoid or minimize adverse impacts on the City and the Region, the Regional Board should consider not just best management practices (BMP) technology alternatives as impact mitigation measures in reaching TMDLs (e.g., catch basin debris excluders instead of vortex separation systems) but also alternative time frames for reaching them.	The current time frame allows sufficient time for scheduling installation of structural BMPs and/or commencement of non-structural BMPs. The TMDL includes a reopener that will occur after 50% of the trash has been abated. At that time, significant progress will have occurred, and requests for additional time, if

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			justified, can certainly be then made.
2.10	City of Commerce	Environmental Justice Issues The City notes with great interest the discussion of the project in terms of environmental justice (EJ). There is no argument from the City on the importance of preventing trash from entering receiving waters and the benefit of so doing to all communities. Nevertheless, the SED needs to look at the impact of cost on City programs and services and on regional issues that can affect low income groups. Often these individuals' depend more heavily on programs and services provided by local government. Because of economic limitations, they cannot to go beaches but must instead, for example, depend on swimming pools provided by parks and recreation programs. Children of low income families must also depend on libraries to do school work because often times are too crowded to do so at home. Senior Citizens, who are also often low income, depend on "quality of, life" programs such as meals on wheels food programs and dial a ride transportation programs. Any discussion of TMDL compliance and cost must take into consideration the potential impacts on the programs and the populations that they serve. Further, EJ issues must be identified in terms of the regional impacts of widespread TMDL compliance would have on low income groups and other population segments including people of color and the elderly. The cost impact on regional health care services by the County of Los Angeles is one example. Compliance costs for all TMDLs should be evaluated for their potential to reduce levels of services for County funded health	See response to comment 2.2. Environmental Justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. It will be achieved in the instance of this TMDL when all communities enjoy the same benefits of reduced litter in their environments that full compliance with the trash TMDL will effect. This TMDL is evenly applied throughout the watershed. Potential implementation measures cover a wide range of costs. Therefore, responsible agencies should take budgetary restraints into account when selecting their mode of compliance. The commenter has failed to note the EJ consequences of forcing downstream communities,

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		care facilities on which low income individuals and families depend.	irrespective of their financial means, to dispose of upstream trash that they did not generate.
2.11	City of Commerce	These arguments are raised not to create a "loophole" for Permittees to avoid having to meet TMDLs but to illustrate that costs can [have] adverse impacts on the environment and do indeed raise environmental justice fairness issues. This fact provides another reason why the SED should look at minimizing the cost impact of the TMDL impacts on Permittees, some of which are less economically endowed than others, and [the] diverse communities that they serve. As stated earlier, this can be achieved by allowing cost-effective BMP alternatives and a longer time for compliance.	See response to 2.10
3.1	Executive Advisory Committee (EAC)	Since the first Los Angeles River Trash TMDL was proposed, many modifications and changes have been incorporated that make this regulatory effort more cost-effective and therefore acceptable to our regulated communities. Instead of only one certified "full capture" device that was extraordinarily expensive to install and risked acerbating other (bacterial) pollutants, there are now several full capture devices including one evaluated by the City of Los Angeles and certified by the Board in late April. Another important device application, submitted by the County of Los Angeles, is under your consideration and will hopefully be Board certified before this TMDL is finalized. The EAC would like to encourage the Board to post sufficient information about each of the certified	The Regional Board is encouraged by the creativity demonstrated by the several different parties which developed full-capture devices which meet the TMDL needs and the particular needs of the implementing agency. Information on the first set of certified full capture devices was provided in Appendix D of the draft Substitute Environmental Document for the trash TMDL which was released to the public on March 20, 2007. Also,

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		devices on its website, so that our representatives can better understand and convey the Board's expectations to our City Management and understand the still substantial commitment imposed upon us under this water quality initiative.	current information on all full-capture applications and certifications are provided on the Regional Board's website at http://www.waterboards.ca.gov/losangeles/html/programs/tmdl/fcc/FullCaptureCertification.html
3.2	EAC	We are greatly concerned about what might be interpreted as an accelerated and punitive implementation schedule. Prior iterations of the Los Angeles River Trash TMDL were based on a 10% reduction in trash per year implementation schedule. Depending on whether one reads the CEQA or draft TMDL, the divergence in these documents being a significant flaw that must be corrected; it appears that dischargers must attain a 30% or 40% reduction during the first year.	The implementation schedule is not intended to be punitive. It is simply based on the recognition that much progress has already been made, by several municipalities, in trash reduction since the baseline conditions were determined four years ago. An essentially identical trash TMDL was approved by EPA on August 1, 2002 and in effect at that time. This TMDL was set aside on July 17, 2006. The fact that the TMDL was set aside a year ago does not negate the efforts that jurisdictions performed during the several years prior to that time, all of which are included when determining their reductions at the first compliance point. The compliance point measures reductions from 2003/04 levels, and considers that many were on schedule to meet the original 30%

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			reductions that would have been required under the old TMDL by 2007. Knowing that in 1998 the LA River was listed as impaired for trash, and recognizing that every TMDL for trash adopted by USEPA or the Los Angeles Regional Board has established zero trash TMDL, it would not be reasonable for any jurisdiction to have assumed that substantial trash reductions would not ultimately be required. Further, given MS4 permit requirements, all municipalities litter ordinances, and representations made by responsible jurisdictions about how significant and serious the problem of trash loading is in the LA River, it is also not reasonable to assume that all the jurisdictions would not take any measures to start reducing trash loading until a final regulation by the Water Boards is in place. There are preexisting responsibilities to control trash loading apart from any TMDL, and these, along with efforts the Regional Board knows to have occurred since 2001, have been considered in setting the new timeline.

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3.3	EAC	A 2006 USEPA and permittee supported study, by the Coalition for Environmental Protection, Restoration and Development (CEPRD), which analyzed data collected by the Los Angeles County Department of Public Works, found that about 50% of the total volume of trash collected using catch basins inserts, was collected from only 15% of the modified inlets. Like the Board, the MS4 Permittees are severely resource limited and we will have already completed the current budget cycle by the time this TMDL becomes effective. In many urban areas, vegetation made up more than 90% of the material collected by full capture certified devices and cities are reluctant to squander our limited staff resources on trash separation or counting exercises. We request that the Board consider allowing permittees to implement a catch basin prioritization plan focusing on the areas of greatest trash generation within our jurisdiction and under our control. Based on the analysis contained in the identified study, installing certified full capture devices at the most problematic 10% of a city's catch basins, should eliminate an amount of trash that is intermediate in value between the figures referenced in the various Board documents. Given that even 10% represents hundreds of Los Angeles River Watershed catch basins, perhaps millions of dollars in mostly unbudgeted 2007-08 year expenditures, and an unprecedented ramping up of device manufacturing capacity, permitting and contractor installations, we encourage you to consider alternative initiatives that proactively address water quality.	The trash TMDL requires percentage reductions in trash discharges. Responsible parties can implement the TMDL as they see fit; prioritization of catch basins is a logical approach wholly allowable within the TMDL as it is written. Demonstrating compliance of greater that 10%, for instance, by installing certified full capture devices at the most problematic 10% of a city's catch basins, can be done if the city can document that a higher percentage of compliance has been achieved. The cities do have the option of showing these reductions in any defensible manner. A "Catch Basin Prioritization and Protection Plan", has been submitted to the Regional Board on May 7, 2007, and it is an implementation strategy that could be used with some modification, at the commenters' discretion (Water Code section 13360), to achieve compliance with the TMDL. It is, however, not an independent alternative to the TMDL, but a means to comply with the TMDL
3.4	EAC	As has become clear during recent efforts to support other Los	Staff disagrees that any municipality

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		Angeles River Watershed TMDLs, there exists a perception that water quality protection is unequally prioritized by permittees across the basin. While some of this may be explained by the differing characteristics among individual municipalities, those cities demonstrating 50% compliance by mass reduction, or certified device installation, should be allowed to pause until all permittees reaches the 50% objective and the TMDL reopener negotiation concluded. Thus even the most pristine jurisdiction, would only have to install certified devices in half of its catch basins, while awaiting for the results of the reopener to determine the cost-effectiveness of continued implementation or certification of new ever more cost-effective full capture devices. Having proposed this, the Board could provide an incentive to communities that volunteer to move forward with a more aggressive implementation schedule by committing to 30-year recognition of any full capture certified device installed prior to the reopener. This incentive would eliminate much risk and provide a clear incentive for early compliance with the most aggressive water quality objectives.	should be allowed to "pause" beyond the established compliance dates if other municipalities fail to achieve a 50% reduction in trash. The re-opener will not determine cost-effectiveness of any device and more cost effective full capture devices can be certified at any time as six new devices have already been. Noncompliant jurisdictions will be subject to enforcement proceedings.
3.5	EAC	The EAC members endeavor to remind the Board that our region is unique, not just in this state, but across the globe, in proposing such an aggressive "zero" litter tolerance on public agencies already strained by a multitude of under-funded responsibilities to provide for public safety and health. The objectives and goals of the Board appear even more intractable to our communities with respect to such a ubiquitous societal challenge as litter; which our cities have proactively confronted for decades. The EAC would like to reiterate our interest in participating in crafting the contents and requirements of the	Trash collection and disposal is a service that is already provided by the jurisdictions covered by the Los Angeles River Trash TMDL. While litter is a ubiquitous societal problem, it is almost universally recognized as unacceptable, as the permittees' own litter ordinances recognize. Further, the Regional Board considers it unacceptable for

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		Los Angeles River Watershed Trash TMDL, so that it meets our shared water quality and community objectives without unduly and unfairly reassigning risk, which has lead to so much misunderstanding and conflict.	one jurisdiction to force others to dispose of their trash for it. Requiring a "zero" numeric target to be met, via a phased implementation schedule, provides the incentive for cities to increase the effectiveness of, or modify their current efforts with respect to litter reduction. This "zero" target simply translates to the most effective use of structural and/or non-structural Best Management Practices, throughout the watershed, for the control of trash.
4.1	Heal the Bay	Heal the Bay and Santa Monica Baykeeper ***strongly*** support the Draft Trash TMDL. We were major proponents of the original Trash TMDL adopted by the Regional Board on September 19, 2001, as the provisions of the TMDL paved the way for water quality standards attainment. Also, we helped negotiate the definition of full capture device with the Regional Board, LA County, and City of LA. In the same vein, the new Draft Trash TMDL meets the threshold of attaining and maintaining water quality standards as set forth in the Clean Water Act. 33 U.S.C. § 1313(d). Of particular note, the original Trash TMDL itself stood strong against many legal challenges over the past four years, as the Court of Appeals ruled in favor of the Regional Board in every one of the Plaintiff's claims against the TMDL, except with respect to CEQA.	Comment noted. The Regional Board is appreciative of all support of its actions to remove the trash impairment in the waterbodies of the Los Angeles River Watershed, and to improve overall water quality. Staff also commends Heal the Bay, Santa Monica Baykeeper, and the many municipalities, CalTrans, and other entities that have assumed the responsibility of beginning to address this problem in a meaningful way.

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4.2	Heal the Bay	As acknowledged throughout the Draft Trash TMDL Staff Report, trash significantly impairs beneficial uses of the Los Angeles River. It is a well established fact that runoff from urban storm drains is the number one source of coastal pollution, and is a continuing threat to marine life and human health in Los Angeles County. Urban runoff carries trash and other pollutants that go directly to local streams, such as the Los Angeles River, and eventually to the ocean unfiltered and untreated. Heal the Bay has routinely documented excessive trash in the River during annual Coastal Cleanup Days—in 2005 volunteers collected nearly 4,000 lbs of trash in a period of several hours at two sites on the Los Angeles River (Elysian Park and Sepulveda Basin at Balboa Blvd). Compton Creek, a tributary of the LA River, is arguably the most trash impaired waterbody in the region and was recently listed as impaired on the 2006 303(d) List of Impaired Waterbodies. Large amounts of trash have been collected and removed from Compton Creek through various cleanup efforts.	Comment noted.
4.3	Heal the Bay	The Los Angeles River supports, or should support, a host of beneficial uses. Today, at various reaches of the river, people bike, jog, walk, horseback ride, bird-watch, photograph, picnic, swim, fish, and collect mussels off of the rocks. There are also numerous species of fish and wildlife that spawn, migrate and live in the Los Angeles River waters.[1] There can be no question	Comment noted. The trash TMDL is designed to address these impaired beneficial uses

[1]The Los Angeles River's beneficial uses include contact recreation such as swimming, non-contact recreation such as fishing, warm fresh water habitat, wildlife habitat, estuarine habitat, marine habitat, rare or threatened or endangered species, migration of aquatic organisms, spawning and reproduction, and early development of fish, commercial and sport fishing, shellfish harvesting, wetland habitat and cold fresh water habitat. 1994 Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties (Basin Plan), pp. 2-10.

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		that trash has tremendously impaired these beneficial uses of the river, particularly, but without limitation: REC1; REC2; GWR; WARM; MAR; WILD; RARE; potential MUN, IND., MIGR, SPWN, and SHELL.	
4.4	Heal the Bay	The Draft Trash TMDL establishes a numeric target of zero trash and a final Waste Load Allocation ("WLA") of 0% of the Baseline WLA. We strongly support the Draft Trash TMDL requirement of zero trash discharge, as zero is the only appropriate TMDL for trash given the water quality standards for the Los Angeles River set forth in the Basin Plan. Moreover, the Regional Board acknowledged that the zero trash discharge limit was appropriate when they adopted the original LA River Trash TMDL in 2001. The federal Clean Water Act requires states to establish TMDLs "…at levels necessary to obtain and maintain the applicable narrative and numerical WQS [water quality standards] with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality."[2] The Basin Plan calls for no floatables or settleables that will cause a nuisance or adversely affect beneficial uses. Even small quantities of trash violate the Clean Water Act and Basin Plan. For instance, small amounts of trash can maim or kill wildlife that becomes entangled in, or ingests, the debris. Plainly, zero is the only fair interpretation of the Basin Plan water quality standards that will guarantee protection of the beneficial uses of the Los Angeles River with an appropriate margin of safety. Thus, the Regional Board staff's proposal of zero trash	Staff agrees. Notably, the zero trash target was upheld by the California Court of Appeal against a variety of legal challenges.

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		discharge is, clearly, appropriate.	
4.5	Heal the Bay	The Draft Trash TMDL includes Baseline Waste Load Allocations for each city in the Los Angeles River Watershed. These values were calculated from two years of trash data collected by municipal stormwater permittees through the Baseline Monitoring Program prescribed in the original Trash TMDL. Heal the Bay strongly supports this approach.	Comment noted.
4.6	Heal the Bay	Clearly, the use of actual trash data for the purposes of redefining WLAs strengthens the Draft Trash TMDL considerably. However, the Draft Trash TMDL Staff Report does not sufficiently describe the monitoring program or the data. How many data points were used in the calculations? How was County data used to calculate baselines for the cities? Some additional explanation would be useful.	Baseline WLA calculations are provided in Appendix III of the draft Staff Report.
4.6	Heal the Bay	The Implementation Element of the Draft Trash TMDL specifies that compliance with final waste load allocations may be accomplished by using a "full capture system." Draft Trash TMDL at 3. In addition, the document provides the technical requirements of such a system. *Id.* As you know, this stems from a settlement that was negotiated through a series of stakeholder meetings with the Regional Board, the City of Los Angeles, Los Angeles County, Heal the Bay and Santa Monica Baykeeper. We believe that this agreed-upon definition is protective of water quality. Thus, we strongly support Regional Board staff's decision to include this provision in the Trash TMDL.	Comment noted.
4.7	Heal the Bay	The Implementation Schedule in the Draft Trash TMDL	Comment noted.

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		requires full compliance, meeting zero percent of the baseline load, after nine years of implementation. Draft Trash TMDL at 7. The required percent reductions begin during the first implementation year. *Id.* Heal the Bay strongly supports this implementation schedule. The responsible parties have had nearly five years—since August 22, 2002--to develop trash reduction strategies and collect data. In additional, millions in Bond funds from the State have been available for trash capture BMPs, and Los Angeles has allocated over 25 million dollars in Proposition O funds for trash exclusion inserts. There is no reason to delay actual trash reductions any longer. Thus, we urge the Regional Board to adopt the Implementation Schedule proposed by their staff.	
4.8	Heal the Bay	The Draft Trash TMDL Staff Report includes a provision for the reconsideration and refinement of the final WLAs once a reduction of 50% in the Baseline Allocation occurs. Staff Report at 25. This provision is inappropriate. The facts will not change in this three-year time frame. Clearly, zero is the only fair interpretation of the Basin Plan water quality standards that will guarantee protection of the beneficial uses of the Los Angeles River with an appropriate margin of safety. Thus, there is no logical reason to reevaluate the final WLA of 0% of Baseline WLAs for municipal permittees and Caltrans. The Regional Board should remove this provision from the Staff Report.	The purpose of this re-opener is to reconsider the Waste Load Allocations based on the findings of any future studies regarding the threshold levels needed for protecting beneficial uses. The requirement to reconsider the WLAs after a 50% reduction was included in the original TMDL, and is carried forward here. At that time, the Regional Board will consider all relevant data and policy considerations, as well as the comments from all stakeholders.
4.9	Heal the Bay	The first compliance point during the implementation phase,	It is our intent to enforce any

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		reducing discharges between October 1, 2007 and September 30, 2008 to 60% of the baseline load, occurs on September 30, 2008. By this date, the Regional Board should be ready to take enforcement action for any exceedance of the WLAs. Appropriately, the Basin Plan Amendment outlines that "[t]his TMDL will be implemented through stormwater permits and via the authority vested in the Executive Officer by §13267…." Draft Trash TMDL at 3. As demonstrated by the postponement of the hearing to incorporate the Santa Monica Bay Beaches Dry Weather Bacteria TMDL into the MS4 Permit, the Regional Board should incorporate WLAs into stormwater permits well in advance of the first compliance point.	exceedances of the Waste Load Allocations after the first compliance date.
4.10	Heal the Bay	Of note, the Loading Capacity Section of the Basin Plan Amendment appears to be in error, as it discusses bacterial indicator densities that are not the impairment addressed in this Draft Trash TMDL. The Regional Board should correct this section to match the draft LA River Trash TMDL that was issued in summer 2006.	Comment noted. This was a typographical error which will be corrected in the Basin Plan Amendment language.
4.11	Heal the Bay	The original Trash TMDL adopted by the Regional Board in 2001 was precedent setting and a major step forward for water quality protection. We urge the Regional Board to adopt the Draft Trash TMDL for the Los Angeles River set at zero and to ***not*** take a step backwards in water quality protection.	Comment noted.
5.1	Caltrans	The California Department of Transportation (Department) appreciates the opportunity to comment on the proposed amendment to the Water Quality Control Plan for the Los Angeles	Regional Board staff commends Caltrans on the development of their Gross Solid Removal Devices which

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		River Watershed. The Department has been proactively installing gross solids removal devices (GSRDs) to comply with the allocations assigned by the Trash TMDL since 2005 and is committed to meeting the goals of the TMDL.	received full-capture certification in October 2004, and their efforts to meet the upcoming compliance deadlines. Removing the trash impairment in the Los Angeles River Watershed will be a joint effort requiring commitment similar to that displayed by Caltrans.
5.2	Caltrans	Our major concern is that the **devices** we are **currently installing** for the trash TMDL that may not be **compatible** with the structural controls that may be required for other TMDLs **developed** for this watershed. The Department has been installing full capture devices that achieve 100% removal of trash from runoff from Department roadways and contribute to meeting the goal of this TMDL. Subsequent to the initiation of installation of these devices, TMDLs were adopted for metals and nutrient compounds**.** The piecemeal issuance of the TMDLs means that permittees such as the Department are required to implement controls prior to being aware of the total pollutant control requirements to comply with all TMDLs.	Responsible agencies have long been aware of all TMDLs slated for their jurisdictions as a result of the 303(d) listing process in 1998, the consent decree in 1999, and Regional Board Staffs outreach efforts to stakeholders and interested parties. This information has made clear what pollutants-waterbody combinations would require TMDLs, and when these TMDLs were due. Therefore, these agencies have had sufficient lead time to develop or determine what implementation approaches to employ towards achieving compliance with the TMDLs. In anticipation of forthcoming TMDLs, CalTrans (or any other jurisdiction) is encouraged to work with other stakeholders and TMDL

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			staff to ensure that, to the greatest extent possible, TMDL implementation measures are complementary to and compatible with each other.
5.3	Caltrans	The problem of incompatibility can manifest itself in several ways, including: • Structural controls are often needed in constrained urban locations. Space may not be available to incorporate additional controls at the end of preexisting controls. • Hydraulic constraints may make it difficult to add-on controls for subsequent TMDLs.	Conceptually, where space may be limiting or hydraulic constraints exist, responsible agencies should consider placing structural controls and different points within storm drain system or using non-structural BMPs such as street sweeping or increased catch basin clean-outs. The specific manner of compliance is not under the Regional Board's jurisdiction (Water Code section 13360), but where specific constraints exist at specific locations, staff encourages CalTrans (or any other jurisdiction) to seek effective alternatives or develop appropriate solutions.
5.4	Caltrans	We encourage Regional Board staff to revisit the compliance schedule of the trash TMDL to be compatible with the other TMDLs that are adopted for this watershed. This would help provide time for the Department to appropriate public funds and install devices that would be effective for treatment of the various pollutants causing impairment to the waterbody.	The means by which trash discharges can be controlled are less complex in relation to pollutants such as metals and toxic pollutants. It is therefore appropriate to assign a longer time-frame to achieving compliance with the more complex

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			pollutants. The compliance schedule provided in the trash TMDL provides ample time for agencies to control trash discharges. Nevertheless, see Response to Comment 5.2.
6.1	USEPA	My initial review suggests the six draft TMDL staff reports have reasonably defined impairment assessments, calculated waste load and load allocations, considered critical conditions and provided a margin of safety. The TMDLs appropriately set the numeric target at zero trash, and included phased reduction tasks from defined baseline waste load and load allocations (WLA and LA). The critical portion of these TMDLs is the implementation plans, which define in detail the steps for achieving zero trash in a set time frame.	Comment noted. (NOTE: USEPA commented on the 5 regional trash TMDLs heard by the Board on June 7, 2007 and the Los Angeles River trash TMDL in the same comment letter.)
7.1	Plastics Food Service Packaging Group (PFPG)	PFPG appreciates the Regional Board's efforts in this matter, and the opportunity to comment on the Draft SED. We are in agreement with the Regional Board's decision to follow a tiered approach under the California Environmental Quality Act ("CEQA"), by preparing the Draft SED as a Tier 1 document, which evaluates impacts at a programmatic level. Municipalities and other entities subject to individual waste load allocations ("WLAs") will prepare Tier 2 documents for their strategies and actions to achieve the WLAs. As discussed in PSPC's previous comments during the CEQA process dated June 30, 2006 (scoping comments) and August 21, 2006 (comments on the previous Draft SED), which are incorporated by reference herein, we agree that municipalities should be the	Comment noted. With regard to the incorporation of prior comments by reference, staff are unable to discern to what extent, if any, the prior responses to comments do not adequately address the comments. Accordingly, we are unable to further respond to the comments proposed to be incorporated. If a specific response was not satisfactory, the commenter should identify the comment and response, and explain how the response was

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		lead agencies for CEQA evaluation of both the environmental benefits and potentially significant adverse impacts of their individual actions for Trash TMDL implementation. We support the Regional Board's analysis and conclusions to this effect as set forth in the Draft SED	inadequate. If appropriate, staff could then provide a further response.
7.2	PFPG	In particular, we agree with the deletion of the statement in the previous Draft SED, issued in July 2006, which had indicated that the "most likely" non-structural alternatives with which cities were expected to comply with the Trash TMDL include "development of municipal ordinances prohibiting food packaging with polystyrene material" (CEQA checklist, pp. 4-5). As clarified in the Regional Board's response to comments, a region-wide ban on polystyrene food service packaging is "not a foreseeable means of compliance" for the Trash TMDL as evaluated in the Draft SED, and individual cities considering adoption of such bans would be the lead agencies for CEQA compliance and evaluation of any environmental impacts. Regional Board Responsiveness Summary – CEQA Scoping Meeting for the Los Angeles River Trash TMDL (September 8, 2006), p. 2.	Development of municipal ordinances prohibiting food packaging with polystyrene material is beyond the scope of this TMDL.
7.3	PFPG	However, we remain concerned that some of the cities subject to the Trash TMDL continue to advocate before the Regional Board for a polystyrene food service packaging ban. *See* Responsiveness Summary – Trash TMDL for the Los Angeles River Watershed (September 8, 2006), pp. 165, 188-189, 198.	Comment noted. See response to comment 7.2.

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7.4	PFPG	In addition, we wish to address the Regional Board's response to our previous comments, asserting that our claims that such bans may result in impacts on air quality, water quality, plant life, fish and wildlife were "merely speculative." *Id.*, p. 160. Given that the Regional Board expressly decided *not* to conduct any CEQA review of such ban proposals in its Tier 1 SED – and therefore declined to evaluate or respond to any of the scientific documentation we previously submitted – it is perplexing that the response would make such an assertion.	It was not the intent of Regional Board staff to discount what are clearly areas of concern for the polystyrene food service packaging industry or opine about impacts that are beyond the scope of the project before the Regional Board.
7.5	PFPG	In particular, a polystyrene ban would necessarily require the substitute of alternate packaging materials. There is extensive evidence of impacts associated with commonly-suggested alternatives, especially biodegradable plastic materials. Accordingly, for the record, we incorporate by reference our previous comments and the evidence submitted therewith, and is also providing the following additional evidence of potentially significant adverse impacts. This evidence plainly exceeds the "merely speculative" and would have to be fully considered, if the Regional Board were to attempt any evaluation of the potential for adverse impacts from a ban strategy as a "reasonably foreseeable means of compliance."	See response to comments 7.2 through 7.5.
7.6	PFPG	Increased use of Bioplastics: A common alternative material for polystyrene packaging is plastic made from biodegradable materials, such as corn-based polymers, polylactic acid ("PLA") and polyhydroxyalkanoate ("PHA"). Manufacturers of biodegradable plastics have stated that legislative bans of polystyrene are considered one of the drivers creating the opportunity for their products to be preferred substitute products to polystyrene.	See response to comments 7.2 through 7.5.

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		As bioplastics become more present in the marketplace, opposition to these products from recycling advocates is on the rise. Specifically, Eco-cycle is lobbying Nature Works to not produce PLA-based water bottles because of concerns that they will contaminate PE recycling feedstock. Further, environmental and economic justice organizations such as the Institute for Local Self-Reliance have supported bioplastics as a replacement for conventional plastics. Thus, it is reasonably foreseeable that there will be an increase in use of bioplastics if there is a ban on all polystyrene materials. … the environmental impacts from the reasonably foreseeable increased use of bioplastics are scientifically based and well documented in the literature.	
7.7	PFPG	Air Quality Impacts: Evidence suggests that bioplastics such as PLA, when introduced into the litter stream, would result in potentially significant adverse air quality impacts Materials are biodegraded primarily through the enzymatic action of microorganisms. Among the principal by-products of the microbial degradation of organic products, including biodegradable plastics, are greenhouse gases ("GHG"), carbon dioxide and methane. Significant quantities of GHG are expected to be generated from the loading of biodegradable plastics in landfills, waterways and as trash due to the increase in carbon dioxide release from the degradation process. Further, when bioplastic litter in water is exposed to heat and moisture in low oxygen conditions, they will undergo anaerobic degradation, whereby generating carbon dioxide, methane,	See response to comments 7.2 through 7.5.

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		nitrous oxide, hydrogen sulfide, and volatile organic compounds ….. the climate change impact can be quite substantial, given that methane and nitrous oxide are many times more potent than carbon dioxide as a GHG. The ammonia released to the atmosphere can migrate to cause eutrophication in marine ecosystems, while hydrogen sulfide and VOCs both produce unpleasant odors. Finally, life cycle analyses show that the production of bioplastics would increase the amount of GHG emissions and other pollutants when compared to making other plastics such as polyethylene and polyethylene terephthalate.	
7.8	PFPG	Water Quality Impacts: Several recent studies conclude that the introduction of bioplastics into the litter stream will result in adverse water quality impacts due to the release of nutrients and nitrogenous compounds. ,,,, nitrate migrates easily in groundwater and surface water. Ammonia, while released to the atmosphere, can still disperse into surface water. Both nitrate and ammonia can contribute to eutrophication in surface waters. The breakdown of bioplastics in a water body such as a river, canal, estuary or bay can also cause large-scale impacts to aquatic resources due to the increased biological oxygen demand from the breakdown process. Moreover, manufacturing residues, such as dyes, inks, plasticizers, fillers and metallic catalysts, which are added to help promote degradation in bio-plastics, could adversely impact water quality as well as aquatic resources. In addition, life-cycle analysis shows that replacing polystyrene	See response to comments 7.2 through 7.5.

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		packaging with bioplastics could increase the adverse water quality impacts. For instance, the production of corn for the raw material has substantial water quality impacts. In particular, commercial corn agriculture requires the use of extremely high levels of nitrogen-based fertilizers, herbicides and insecticides, which enter surface waters during runoff. High levels of erosion are also known to be associated with commercial corn agriculture.	
7.9	PFPG	Plant Life Impact: As discussed above, nitrogenous compounds released during the degradation of bioplastics can cause eutrophication of surface waters. This condition result in increased growth of harmful and aggressive plants including algae, periphyton attached algae, and nuisance plants weeds in water bodies. Such an "algal bloom" dominates a water body by crowding can out other plant series and reducing the population of other plant species. It will also deplete the available amount of oxygen, further reducing the population of indigenous aquatic plant species. In addition, the toxicity to plants due to the buildup of inorganic materials in the soil can result in a reduction in soil productivity. Similarly, soil organisms can be affected leading to a less productive soil environment.	See response to comments 7.2 through 7.5.
7.10	PFPG	Impacts to Fish and Wildlife: …., nitrogenous compounds released during the degradation of bio-plastics can lead to algal bloom thereby reducing the available food source for fish and other aquatic life. An algal bloom reduces dissolved oxygen in the water and low dissolved oxygen content can kill fish.	See response to comments 7.2 through 7.5.

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		There is substantial evidence that the increased use of bioplastics will have reasonably foreseeable adverse environmental impacts to fish and wildlife, such as blockage of guts, impairment of gill function and spoilage of fur and feathers. These impacts are reasonably foreseeable due to the fact that the rate of biodegradation of bioplastics depends on local conditions and is highly variable, as well as the characteristics of partially degraded bioplastics. For example, under optimal conditions (i.e. optimized compost heaps), PLA takes three weeks to degrade. However, under sub-optimal conditions, even in the presence of high heat and humidity, PLA plastic can take up to six months to degrade. Further, PLA plastic is very stable in aquatic environments and will take months to degrade. Accordingly, fish and wildlife will be exposed to bioplastic materials that remain in the environment in the form of litter for longer periods that people generally assume. Further, many bioplastics do not remain solid while they degrade in the environment. Rather, they form a thick rubbery substance when exposed to water. The potential for long-term exposure of fish and wildlife to partially degraded bioplastics results in reasonably foreseeable adverse environmental impacts. Animals may be harmed because ingested bioplastics, whether whole or partially degraded, can result in blockage of the digestive track . Fish can be harmed as a result of impaired gill function after coming into contact with thick rubbery, partially degraded plastic in aquatic and marine environments Finally, the thick rubbery “goo” of partially degraded	

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		bioplastics can stick to the fur of mammals and feathers of birds, causing altered behavior and death..	
7.11	PFPG	Energy Impacts: Life cycle analyses suggest that replacing the polystyrene with bioplastics will increase the amount of energy required to produce an equivalent amount of bioplastic food packaging. For example, in the case of PLA, more fossil fuels are burned to fertilize and harvest the corn and to convert it into bio-plastic than is required to make an equivalent amount of petroleum-based plastics.	See response to comments 7.2 through 7.5.
7.12	PFPG	Impacts to Recycling Systems Increasing the quantity of bioplastics in the waste stream could impair the efficiency of existing recycling services. Plastic recyclers consider PLA to be a contaminant that must be removed from recycling plastics, despite the considerable cost to do so. The mixing of biodegradable plastic into the plastic recycling stream could potentially cause failure of the recycled plastic product, which is especially serious in the case of construction materials. If buyers of recycled plastic lose confidence in the quality of a particular source of recycled plastic, they are likely to choose to reduce their purchase of recyclable plastic. As a result, the unpurchased recyclable plastic would have to be disposed of as solid waste. Aside from creating additional solid waste, the transport of the recyclable plastic to a disposal facility would adversely impact air quality as a result of increased fuel consumption.	See response to comments 7.2 through 7.5.

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7.13	PFPG	Impacts from Increased Composting Another foreseeable consequence of increased use of bioplastics is that cities would seek to compost as much bioplastics as possible. In fact, the bio-based packaging industry recommends that its products be disposed of in a municipal or industrial composing facility in order to realize the packaging's maximum environmental efficiency (Royte 2006). The need to transport material to composting facilities, if they are not located close to where the material is generated, could result in increased fuel consumption from such transportation thereby impacting quality.	See response to comments 7.2 through 7.5.
7.14	PFPG	Impacts to Composing Services The increased use of bioplastics could also lead to contamination of "green" waste collected for composting in commercial and municipal composting facilities. As has been observed regarding the impact of plastic bags on commercial composting, "The quality of the end compost product is critical to market success, so any contamination with plastics is a potential problem." The same is true where the result is contamination of the compost end-product by non-biodegradable (although otherwise recyclable) plastics. This could cause batches of compost material to be unmarketable, and therefore, such material would have to be disposed of as solid waste. Again, the need to dispose of the compost material would create additional solid waste and the transport of the contaminated compost to a disposal facility will result in adverse air quality impacts from increased fuel consumption.	See response to comments 7.2 through 7.5.

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7.15	PFPG	Impacts of Increased Litter It is also foreseeable that switching to biodegradable plastics could lead to increase in litter. The general public perceives biodegradable products to be materials that "go away" quickly in the environment. Indeed, the results of a market research study show that there is reason to expect increased littering of bioplastics, as a substantial share of consumers expect that these discarded products will simply go away. On the contrary, life-cycle assessment studies show that biodegradable plastics may take weeks or months to degrade completely depending on the environmental conditions in which they are found. Experts also indicate that, without proper education, consumers have a tendency to think that there are no adverse environmental impacts from discard trash items labeled "biodegradable" or "compostable" onto the ground. This is not only an adverse environmental impact in itself, but increased levels of bioplastics and other biodegradable materials in the litter stream would exacerbate other impacts described in the comments above.	See response to comments 7.2 through 7.5.
7.16	PFPG	Impacts of Other Alternative Packaging Materials: In addition to or as an alternative to bioplastics, a polystyrene ban could lead food service providers to increase use of recyclable food service packaging. This could result in increased health concerns and potential contamination Over half of the outbreaks of food-borne disease in 2004 occurred in restaurants, cafeterias, schools, delicatessens and other foodservice operations, according to the Centers for Disease	See response to comments 7.2 through 7.5.

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		Control and Prevention. The use of disposable food service items is an important means of limiting food-borne disease. To the extent that any potential ban on non-recyclable plastic products results in increased recycling, it will be necessary for food providers to collect, store and separate those products for recycling, leading to increased risk of bacterial contamination and unsanitary conditions. In addition, it is well established, through multiple independent studies, that use of reusable food service items is associated with substantially higher levels of bacterial contamination than disposable items. In one study, bacteria are present at consistently higher levels on reusable products compared to disposable items, and the percentage of reusable items contaminated with detectable bacteria was approximately twice that of disposable items. The bacteria detected included types associated with human disease such as staphylococcus, streptococcus and coli form bacteria. *Id.* Another study reported a 50% greater probability of bacterial contamination for reusable than for disposable items in the same establishments. If paper products were considered as an alternative, such an approach would likely result in additional adverse environmental impacts. Hocking (1991) found that paper cups caused much greater environmental impacts than expanded polystyrene cups, requiring more chemicals, 10 times as much steam, 14 to 20 times as much electricity, and generating twice as much wastewater and 1.3 to 1.8 times as much air emissions. In addition, to the extent any ban would lead food service	

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		providers to use recyclable food service packaging; there is an increased human health risk of pathogen contamination as noted above. Moreover, paper foodservice packaging, particularly the plastic-coated type, is difficult to recycle, which is reflected in the fact that the recycling level for food service packaging is generally low. Thus, alternative products, such as paper products, that are not bioplastics also would have their own environmental impacts.	
8.1	Burke, Williamson, & Sorensen, LLP	The Cities support the goal of eliminating trash in the Los Angeles River. Nonetheless, there are flaws **in** the proposed amendment that must be noted and that should be corrected: First, the Substitute Environmental Document ("SED") that the Regional Board prepared does not comply with the California Environmental Quality Act ("CEQA") or the standards enunciated in *City of Arcadia* v. *State Water Resources Control Board (2006)* 135 Cal.App.4th 1392, 1420. It is deficient in the following ways: The SED has not adequately analyzed the environmental impacts of the proposed compliance activities, in particular, impacts to air quality and water quality; The SED has not adequately analyzed impacts to public facilities and governmental services, in particular, impacts on garbage hauling and landfill space; The SED does not include a fair and complete disclosure of the proposed TMDL's reasonably foreseeable impacts;	The Substitute Environmental Document (SED) provides a detailed analysis of the potential adverse impacts associated with the implementation of the Los Angeles River Trash TMDL. For each implementation approach the SED includes a fair and complete disclosure of reasonably foreseeable impacts to aesthetics, agricultural resources, air quality, coastal resources, cultural resources, geology and soils, hazards, hazardous materials and human health, hydrology and water quality, land-use, noise and vibration, population and housing, public services, recreation, transportation and traffic, and utilities and service systems. (See Chapter 7, sections 7.3-7.18)

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		The SED does not adequately analyze the potentially significant adverse impacts; The SED does not analyze the cumulative impacts from the proposed TMDL, including cumulative impacts related to implementation of other TMDLs; The SED fails to consider economic impacts and costs of the proposed TMDL; The SED fails to consider social impacts, including impacts on housing and public services; The SED does not adequately consider the fact that the overwhelming majority of trash in the Los Angeles River is plastics. The TMDL shifts the burden of controlling plastic source pollution from businesses and consumers to municipalities; and The SED does not adequately analyze project alternatives, including the no project alternative.	The SED also provides an adequate analysis of project alternatives (Chapter 4), potentially significant adverse impacts (Chapter 9 – section 9.3), and cumulative impacts related to other TMDLs (Chapter 9 – section 9.1). With respect to economic impacts and costs, the diversion of fiscal resources is an economic impact, which does not contribute to and is not caused by physical impacts on the environment that are the purview of this SED, and CEQA generally. Finally, while a significant proportion of the trash in the Los Angeles River may be plastics, municipalities are responsible for controlling trash dischargers from their stormdrains. The comment fails to explain in any manner how the SED's analysis is inadequate, fails to recognize the analysis that exists in the SED, and provides staff no basis to discern any specific issue the commenter has

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			with the analysis, and likewise, no basis to respond (other than by contradicting the comment), and no basis to create a supplement to any alleged deficiency.
8.2	Burke, Williamson, & Sorensen, LLP	Second, the TMDL fails to impose implementation measures on non-point sources, such as the National Forest Service, as well as those federal and State facilities, universities, hospitals, and school districts that have yet to be issued Phase II NPDES permits. This failure improperly and unfairly increases the burden on municipalities.	The Court of Appeal determined that the Regional Board need not impose implementation measures on nonpoint sources. (*Arcadia*, 135 Cal.App.4th at 1431.) Nevertheless, the TMDL includes requirements that Waste Discharge Requirements (permits) may be issued, consistent with California's Nonpoint Source Pollution Control Program Plan, to address any nonpoint sources discharges of trash to relevant water bodies. Nonpoint source discharges of trash have no bearing upon the municipalities' burden to eliminate trash discharges from their point sources. Nonpoint sources by definition do not discharge through the MS4 point source. As regards the Phase II Permits, School districts are considered "non-traditional" Phase II MS4s under USEPA storm water regulations. The designation, permitting, and

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			scheduling, of "non-traditional" MS4s is left to the discretion of the Regional Board based on its priorities. Storm drains operated by the City of Los Angeles and the County of Los Angeles, and Caltrans are the principle sources of trash to the Los Angeles River. Special studies to quantify the loads from small MS4s such as educational institutions could be conducted, and WLAs for small MS4s could be developed based on the results of these studies. The Regional Board is also contemplating designation of small MS4 facilities on a watershed basis based on TMDL priorities. In such a case, designated small MS4 facilities may be required to seek coverage under a small MS4 watershed general permit that could be developed for the Los Angeles River Watershed.
8.3	Burke, Williamson, & Sorensen, LLP	Third, the TMDL is an unfunded mandate contrary to the California Constitution.	This claim is not a proper comment to the Regional Board. If the commenter believes the TMDL, when implemented, would constitute an unfunded mandate, the commenter is free to file a test claim

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			before the Commission on State Mandates, which has exclusive jurisdiction over unfunded mandate issues. In any event, the claim is not valid for a variety of reasons. First, the Los Angeles River Trash TMDL is compelled by federal law and as such is not an unfunded state mandate, but a federal mandate. The requirement that states develop TMDLs for impaired waters is clearly set forth at 33 U.S.C. 1313(d)-(e). Second, the TMDL is a regulation that is not self-implementing, although the regulation contemplates that NPDES permits will ultimately be modified to incorporate the TMDL's requirements. Notably, every point source discharger is required to have an NPDES permit, not just municipal permittees. Thus the requirement is not endemic to municipalities, thus precluding a mandates claim. The fact that the federal Clean Water Act established more lenient requirements for municipalities via an MS4 permit,

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			than other NPDES permittees, does not negate the fact that the permit requirement applies to all dischargers, municipal and private alike. The TMDL implements the applicable water quality standard, and makes all stormwater permittees in the watershed responsible for meeting the water quality standard. As a result, the TMDL is generally applicable and not subject to subvention requirements in Article XIII. Third, the affected agencies have sufficient time to conduct planning and implementation activities, and to explore and select any necessary funding options, including loans, grants and revenue increases. The availability of such funding mechanisms precludes a claim for subvention.
8.4	Burke, Williamson, & Sorensen, LLP	Fourth, the compliance schedule is overly aggressive to the point of being infeasible. The TMDL would require a 40% reduction in the first year and annual reductions of an additional 10% in subsequent years until the numeric target of zero is met. This	See response to comments 1.4 and 3.2. Responsible agencies have been aware of the requirements of the TMDL since it was first adopted

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		unrealistic target ignores the fact that the Court invalidated the prior trash TMDL based on the Regional Board's failure to comply with CEQA and thus there has been no TMDL requirement in place. This aggressive compliance schedule also ignores the fact that the Cites must plan, budget, obtain funding, allow a public bidding *process,* select *a vendor and then* install *the devices. These things* do *not* happen overnight. In effect, by requiring a 40% reduction in the first year, the Regional Board is shifting the burden of the prior TMDL's invalidation on to the backs of the Cities, rather than face its failure to comply with CEQA which led to the invalidation.	in 2001. Since then, several cities have increased their litter abatement efforts. This 40% reduction is from the baseline established based on data from the 2002-03 and 2003-04 storm years, and would translate to an annual reduction of10% upon the first compliance point in 2008. Unless it was the intent of a responsible agency to never embark on trash discharge abatement efforts, there has been ample time to include trash abatement considerations into budgeting processes. The commenters have not set forth any evidence demonstrating what efforts they have to date undertaken, and what further efforts would be needed to comply with the 40% reduction, and how the current time frame precludes such compliance. Without specific evidence of a hardship, the policies favoring restoration of the watershed, controlling one's own waste rather than forcing its control and impacts on downstream communities, the existing independent requirements in the MS4 permit, and the fact that all jurisdictions in the region have

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			known since at least 2001 that significant trash abatement efforts will all be required, prevail over the unsupported claim that the schedule is overly aggressive. Notably, neither Alhambra nor Industry were parties to the *Cities of Arcadia* litigation, and thus as to them, the TMDL was effective until June 7, 2006 when it was set aside. While cities are free to ignore regulatory requirements in hopes that regulations may be set aside in litigation, it unreasonable to assume that they may force the impacts of their failure to properly dispose of their trash on downstream communities and the environment forever. At some point, they do so at their own peril. The implication in their comment (40% is prospectively required in the first year) suggests that they've done nothing to start to address this problem during the last six years. That would be inconsistent with their comment 8.1 that "The Cities support the goal of eliminating trash in the Los Angeles River."

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8.5	Burke, Williamson, & Sorensen, LLP	Fifth, the Regional Board plans on implementing the TMDL through the MS4 permits. The MS4 permits, however, utilize an iterative process. A drastic 40% reduction is not possible to achieve utilizing an iterative process. The TMDL is thus inconsistent with the very permits that will implement the TMDL	Staff disagrees. Sufficient time has been allowed for an iterative process by the 9-year compliance schedule. Furthermore, comments to the ultimate manner in which the TMDL is incorporated into the permit may be made when the permit modification is ultimately before the board.
8.6	Burke, Williamson, & Sorensen, LLP	Sixth, implementing the TMDL via the MS4 permits puts the Cities at risk of a citizen suit for any failure to comply, no matter how minor. This is an-improper burden to place on Cities.	The commenters' opinion of Congress decision 1) that states establish TMDLs to attain water quality standards; 2) that municipalities be subject to the Clean Water Act requirements through the MS4 permitting process; and 3) that citizens should have the right to enforce violations of the Clean Water Act through private litigation, is noted. Further, there is no evidence of rampant citizens suits for trivial violations, but even if such private enforcement occurred, any penalties would no-doubt be scaled to the gravity of the violations, as required by Water Code section 13385.
8.7	Burke, Williamson, & Sorensen, LLP	And finally, the Staff Report, like the SED, does not adequately analyze the costs to the Cities to comply. For example, for the City of Alhambra, the minimum capital costs alone to comply would be $500,000, and this figure does not include costs related	The diversion of fiscal resources is an economic impact, which does not contribute to and is not caused by physical impacts on the environment

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		to personnel and staff resources. There is no funding either identified or available for such massive financial expense.	that are the purview of this SED, and CEQA generally. See response to comments 1.4, 2.2, and 2.3.
9.1	Rutan & Tucker	The Coalition for Practical Regulation also known as "CPR" is an ad hoc group of municipalities in Los Angeles County committed to obtaining clean water through cost-effective and reasonable stormwater regulations, and consists of the following Cities: Arcadia, Artesia, Baldwin Park, Bell, Bellflower, Bell Gardens, Bradbury, Carson, Cerritos, Commerce, Covina, Diamond Bar, Downey, Gardena, Hawaiian Gardens, Industry, Irwindale, La Canada-Flintridge, La Mirada, Lakewood, Lawndale, Monrovia, Montebello, Monterey Park, Norwalk, Palos Verdes Estates, Paramount, Pico Rivera, Pomona, Rancho Palos Verdes, Rosemead, Santa Fe Springs, San Gabriel, Sierra Madre, Signal Hill, South El Monte, South Gate, South Pasadena, Temple City, Vernon, Walnut, West Covina, and Whittier.	CPR is a group of municipalities in the Los Angeles Region whose members (along with other parties) have instituted a variety of lawsuits against the Regional Board and the State Board, mounting substantial challenges over the last six years to the Regional Boards efforts to require storm water discharges to be protective of water quality standards. The litigation typically does not merely challenge the adequacy of the evidence to support the Regional Boards actions, but also includes fundamental challenges to the Regional Board's legal authority to even regulate, and to virtually every aspect of the Board's compliance with the various statutes that govern its activities. With the very limited exception of certain California Environmental Quality Act (CEQA) claims, the Water Boards have

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			prevailed on each of the many claims raised in each of these lawsuits. They include: • *Cities of Arcadia et al v. LARWQCB et al* (2006) 135 Cal.App.4th 1392 (Challenge to the Los Angeles River Trash TMDL). • *County of Los Angeles, et al v. SWRCB et al* (2006) 143 Cal.App.4th 985 (Challenge to the 2001 Los Angeles MS4 Permit). • *County of Los Angeles, et al v. Commission on State Mandates; LARWQCB Real Party in Interest* (2007) 150 Cal.App.4th 898 (Claim that parts of the Los Angeles MS4 Permit are an unfunded state mandate). • *Cities of Bellflower et al v. LARWQCB*, Los Angeles Superior Court # BS101732 (Challenge to the Los Angeles River and Ballona Creek Metals TMDLs).

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			• *Cities of Arcadia et al v. LARWQCB et al*, Orange County Superior Court # 06CC02974) (Challenge to the Regional Board's 1975 and 1994 region-wide water quality control plans, and the process to review water quality standards). The environmental impacts of the Regional Board's regulations were considered in the first iteration of the Los Angeles River Trash TMDL. However, documentation of that consideration failed to pass muster. During the intervening years after the trial court rulings in the trash case, CPR member-cities or their counsel have submitted detailed CEQA comments to many other TMDLs, permits, and other matters before the Regional Board. Often, no substance has been provided to support the comments; rather the mere allegation that the "board did not analyze" or "did not consider" has been submitted with respect to each and every item in the standard

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			form CEQA checklist, leaving staff to refute the allegations rather than engage in meaningful dialogue about the actual impacts of the project or the availability of mitigation, which is the purpose of CEQA. Further, sometimes these comments have appeared abstracted from other documents, verbatim, without analysis of the CEQA documents before the Regional Board. In response to this trend, and the various past, pending, and anticipated future legal challenges to this TMDL and others, staff has developed further CEQA expertise, from which the 300 page SED in support of this TMDL is a result, and staff has responded in good faith to every comment submitted. Notably, while these cities are litigating the Regional Board's CEQA compliance and the adequacy of staff's conclusions about the existence of significant environmental impacts from the means of compliance with this TMDL, staff's research shows that

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			in every instance where a jurisdiction subject to the TMDL has commenced compliance efforts, the jurisdiction has executed a Notice of Exemption, implying a conclusion that no impacts result from the project. Indeed, given that most of the impacts are born of trash collection efforts and construction or modifications to municipal storm drains, matters routinely conducted every day by municipalities throughout the region, the impacts from these activities are well-known to them, and staff does not believe that CEQA analysis generates any useful information that the cities do not already know.
9.2	Rutan & Tucker, LLP	Introduction (A-C): In August of 2002, twenty-two Cities sued the Regional and State Boards to set aside the 2001 TMDL, with the case ultimately being resolved by the Court of Appeal invalidating this TMDL on the grounds that the Boards had failed to comply with the California Environmental Quality Act ("CEQA"), as they had failed to include "an analysis of the reasonably foreseeable impacts of construction and maintenance of push control devices or mitigation measures," and because "[a]s a matter of policy, in CEQA cases a public agency must explain the reasons for its actions to afford the public and other	*The commenters provided a summary of events preceding the release of the March 20, 2007 draft of the Los Angeles River Trash TMDL. This summary does not accurately reflect the events as they occurred:* In August of 2002, twenty-three cities ("Cities") sued the Los Angeles Regional Water Quality Control Board and State Water

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		agencies a meaningful opportunity to participate in the environmental review process and to hold it accountable for its actions."	Resources Control Board to set aside the TMDL, on many grounds. The trial court entered an order deciding some claims in favor of the Water Boards, and some in favor of the Cities. Both sides appealed, and on January 26, 2006, the Court of Appeal decided every one of the Cities' claims in favor of the Water Boards, except with respect to their CEQA compliance. (*City of Arcadia et al., Los Angeles Regional Water Quality Control Board et al.* (2006) 135 Cal.App.4th 1392.) The Cities filed a petition for review by the California Supreme Court, but on April 19, 2006, the Supreme Court declined to hear any of the Cities' claims. The Court of Appeal ruled as follows: The Court rejected the Cities' claim that the target of zero trash is unattainable and inordinately expensive. (135 Cal.App.4th at 1413 and 1427-1430.) The Court rejected the Cities' claim that an assimilative capacity study was required before the Water Boards could determine how much

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			trash, a pollutant that does not assimilate, would violate the narrative objectives. (135 Cal.App.4th at 1409-1413.) The Court rejected the Cities' claim that the California Water Boards were required, but failed, to conduct a cost/benefit analysis and consideration of economic factors. (135 Cal.App.4th at 1415-1418.) The Court rejected the Cities' claim that the California Water Boards were prohibited from establishing a TMDL for the Los Angeles River Estuary until it was formally listed on the 303(d) list. (135 Cal.App.4th at 1418-1420.) The Court rejected the Cities' claims that TMDLs for storm water may not require agencies to perform better than the "maximum extent practicable", and must allow compliance through best management practices. (135 Cal.App.4th at 1427-1430.) The Court rejected the Cities' claim that the California Water Boards were required to implement load

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			allocations for nonpoint sources of trash pollution. (135 Cal.App.4th at 1430-1432.) The Court rejected the Cities' claim that the California Water Boards failed to adhere to the data collection and analysis required by federal and state law (135 Cal.App.4th at 1433-34.) The Court rejected the Cities' claim that the California Water Boards relied on nonexistent, illegal, and irrational uses to be made of the Los Angeles River. (135 Cal.App.4th at 1432-33.) The Court rejected the Cities' claim that the California Water Boards violated the Administrative Procedures Act (APA). (135 Cal.App.4th at 1434-35.) The Court did find, however, that the Water Boards did not adequately complete the environmental checklist, and that evidence of a "fair argument" of significant impacts existed such that the Water Boards should have performed an EIR level of analysis through an EIR

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			or its functional equivalent. (135 Cal.App.4th at 1420-26.) The Court therefore affirmed a writ of mandate issued by the trial court, which orders the Water Boards to set aside and not implement the TMDL, until it has been brought into compliance with California Environmental Quality Act (CEQA).
		The Regional Board thereafter scheduled a hearing for September 14, 2006, to readopt the TMDL, but without any apparent effort to comply with the requirements of the Writ of Mandate or to prepare the functional equivalent of an EIR. Accordingly, the Cities were forced to go back to the trial court in the *Arcadia v. State Board* litigation, to enforce the Writ of Mandate, and successfully obtained an order striking the State and Regional Boards' Return to the Writ of Mandate dated July 21, 2006,….	The Regional Board set aside the TMDL on June 7, 2006, and subsequently filed their return demonstrating compliance. Staff thereafter updated the CEQA analysis for the September 14, 2006 hearing to include detailed analyses of implementation alternatives in compliance with the Writ of Mandate. The Cities filed several challenges to the return to the writ filed by the Water Boards. The return was ultimately sustained, and the court specifically ruled that it had not formed any conclusion whatsoever about the adequacy of the Regional Board's draft CEQA documents.

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		Accordingly, after continuing the hearing on the adoption of the 2006 TMDL from September 12 to October 12, and then again to October 24, 2006, the Regional Board determined not to proceed with the adoption of the 2006 TMDL, presumably because it finally recognized the need to prepare the functional equivalent of an EIR. No additional notices or iterations of the Trash TMDL, after the 2006 TMDL was released, were publicly noticed until the March 20, 2007 draft.	As identified in the Regional Board Notice dated October 19, 2006, the TMDL was not heard because, under section 21159 of the Public Resources Code, an agency's environmental analysis must include an analysis of a reasonable range of specific sites, a deficiency called to the Board's attention in one of the comment letters. While the draft environmental documents did analyze site-specific impacts, it did not make reference to specific sites. Among the many comments received on this matter, one comment objected in this regard. Accordingly, a site-specific analysis was prepared. In the meantime, Regional Board staff completely rewrote the CEQA documentation. This reanalysis contemplated the pattern of litigation discussed in response to comment 1, and although staff fully believe the 2006 documents were adequate (with the exception of the site-specific analysis that was

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			inadvertently omitted), they undertook a far more extensive and detailed analysis than ever before. Staff intends to fully comply with CEQA in every respect, and reduce the risk of success of any future claims of CEQA violations.
		The EPA TMDL is discussed as a "project" alternative in the Substituted Environmental Document ("SED") dated March 20, 2007 and prepared for the 2007 TMDL. Yet, as discussed further below, the SED mischaracterizes the implementation deadlines in the EPA TMDL, as the EPA TMDL expressly endorsed a phased implementation schedule in accordance with the 2001 TMDL, over a ten year period, ...	The 2002 EPA Trash TMDL for the Los Angeles River was adapted from the Regional Board's 2002 TMDL in order to meet the 2002 the consent decree deadline, hence the endorsement of the phased Implementation schedule.
		The 2006 TMDL also varied markedly from the 2001 TMDL in that it deleted the requisite "load allocation" for "nonpoint sources." Instead, the 2006 TMDL only specified a "waste load allocation" for point sources, and completely left out of the TMDL calculation the required "load allocations" for nonpoint sources even though a load allocation is required by the federal regulations. (40 CFR § 130.2(i).)	Since the draft 2006 TMDL is not under consideration, further responses to comments relating to the 2006 draft will be limited.
9.3	Rutan & Tucker, LLP	The March 20, 2007 Proposed Trash TMDL ("2007 TMDL" or "TMDL"), differs from the 2001 TMDL, the EPA TMDL and	See response to comment 8.4. In the 2001 Trash TMDL a 10% reduction

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		even the July 2006 TMDL, in one material respect. Specifically, rather than requiring a ten percent (10%) reduction in trash after three years, or even a thirty percent (30%) reduction after one year, the 2007 TMDL instead requires an overly aggressive forty percent (40%) reduction in trash by September 30, 2008, as the initial interim waste load allocation.	was required after one year of compliance measures opposed to three years as stated by the commenter. The two years preceding the first year of compliance was the baseline monitoring period during which data was collected for establishing baseline waste load allocations. The 30% reduction in trash in the 2006 draft Trash TMDL reflected an expectation of an annual 10% reduction in trash as a result of efforts by responsible jurisdictions since the end of the baseline monitoring periods. The 40% reduction in trash reflects a similar expectation.
9.4	Rutan & Tucker, LLP	The 2007 TMDL also varies from the 2001 TMDL and the EPA TMDL, in that it fails to include the required "load allocation" for nonpoint sources, and thus only specifies a waste load allocation for point sources, a flaw that is fatal to the development of any TMDL. (See 40 CFR 130.2(i).)	The 2001 TMDL did not include an express load allocation, but USEPA agreed a zero load allocation is implied in a zero trash TMDL. Since the load allocations are necessarily zero in a zero trash TMDL, the point sources suffer no prejudice from the failure to expressly state that load allocations are zero. Nevertheless, conforming changes will be included to address the comment, and expressly state that which is implied.

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			Also, the Court of Appeal determined that the Regional Board need not impose implementation measures on nonpoint sources. (*Arcadia*, 135 Cal.App.4th at 1431.)
9.5	Rutan & Tucker, LLP	In addition, the 2007 TMDL suffers from many of the same defects as did the 2006 TMDL (which the Cities have submitted extensive comments on), and is arbitrary and capricious, is not supported by substantial evidence, and is contrary to law, for the following reasons: (1) First, the attempted accelerated compliance schedule and the requirement of a forty percent (40%) reduction in trash by 9/30/08, rather than a ten percent (10%) reduction by the end of the first year the TMDL becomes final, as provided for in the EPA TMDL, is a significant change in the TMDL and causes the TMDL to be unreasonable and unobtainable because achieving a forty (40%) reduction in trash by 9/30/08 cannot "reasonably" be achieved. (See Water Code §§ 13000 and 13241.) Accelerating the initial waste load allocations to 40% also otherwise compounds the problem of complying with TMDL, since to date, the only recognized deemed compliant full-capture devices are costly and/or unproven. The Cities propose a more reasoned and effective alternative to the Trash TMDL project. (See Exhibit "10," a proposed Catch Basin Alternative to the 2007 TMDL.)	See response to comment 8.4. The compliance schedule has not been accelerated. The 40% reduction reflects the expectation that cities have been involved with trash reduction efforts since the determination of the baseline waste load allocations ending in the 2003/04 storm year. The commenter has not submitted any evidence supporting the implication that this assumption is incorrect. Staff disagrees that none of the certified full-capture systems are cost effective. Moreover, the board may certify additional full-capture systems as may be proposed by stakeholders, including that proposed by the commenters.

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9.6	Rutan & Tucker, LLP	In fact, the 2007 TMDL, with the required reduction in trash by 9/30/08, would require a forty (40%) reduction in trash over a matter of mere months from the date it becomes an enforceable document. Specifically, by the time the 2007 TMDL is approved by the State Board, the OAL and by US EPA, and by the time it is thereafter incorporated into either the municipal NPDES permit for Los Angeles County, or a separate set of Waste Discharge Requirements ("WDRs") or a Memorandum of Understanding ("MOU") between the Regional Board and the affected cities, the 9/30/08 deadline to achieve the required forty percent (40%) reductions would likely be but six (6) months or less away from the effective date of the TMDL.	See response to comments 1.4, 2.2, 2.3, and 3.2. The commenters submitted evidence admitting that they can reduce 50% of the trash discharges by addressing a mere 15% of the storm drain inlets. (See Commenters' Exhibit "10," Plan, p. 1.)
9.7	Rutan & Tucker, LLP	That the effective date of the TMDL is the date it is ultimately enforceable through its incorporation into the subject NPDES permit, other WDRs or an MOU, is evidenced by the Boards' positions and assistance to US EPA in *City of Arcadia v. US EPA* (9th Cir. 2005) 411 F.3d 1103, which resulted in US EPA successfully arguing that ***"a TMDL is not self-enforcing, but serves as an informational tool or goal for the establishment of further pollution controls."*** (*Id*. at 1105.) The proposed basin plan amendment itself provides that the TMDL "will be implemented through storm water permits" (see attachment A to proposed Resolution adopting 2007 TMDL, Table 7-2.1), a process which cannot incur until after the State	TMDLs are not self-implementing. Absent modifications to relevant permits, the TMDL terms are not enforceable. The TMDL regulation however, becomes effective, and thus forms the basis for permit limits, after it is approved by the State Board, OAL, and USEPA.

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		Board, the OAL and US EPA have all approved the 2007 TMDL, and a process that will require either the adoption of a new Municipal NPDES permit for Los Angeles County and the Cities, or an amendment of the existing Municipal NPDES permit, or the adoption of separate WDRs or MOUs.	
9.8	Rutan & Tucker, LLP	In addition, the 2007 TMDL cannot "reasonably" be achieved and thus was not developed in accordance with the requirements of law because it fails to include a reasonable set of measures that may be implemented to comply with its terms. To date, the only deemed full compliant measures are either too costly to implement and/or are unproven. Specially, the 2007 TMDL fails to identify a sufficient number of full capture devices which may be installed and utilized throughout the Basin in order for the Cities to be deemed in compliance with the Waste Load Allocations ("WLAs"). The most likely means the Cities would follow to comply with the TMDL would be to install catch basin protection devices at various locations throughout their jurisdiction which drain to the LA River. However, under the TMDL, the only apparent deemed compliant full-capture catch basin protection device is the catch basin brush insert developed by the cities of Glendale, Pasadena, LaCanada-Flintridge and Burbank (see tentative Resolution, p. 3, ¶ 12 – hereafter the "Brush Catch Basin Insert"), a device which has proven to be difficult to maintain and with limited application and effectiveness. Other catch basin devices were recently approved as full-capture devices, and these devices should be included in the list of certified full-capture devices in the TMDL.	CPR, represented by Rutan and Tucker, lost this argument in *Cities of Arcadia*. The claim that some full-capture systems are allegedly not effective, even if true, does not prejudice the cities. Compliance through a certified full capture system is deemed compliance with the WLA, thus if it is not fully effective, the permittee would not be liable for violating the WLAs (unless of course, the limited effectiveness results from conduct of the permittee). In addition to Vortex Separation System (VSS) units, the Regional Board has certified the following devices as full-capture for the purpose of the trash TMDL: City of Signal Hill's Hamilton Bowl

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		Without other approved deemed compliant full-capture catch basin protection devices, or other approved Best Management Practices ("BMPs") which, if implemented, will be deemed to either be considered full-capture, or when combined with other measures, collectively deemed to be full-capture, the 2007 TMDL is not reasonably achievable as none of the interim waste load allocations "could be reasonably achieved." (Water Code § 13241(c).)	Trash Nets (Signal Hill is a member of CPR, and a party in Cities of Arcadia). California Department of Transportation's Gross Solid Removal Devices (GSRDs), City of Glendale's Catch Basin Brush Inserts and Horizontal Screens, City of Los Angeles horizontal screen inserts and vertical trash capture screen inserts, and In addition, approval for the connector pipe screen devices, developed by Los Angeles County Department of Public Works, is pending. These devices have been developed by their respective agencies and presented to the Executive Officer for full-capture certification. Full-capture devices do not have to be limited to those listed above. Any agency and/or jurisdiction can develop or identify potential full-

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			capture systems. The criteria necessary to meet full-capture certification are provided in Appendix D of the TMDL Staff Report that was released for public review on March 20, 2006 and is also available on the Regional Board website.
9.9	Rutan & Tucker, LLP	Second, adopting the 2007 TMDL, in its present form, is action contrary to CEQA, the trial court's Writ of Mandate and the Court of Appeal's decisions in *Arcadia v. State Board*. For example, the SED is contrary to CEQA because the TMDL project analyzed in the SED requires only a thirty percent (30%) reduction in trash by 9/30/08, and yet the proposed resolution and Basin Plan amendment require a forty percent (40%) reduction in trash. Thus, the environmental impacts from the proposed 40% reduction in trash "project" by 9/30/08 have not been analyzed.	The SED analysis of compliance measures focuses on the potential impacts of the compliance measures required for full compliance with the TMDL and are therefore not affected by the amount of trash removed in the first year
9.10	Rutan & Tucker, LLP	Further, the 2007 TMDL fails to comply with CEQA because its feasible alternatives analysis is woefully deficient. Specifically, the SED mischaracterizes the lone suggested feasible alternative, i.e., the EPA TMDL, wrongly claiming it "will require compliance at the time of permit renewal, and in all permit cases, in less than five years." The SED further provides that: "the environmental impacts due to Alternative Two [the EPA TMDL] may be of a greater severity as the intensity of implementation actions will be greater to comply	The Substitute Environmental Document analyses all possible program alternatives. The commenter does not identify any other reasonable program alternatives that could have been included. In addition, the SED provides an extensive analysis of feasible project level alternatives.

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		with the shorter timeframe." (SED, p. 43.) Yet, as referenced above, the EPA TMDL expressly endorses "a yearly reduction of ten percent" and a series of interim goals "for reaching the waste load allocation of zero at the end of implementation year ten."	With respect to the comment on the mischaracterization of the EPA TMDL, EPA generally does not provide for implementation schedules in the TMDLs that it develops. However, the 2002 EPA Trash TMDL for the Los Angeles River was adapted from the Regional Board's 2001 TMDL in order to meet the 2002 the consent decree deadline, hence the endorsement of the phased implementation schedule. Whether or not EPA would again allow staged implementation does not affect the fact that the same compliance measures would be required, irrespective of which agency adopted the TMDL. Thus, an EPA TMDL would not result in substantially less significant adverse environmental impacts than the TMDL adopted by the Regional Board.
9.11	Rutan & Tucker, LLP	Third, the 2007 TMDL violates the requirements of the Administrative Procedures Act ("APA"), and specifically the need for "clarity," a requirement to ensure that the regulated parties understand their obligations under the proposed	The TMDL is clear that agencies are responsible for any trash discharged within their jurisdiction. Trash discharged from County maintained

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		regulation. (See Govt. Code § 11349.1.) The Basin Plan amendment, which is a proposed "regulation," lacks clearly for five reasons. First, the 2007 TMDL requires the various affected Cities, the County of Los Angeles and the County Flood Control District, as well as Caltrans, to achieve the interim and final WLAs, without specifying that the Cities are not responsible for achieving the WLAs for those areas affected by catch basins and storm drain lines maintained by either the County, the Flood Control District or Caltrans.	drains within a city is the responsibility of that city. The County of Los Angeles is responsible for trash discharged from drains within the unincorporated areas of Los Angeles County. Finally, trash discharged from any Caltrans right of way is the responsibility of Caltrans.
		Second, the regulation lacks clarity in that the proposed Resolution confirms that at least one catch basin device utilized by the Cities of Glendale, Pasadena, La Canada-Flintridge and Burbank, the Brush Catch Basin Insert, is to be considered a "full-capture" device, but on the other hand, the TMDL Report characterizes "catch basin inserts" as only "partial" capture devices, without a discussion of the Brush Catch Basin Insert, or any other catch basin device being considered a full-capture device.	The Cities of Glendale, Pasadena, La Canada-Flintridge and Burbank developed catch basin brush inserts in conjunction with horizontal in-laid screens as a full-capture system that was certified. Since then the City of Los Angeles and the Los Angeles County Department of Public Works have both developed horizontal and vertical trash capture screen inserts
		Third, the proposed Basin Plan Amendment describes the "load capacity" in terms of "bacterial indicator densities" rather than types and/or amounts of trash.	The reference to "bacteria indicator densities" is clearly a typographical error which will be corrected.

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		Fourth, the TMDL provides for a design storm event in connection with the definition of "Full-Capture Systems," but utilizes a different design storm event definition in other storm water requirements.	The design storm events used in other storm water requirements (SUSMP - 0.2 in/hr sizing) will not meet the "full-capture" performance level. The commenter has not explained how this is allegedly a violation of the APA.
		Finally, the TMDL is ambiguous on when the "reopener" described in footnote 2 to Table 7.2.3 is to occur (i.e., whether all affected entities must reach 50% reductions in trash or whether the 50% level is evaluated on a watershed basis), and whether those Cities which reach 50% may cease implementation of further measures until such time as the reopener process has been concluded. These ambiguities must be clarified before the proposed "regulation" can be adopted.	The reopener is to occur when a 50% reduction of trash has been achieved in the watershed. The Basin Plan Amendment has been clarified. Cities are required to comply with the schedule in the Basin Plan Amendment. Noncompliant jurisdictions will be subject to enforcement proceedings.
9.12	Rutan & Tucker, LLP	Fourth, in addition to the failure of the Regional Board, in the SED or otherwise, to consider the environmental impacts of an alternative requiring a 40% reduction in trash by 9/30/08, and in addition to the fact that such an alternative cannot "reasonably be achieved," it is apparent that the "economic" impacts of such an alternative were not adequately considered, as required by Water Code sections 13000 and 13241, as well as by Public Resource Code section 21159. Moreover, the "economic" analysis of the costs of the various proposed implementation measures set forth in the TMDL Report prepared by staff ("TMDL Report") is deficient, as the cost analysis in said	The Court of Appeal rejected claims that the previous Trash TMDL violated section 13241 or 13000. (*Arcadia* 135 Cal.App.4th 1392, 1415-18.) A TMDL is not a water quality objective (See Memorandum from Staff Counsel Michael Levy to Ken Harris, dated July 12, 2002, "*The Distinction Between a TMDL's Numeric Targets and Water Quality Standards.*"), and economic

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		document is dated and contains a series of figures that are drastically understated.	considerations, or others of the 13241 factors could not be used to relax TMDL requirements; only to make them more stringent. The economic analysis presented in the staff report is neither flawed nor outdated. The economic analysis is based on the area of the Los Angeles River watershed, an estimate of the number of catch basin inserts, vortex separators and end of pipe nets required to implement the TMDL and unit costs for the number of catch basins in the Los Angeles River watershed, and the unit costs for the device. This is a standard cost estimating protocol used widely in the engineering and construction industries. The assumptions used to estimate watershed area and the capacity and costs for catch basin inserts, vortex separators, and trash nets are reasonable and the cost estimate is valid. Also, municipalities are opting to use the more recently certified vertical and horizontal catch basin trash capture devices in lieu of the more costly vortex separation systems. The

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			TMDL Staff Report includes a cost analysis of such full capture catch basin trash capture devices.
9.13	Rutan & Tucker, LLP	Fifth, the Trash TMDL will result in unfunded mandates being imposed on the Cities, in violation of the California Constitution. (See Cal. Const., Art. XIII B, § 6.)	See response to comment 8.3.
9.14	Rutan & Tucker, LLP	Sixth, the 2007 TMDL is contrary to law as it does not contain a "load allocation" for nonpoint sources, even though, by law, a "load allocation" is required by the federal regulations. (See 40 CFR § 130.2(i).) By definition, a TMDL is defined as the sum of the individual "waste load allocations" for point sources, and the "load allocations" for nonpoint sources, along with natural background. (See 40 CFR § 130.2(i).) And a number of other trash TMDLs adopted or proposed by the Regional Board expressly impose "load allocations" on nonpoint sources of trash. (See the East Fork San Gabriel River Trash TMDL, attached as Exhibit "11"; also see the Proposed Basin Plan Amendments for various trash TMDLS for the following waters: Legg Lake, Machado Lake, Ventura River Estuary, Revolon Slough and Beardsley Wash, Lake Elizabeth, Munz Lake and Lake Hughes, collectively Exhibit "12.") The Regional Board's failure to identify a "load allocation" for nonpoint sources, is action that is contrary to law. Similarly, the Board has acted arbitrarily and capriciously by failing to develop implementation measures for nonpoint sources, such as measures imposed on the National Forest Service, and those State and federal facilities, universities, hospitals, school districts and others, which are to be issued	Since the load allocations are necessarily zero in a zero trash TMDL, the point sources suffer no prejudice from the failure to expressly state that load allocations are zero. Nevertheless, conforming changes will be included to address the comment, and expressly state that which is implied. Also, see response to comments 9.4 The Court of Appeal determined that the Regional Board need not impose implementation measures on nonpoint sources. (*Arcadia*, 135 Cal.App.4th at 1431. Also, there is

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		Phase 2 Permits. The result is that the burden on the Cities has been unlawfully increased.	no indication that the Angeles National Forest is a contributor to the trash that impairs the waterbodies of the Los Angeles River Watershed. Special studies would need to be conducted to determine whether or not the Angeles National Forest is a significant source of trash in the watershed. Also, see response to comments 8.2 .
9.15	Rutan & Tucker, LLP	Seventh, the 2007 TMDL is invalid and contrary to law as the Regional Board has failed to use a "translator" in establishing the TMDL, in accordance with EPA's "Guidance for Developing TMDLs in California, EPA Region 9," dated January 7, 2000 (Exhibit "13").	Nothing in the non-binding EPA Guidance requires the Regional Board to utilize a translator when establishing a TMDL for trash.
9.16	Rutan & Tucker, LLP	Eighth, the 2007 TMDL is contrary to law as it is not suitable for calculation, and because it does not provide for a "daily" load for the municipalities to comply with. As such, the 2007 TMDL is contrary to the express requirements of the CWA. (See *Friends of the Earth, Inc. v. EPA, et al.* (D.C. Cir. 2006) 446 F.3d 140.)	EPA determined that all pollutants are suitable for TMDL calculation. EPA affirmed that trash is included in "all pollutants" when it established its own trash TMDL, and when it approved California's. See *Cities of Arcadia v. Water Boards* (2006) 135 Cal.App.4th 1392, 1434, ruling against the commenters on this point. The decision in the

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			Friends case is not yet final, and even if it stands, it only represents one Circuit. We our bound by 9th Circuit authorities. If and when EPA changes its regulations, the Water Boards will apply the appropriate regulations existing at that time. Nevertheless, the Trash TMDL's "daily" load of trash is zero (as its monthly and annual load), and thus even under the *Friends of the Earth* decision, the TMDL complies with 303(d).
9.17	Rutan & Tucker, LLP	Ninth, the Board has acted contrary to law with the 2007 TMDL by failing to base the TMDL on water quality objectives ("Objectives") that have been developed and adopted in accordance with law, since, with the proposed TMDL, these Objectives are now being applied to storm water and urban runoff (collectively, "storm water"). For example, rather than basing the Objectives on past, present, or "probable future" beneficial uses of the LA River, as required by law, instead, many of the listed Objectives are unlawfully designed to achieve mere "potential" beneficial uses of the LA River. (See Water Code § 13241(a).) The 2007 TMDL is arbitrary and capricious and contrary to law as it is being based on faulty Objectives.	This comment appears similar to arguments raised by these same parties in their contemporaneous challenge in Orange County to the Basin Plan for this region, which a court will consider later this year, and arguments made and rejected in their challenge to the LA River Metals TMDL in Los Angeles County (*Cities of Bellflower* case). The only relevant water quality objectives here are those for Solid, Suspended, or Settleable Materials and Floating Material. For the previous trash TMDL, the Court of Appeal considered whether the Board considered the cost to

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			implement the TMDL under section 13241. The Court determined that the Board's consideration had been adequate. City of Arcadia v. State Water Resources Control Bd. (2006) 135 Cal.App.4th 1392. Beyond just the economic considerations, there is evidence within the record to support these water quality objectives and no evidence has been provided to suggest that the objectives are improper, given the considerations listed in section 13241. The objectives have not changed since 1994 and were never challenged. They also were not challenged when applied to these commenters in other permits or actions, and the many other permittees since 1994. Had the commenters had a quarrel with the process for adopting those objectives in 1994, they should have presented comments or challenges at that time rather than allowing the Regional Board to implement them in many other proceedings during the last 13 years. Indeed, the commenters raised no such claims in their challenge to the original Trash

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			TMDL. Staff has considered the 13241 factors as part of this process and notes that the consideration for this TMDL is the same as for adopting a water quality objective for trash in the Los Angeles River and Ballona Creek. Thus even assuming the objectives were defective (which staff firmly disputes), the analysis in the TMDL adequately complies with the commenters' claim that the 13241 factors ought to have been considered. Finally, the water quality objectives affected by this TMDL are consistent with Water Code section 13000. As noted by the Court of Appeal in County of Los Angeles v. State Water Resources Control Board (2006) 143 Cal.App.4th 985 (in which petitioners were parties), the Clean Water Act requires the setting of a TMDL for designated waters and nothing within the Porter-Cologne Water Quality Control Act may circumvent the requirements as to the calculation of

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			the TMDL. The TMDL is based upon beneficial uses that are identified in the Basin Plan. The Court of Appeal already determined that even if some of the designated uses were not appropriate, the Commenter has not made a showing that the TMDL would be any less stringent in their absence, and thus there is no prejudice. (*Arcadia*, 135 Cal.App.4th at 1432-33.)
9.18	Rutan & Tucker, LLP	Tenth, the TMDL is contrary to law as the Board has failed to determine how much trash is too much, i.e., the Board has failed to determine the "loading capacity" of the LA River, as required by the federal regulations. (See 40 CFR 130.2(f).)	It is clear from the numeric target that the loading capacity of the LA River is zero.
9.19	Rutan & Tucker, LLP	Eleventh, the Board has failed to perform any form of cost/benefit analysis in accordance with Water Code sections 13165, 13225 and 13267 for the various reporting, monitoring and studies required by the 2007 TMDL.	The Court of Appeal already determined that these sections do not apply until an order is actually issued pursuant to those sections. (*Arcadia*, 135 Cal.App.4th at 1413-15.)
9.20	Rutan & Tucker, LLP	Finally, in spite of the six years of litigation over a Trash TMDL a Court of Appeal decision overturning the TMDL on the grounds that the Boards failed to comply with CEQA	During the last six years, the Regional Board staff has consulted with and carefully evaluated the

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		(*Arcadia, et al. v. State Board*, *supra*, 135 Cal.App.4th 1392) and further, in spite of the numerous efforts made by the Cities to work with the Regional and State Boards to develop a logical and reasoned implementation plan to address the problems of trash in the LA River (see, e.g., Exhibit "10," Cities' Proposed Catch Basin Alternative), to date the Boards have failed to fully consult with local agencies and to coordinate with other governmental agencies, such as the Southern California Association of Governments, to develop the Trash TMDL, as required by law. (See, e.g., Water Code §§ 13144 and 13240.)	recommendations of every interested or concerned federal, state, and local agency that has sought an audience with the Regional Board, including when requested, representatives of CPR. No meeting has ever been refused as the comment seems to suggest, and no specific instances in this regard have even been alleged. Nevertheless, the statutes do not allow the Regional Board to abdicate its decision-making authority to those agencies, to SCAG, or to any other entity. In May 2007, Regional Board staff received the Cities' "Proposed Catch Basin Alternative" which is an implementation strategy for achieving compliance with the trash TMDL. Staff have met with proponents of the proposed strategy and are encouraged by the creativity which these cities brought to the development of this strategy and can envision how this strategy can be modified to achieve compliance with the TMDL project. The current proposal fails to specify how the zero trash targets would be met, as

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			the proposal only relates to a portion of the storm drains in high trash generating areas, and doesn't address other areas. In its current form, therefore, it fails to achieve the project's purposes. Staff are nevertheless engaged in a dialogue with CPR representatives about the specifics of the proposal, and modifications that could make it appropriate. A modification to the proposed basin plan amendment has been included to accommodate proposals such as that described. Staff notes that CPR has styled the proposal as a "project alternative", and during a telephone communication between Board counsel and CPR counsel, Mr. Montevideo insisted that the proposal be referred to as a "project alternative", and the written comments reflect his position in that regard. The significance of the title is presumably due to the recent litigation, Cities of Bellflower v. RWQCB, a lawsuit by CPR cities challenging the LA River and Ballona Creek Metals TMDLs. In

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			that action, the trial judge ruled that the Regional Board had failed to undertake an alternatives analysis, and therefore the Regional Board's CEQA compliance was deficient. Staff believe the emphasis on the title is intended to preserve a similar claim for the next round of litigation over the Trash TMDL. Regional Board counsel emphasized to Mr. Montevideo that staff would consider the proposal irrespective of what CPR chose to title it. For CEQA purposes however, to the extent the proposal presents an alternative means of complying with the TMDL, it's impacts are consistent with the existing CEQA analysis for the TMDL (under PRC section 21159), which analyzes the various structural and nonstructural compliance options, and the impacts attendant with them. To the extent CPR contends it is a "project alternative" (an alternative to the TMDL) for which an alternatives analysis is required under 23 CCR 3777 and PRC 21080.5, alternatives to the TMDL have been analyzed. As an additional "alternative", this

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			proposal in lieu of a TMDL would fail to achieve the project's purpose of establishing a TMDL to comply with section 303(d), and thus avoid federal intervention, and the proposal would not achieve the project's purpose of attaining water quality standards, including the water quality objectives to which the TMDL is directed, and the zero trash targets. Further, no showing has been made that the proposal would result in less significant adverse environmental impacts than the project as proposed. The Southern California Association of Governments (SCAG) was notified of the public hearings for this and earlier Los Angeles River Trash TMDLs. Comments were submitted by SCAG on the July 7, 2006 version of the TMDL which were addressed in the responsiveness summary dated September 8, 2006 that is currently available on the Los Angeles Regional Boards website at http://www.waterboards.ca.gov/losangeles/html/bpaRes/bpa_td/50_

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			New/06_0908/Response%20to%20Coments.pdf . The fact that the Regional Board may reach a different conclusion than some commenters would otherwise prefer does not imply a failure to consider their concerns or a failure to consult with them. TMDL development is an open process that allows input from all interested parties and stakeholders. It is the responsibility of the Regional Board to notice its actions. It is the option of stakeholders to participate. Regional Board records showed that SCAG has been receiving electronic notifications of matters relating to the Trash TMDL since October 9, 2002.
9.21	Rutan & Tucker, LLP	For the reasons discuss herein, and as supported by the various exhibits submitted herewith, the Cities respectfully request that the Regional Board not adopt the subject 2007 TMDL until it has worked with the effected cities to develop a TMDL that can reasonably be achieved, and one that is otherwise consistent	The draft TMDL presented is one that can be reasonably achieved and is consistent with applicable State and federal law and in compliance with CEQA, the Writ of Mandate

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		with applicable State and federal law and in compliance with CEQA, the Writ of Mandate issued in *Arcadia v .State Board,* and the Court of Appeal decision affirming said Writ of Mandate.	issued in *Arcadia v .State Board,* and the Court of Appeal decision affirming the Writ of Mandate.
9.22	Rutan & Tucker, LLP	The Board has repeatedly failed, either in the Basin Plan development process, any past Triennial Review process, the Municipal NPDES permitting process, and/or the TMDL process, to comply with its statutory obligations under Water Code sections 13000, 13240 and 13241, namely, to give full and complete consideration to the following when imposing TMDLs or otherwise when requiring storm water and urban runoff discharges to be in strict compresent or ***probable future*** beneficial uses of the waters in issue; (b) the environment characteristics of the hydrographic unit under consideration, including the quality of water available thereto; (c) the water quality conditions that could ***reasonably be achieved*** through the coordinated control of all factors which affect water quality in the area; (d) ***economic considerations***; (e) the need for developing housing within the region; (f) the need to develop and use recycled water (see Water Code § 13241), and the various policy considerations set forth in Water Code section 13000. The Board's failure to comply with these and other legal requirements, as set forth below, will result in a legally defective, impractical and unenforceable amendment to the Basin Plan for the Los Angeles Region that will only delay the adoption and implementation of an appropriate Trash TMDL for the LA River.	The Court of Appeal rejected claims that the previous Trash TMDL violated section 13241 or 13000. (*Arcadia* 135 Cal.App.4th 1392, 1415-18.) A TMDL is not a water quality objective. See response to comment 9.17.
9.23	Rutan & Tucker,	Pursuant to the above provisions of the Porter-Cologne Act	The Court of Appeal rejected the

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	LLP	(Water Code sections 13000, 13240 and 13241), in any formulation or amendment of a water quality control plan where water quality standards or objectives are being adopted or modified (as here with the adoption of numeric objectives), the policies set forth in section 13000 must be complied with and the factors set forth in section 13241 fully considered. (*See United States of America v. State Water Resources Control Board, et al.* (1986) 182 Cal.App.3d 82 ("*U.S. v. State Board*"). In *U.S. v. State Board*, the State Board issued **revised** water quality standards for salinity control and for the protection of fish and wildlife because of changed circumstances which revealed new information about the adverse affects of salinity on the Sacramento–San Joaquin Delta ("Delta"). (*Id.* at 115.) The State Board approved these standards with the understanding it would impose more stringent salinity controls in the future. In invalidating the revised salinity standards, the Court in *U.S. v. State Board* consistently recognized the importance of complying with the policies set forth under section 13000 and the factors listed under section 13241. It emphasized the section 13241 need for an analysis of "economics," as well as the importance of establishing water quality objectives which are "reasonable," and adopting "reasonable standards consistent with overall State-wide interests." In *City of Burbank v. State Water Resources Control Board* (2005) 35 Cal.4th 613 ("*Burbank*"), the California Supreme Court addressed the issue of whether this Board and the State Board were required to comply with Water Code section 13241, which, through section 13263, requires the Boards to consider	commenters' claims that the previous Trash TMDL violated section 13241 or 13000 in the prior litigation. (*Arcadia* 135 Cal.App.4th 1392, 1415-18.) A TMDL is not a water quality objective. (See Memorandum from Staff Counsel Michael Levy to Ken Harris, dated July 12, 2002, "*The Distinction Between a TMDL's Numeric Targets and Water Quality Standards.*") A TMDL implements existing objectives. See response to comment 9.12. *Burbank* was a permit action construing Water Code section 13263, which requires analysis of 13241. While NPDES permits may be issued or modified to

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		"economics" when issuing an NPDES permit. (*Id.* at 626.) The *Burbank* Court found that where the State and Regional Boards adopt provisions that "exceed the requirements of the Federal Clean Water Act," State law, specifically section 13241, must be complied with. (*Id.* at 627.) The Court held that unless the specific requirement is mandated by federal law, section 13241 must be complied with even where a permit is being adopted pursuant to federal law. (*Id.*) The Court stated that: "because section 13263 cannot authorize ***what federal law forbids***, it cannot authorize a regional board, when issuing a waste water discharge permit, to use compliance costs to justify pollutant restrictions that do not comply with federal clean water standards." (*Id.* at 626, emphasis added.) In short, the Supreme Court found that State law must be complied with unless it is in conflict with federal law or proposes something that "federal law forbids." (*Id.*) Consequently, as the Regional Board is required to comply with State Law, including specifically Water Code section 13241, whenever it adopts requirements that are not required by federal law, and as federal law does not require either the particulars of the subject 2007 TMDL, or that municipalities strictly comply with the numeric limits set forth in TMDLs, here, the Board is required to comply with section 13241 and the other provisions of the Porter-Cologne Act, prior to adopting the TMDL.	subsequently implement an adopted TMDL, the TMDL itself is not a permit, and its adoption is not subject to 13263. Moreover, a TMDL under 13242 is not a standards action to adopt objectives, subject to 13241. This TMDL does not conduct a triennial review and does not adopt a municipal permit. See response to comment 9.1. Under *City of Burbank,* particularly, the language cited by the commenter, the only effect a 13241 analysis could have would be to make the TMDL more stringent, not less stringent. The commenters lost this point in *Cities of Bellflower*. In any event, in view of the comments made by these commenters, both during this, and many previous TMDLs, the Regional Board has considered the 13241 factors.
9.24	Rutan & Tucker, LLP	As explained by the State and Regional Boards' attorneys in pleadings submitted to the San Diego Superior Court last fall: "No authority exists to compel the water boards to establish a	The comment is taken out of context. Clean Water Act section 303(d) clearly requires states to

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		TMDL." (Exhibit "4," p. 10.) This position that neither federal law nor any requirement under the Consent Decree or the Writ of Mandate compels the Regional or State Boards to adopt a Trash TMDL, was confirmed by their counsel in open court in a hearing on September 1, 2006, where the Boards' counsel stated as follows: "If we don't adopt a Trash TMDL under the Consent Decree I referenced, USEPA would have to adopt one. ***But we don't have to do one.*** And we can't guess, as staff, what the Regional Board is going to do on that project." (Exhibit "5," p. 25, emphasis added.) Accordingly, there can be no debate about the fact that nothing in federal law compels the State or Regional Boards to adopt the subject Trash TMDL. State law requirements must therefore be adhered to.	establish TMDLs, and in California, that responsibility is delegated to the Water Boards by Water Code section 13160. Failure to establish the TMDL would clearly be unlawful. The comment quoted, however, related to the issue of whether a court in the judicial branch of government could compel an agency by a writ of mandate, to establish any regulation (in this case, a new TMDL). Neither the Clean Water Act nor the Porter-Cologne Act contain enforcement provisions to force the Water Boards to establish TMDLs, and plainly the courts lack legal authority to do so, under the doctrine of separation of powers, as elucidated in the brief cited by the commenter. The absence of enforcement authority however, does not render a violation of 303(d) lawful. To the contrary, a violation of a statutory directive is unlawful, and therefore not feasible. Further, failure of the Water Boards to implement the

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			programs delegated to them by the legislature may result in undesirable budgetary or other political ramifications. In any event, under 303(d)(2), and the consent decree between Heal The Bay and US EPA, upon the Water Board's default (including either failure to establish, or establishing a TMDL that does not comport with federal law), US EPA will establish the TMDL. Thus, a no-TMDL "alternative" is not really an alternative, and the Water Boards must establish TMDLs, that comport with all requirements of federal law.
9.25	Rutan & Tucker, LLP	Moreover, the State Board's Office of Chief Counsel has likewise confirmed the requirement that the Board consider State law requirements in adopting TMDLs. In a memorandum dated January 4, 1994, from William R. Attwater, Office of Chief Counsel, State Water Resources Control Board, to all Regional Board Executive Officers and Board Attorneys, on "Guidance on Consideration of Economics in the Adoption of Water Quality Objectives," (hereafter "Attwater Memo," a copy of which is marked as Exhibit "14," along with a memo from the Chief Counsel's Office, from Sheila Vassey ("Vassey Memo")), the Board's Chief Counsel recognized that, in adopting water quality objectives, Boards "are required to exercise their judgment to 'ensure the ***reasonable*** protection of	TMDLs under 303(d) are established pursuant California Water Code section 13242, relating to a program of implementation of water quality objectives. TMDLs are not themselves water quality objectives, and therefore, are not established pursuant to section 13241. Rather, TMDLs must be established under 13242 at levels that implement the already established objectives that were established under section 13241. This is analogous to the

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		beneficial uses and the prevention of nuisance. (See Exhibit "14," Attwater Memo, p. 2.) The Memo relies on the legislative history to the Porter-Cologne Act, which provides that although objectives are to be tailored on the high quality side of the needs of the present and future beneficial uses: "nevertheless, ***objectives must be reasonable and economic considerations are a necessary part of the determination of reasonableness***." (*Id.*) As discussed in the Memo, the Legislative History to the Porter-Cologne Act recognizes that: The Regional Boards must balance environmental characteristics, past, present and future beneficial uses, and economic considerations (both the cost of providing treatment facilities and the economic value of development) in establishing plans to achieve the highest water quality ***which is reasonable***. (Exhibit "14," Attwater Memo, p. 3; emphasis added.) The Attwater Memo specifically cites to the language in Water Code section 13000, including the reference to the need "to attain the highest water quality which is ***reasonable***, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, ***economic*** and social, tangible and intangible." (*Id.* at 3; underlining in original, other emphasis added.) The Memo similarly reviewed the additional mandate to consider "economics" when adopting objectives set forth in Senate Bill 919 (adopted in 1993), and concluded that the Bill, which amends CEQA to require (whenever Boards adopt rules requiring the installation of pollution control equipment or establishing a performance standard or treatment requirement), that the Boards conduct an environmental analysis of the	federal requirements, where standards are established under section 303(c), and TMDLs established under 303(d) to implement the already established 303(c) standards.

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		reasonably foreseeable methods of compliance and that "[t]his analysis must take into account a reasonable range of factors, ***including economics***." (*Id.* at 4.) The policies and factors under Water Code sections 13000, 13240, and 13241 are thus all required to be complied with when the Boards develop TMDLs.	
9.26	Rutan & Tucker, LLP	**The Initial Waste Load Allocation Of a 40% Reduction By 9/30/08 Is Not Reasonably Achievable.** In various submissions to the Courts, the State and Regional Boards' attorneys have consistently taken the position that the adoption of a TMDL itself does not result in an enforceable regulation. Instead, the Boards' attorneys have successfully claimed that a TMDL only becomes enforceable once incorporated into an NPDES permit. (See *City of Arcadia v. US EPA,* (9th Cir. 2005) 411 F.3d 1103, 1105, "[a] TMDL is not self-enforcing, but serves as an informational tool or goal in the establishment of further pollution controls.") The 2001 TMDL was adopted by the Regional Board on September 1, 2001, but was not approved by the State Board, OAL, and EPA until August 1, 2002, i.e., some ten and a half months thereafter. Further, because the 2001 TMDL had been invalidated, it was never incorporated into the Municipal NPDES permit, a process which could not occur until after its final approval by all responsible agencies. With the 2007 TMDL, assuming it is adopted on the proposed date of adoption by the Regional Board, i.e., on July 12, 2007, based on the schedule for the 2001 TMDL, it will not likely be	See response to comment 8.4. An essentially identical trash TMDL was approved by EPA on August 1, 2002 and in effect at that time. This TMDL was set aside on July 17, 2006, therefore responsible parties had four years of complying with an effective trash TMDL. Responsible agencies have been aware of the requirements of the TMDL since it was first adopted in 2001. Since then, several cities have increased their litter abatement efforts. This 40% reduction is from the baseline established based on data from the 2002-03 and 2003-04 storm years, and would translate to an annual reduction of 10% upon the first compliance point. Unless it was the intent of a responsible agency not to comply with the TMDLs, there has been ample time to include trash

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		finally adopted, and thereafter incorporated into the existing or a new Municipal NPDES permit for Los Angeles County, until approximately June 1, 2008. Practically, therefore, the Cities would have a mere four months to achieve a 40% reduction in trash by 9/3/08. Achieving such interim waste load allocations over such a short period of time would be virtually impossible and is completely unreasonable.	abatement considerations into budgeting processes. The permits will be based on the TMDL. Neither instrument dictates when responsible jurisdictions may commence efforts to comply, and given the many representations by CPR representatives about the significance of the trash problem and the need to address the problem, staff presume CPR's member organizations have been proceeding with efforts to abate the trash nuisance for a number of years, and certainly long before the permits implementing the TMDL are ultimately issued. The commenter has set forth no evidence suggesting that CPR organizations have not been proceeding with trash abatement efforts, or why 10 years since the Los Angeles River was listed as impaired is not enough time to have abated less than half of the trash discharges.
9.27	Rutan & Tucker, LLP	The most likely implementation measure to be utilized to comply with the TMDL, will be through a catch basin protection plan. (See Exhibit "10.") Yet, before such protection devices may be installed throughout the Cities to reach the	Responsible agencies have been aware of the requirements of the TMDL since it was first adopted in 2001. There has been sufficient time

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		deemed forty percent (40%) reductions in the discharge of trash by 9/30/08, each city will likely first need to conduct a litter survey to determine the high trash generation areas within the city, so as to achieve the highest reductions in trash achievable with the best use of its resources. (Exhibit "10,") Second, the city would need to conduct an evaluation of particular catch basins designated for installation of these protection devices, in order to determine the type, number and size of the proposed devices, as well as whether the catch basins themselves are constructed in such a fashion so as to even allow for the installation of such a device. (See Exhibit "10.") The third step in the process, once the trash generation survey is completed and the catch basin study performed, would be to prepare plans and specifications and thereafter forward a Request for Proposal to vendors to start the public bidding process for the purchase and installation of the catch basin protection devises (to be installed throughout the city to achieve the 40% reductions in time to meet the 9/30/08 deadline). As a part of this process, the successful bidder is to be selected at a public meeting of the City Council or Board of Supervisors. The public bidding process is lengthy and time consuming. In light of the public bid and public contract requirements, as well as the time needed to conduct the litter survey and the catch basin analysis, and given the time needed to obtain appropriate bids and complete the public contract purchase and install all of the needed catch basin devices, all at the same time as 40 or so other cities are attempting to do the same, is not only unreasonable, it is likely impossible. In short, achieving compliance with the 40% interim waste load	to include trash reduction strategies in their planning and budgetary processes. The presumption that the cities have not been and should not be doing anything to abate their unlawful trash discharges to the LA River until a Regional Board permit sets forth enforceable deadlines, defies logic and is without evidence in the record. Indeed, Signal Hill is presently in compliance. Trash in the streets of the CPR jurisdictions constitutes a nuisance to their citizens, and when washed into the Los Angeles River, a nuisance to the downstream communities, and a public health and environmental hazard. It is not arbitrary to assume that responsible jurisdictions, vested with the independent responsibility to protect the public health and welfare in their jurisdictions, would commence efforts to abate the nuisance long before being compelled to do so by a state agency implementing federal requirements. .

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		allocations by 9/30/08 "could [***not***] reasonably be achieved" and is not a "reasonable" means of achieving the desired water quality. (Water Code §§ 13241(c) and 13000). As such, the 40% requirement to reduce trash by 9/30/08, is arbitrary, capricious and contrary to law.	
9.28	Rutan & Tucker, LLP	In addition, although not entirely clear (see discussion below on the need for compliance with the APA), it appears that the only practical means by which the Cities will be able to comply with the more significant required reductions in trash by the respective deadlines, starting with the 40% requirement, is through the installation of catch basin protection devices to the extent that they are deemed to be full-capture devices. However, the only catch basin device specified in the TMDL as being a full capture device is the Brush Catch Basin Insert which, to date, has not proven to be reliable or without ongoing operation and maintenance problems. As such, without the approval of technically sound catch basin protection devices as full-capture devices, neither the 40% requirement, nor any of the other WLAs, will be "reasonably achievable."	See Response to comment 9.8 for a list of certified full-capture devices, and the response generally. These are devices that have been developed by responsible agencies interested in identifying cost-effective trash-reduction measures for use in their jurisdictional areas. To date, the Executive Officer has approved, with certain modifications, all requests made for full capture certification. If none of the available certified full capture devices is deemed suitable by other agencies, they have the option of using their initiative to develop better-suited alternatives. This has been the case since the adoption of the September 2001 TMDL.
9.29	Rutan & Tucker, LLP	**The Other Interim WLAs and Final WLA of Zero Trash Are Not Reasonably Achievable and Are Contrary To The Requirements of The Porter-Cologne Act.** In addition, the other interim WLAs and the ultimate WLA of "zero" trash to be discharged to the LA River from the Cities'	These issues were already decided adversely to the Commenters in *Arcadia v. SWRCB* , 135 Cal.App.4th 1392.

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		storm drain systems, are not reasonably achievable. Initially, as discussed above, because the only practicable and legitimate means of meeting any of the interim WLAs and the final WLA of "zero" is through the use of deemed compliant full-capture devices, namely, yet to be approved catch basin protection devices (see Exhibit "10"), the 2007 TMDL has not been developed in accordance with the "reasonably achievable" requirements under State law. In addition, because the 2007 TMDL is not written in a fashion whereby it reflects it may be complied with the use of iterative BMPs, and that the Cities will not be required to strictly comply with its numeric limits, the TMDL imposes requirements that are more stringent than those set forth under federal law, and thus, because it is not "reasonable" to require storm water to strictly comply with the TMDL's numeric limits, the 2007 TMDL is contrary to State law.	The commenters concern about how the storm water permit will ultimately incorporate the waste load allocations is speculative, and not before the board at this time. Comments to the manner of incorporation into the MS4 permit should be presented at the time the storm water permit is actually proposed to be modified to incorporate the TMDL's requirements.
9.30	Rutan & Tucker, LLP	Federal law does not require that municipalities strictly comply with TMDLs. In a US EPA November 22, 2002 Policy Memorandum, entitled "Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based On Those WLAs" (Exhibit "15" – hereafter "EPA TMDL Policy Memo), EPA confirmed that municipalities are not required to strictly comply with TMDLs, as they are not required to strictly comply with numeric limits: EPA expects that most WQBELs [water quality based effluent	These issues were already decided adversely to the Commenters in *Arcadia v. SWRCB*, 135 Cal.App.4th 1392, and *County of LA v. SWRCB*, 143 Cal.App.4th 985. See response to comment 9.29.

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		limits] for NPDES-regulated municipal and small construction storm water discharges will be in the form of BMPs, **and that numeric limits will be used only in rare instances**. When a non-numeric water quality based effluent limit is imposed, the permit's administrative record, including the fact sheet when one is required, needs to support that the BMPs are expected to be sufficient to implement the WLA in the TMDL. (*Id*. at p. 2; emphasis added.) * * * EPA's policy recognizes that because storm water discharges are due to storm events that are highly variable in frequency and duration and are not easily characterized, **only in rare cases will it be feasible or appropriate to establish numeric limits for municipal and small construction storm water discharges**. (*Id*. at p. 4.) * * * Under certain circumstances, BMPs are an appropriate form of effluent limits to control pollutants in storm water. See 40 C.F.R. § 122.44(k)(2) & (3). If it is determined that a BMP approach (including an iterative BMP approach) is appropriate to meet the storm water component of the TMDL, EPA recommends that the TMDL reflect this. (*Id.* at p. 5.)	
9.31	Rutan & Tucker, LLP	Similarly, in State Board Order No. WQ 2001-15, the State Board confirmed its that municipalities are not required to strictly comply with water quality standards, but instead found that: Compliance is to be achieved over time, through an iterative approach requiring improved BMPs. As pointed out by the Browner court, there is nothing inconsistent between this approach and the determination that the Clean Water Act does	See response to comment 9.30.

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		not mandate strict compliance with water quality standards. **Instead, the iterative approach is consistent with U.S. EPA's general approach to storm water regulation, which relies on BMPs instead of numeric effluent limitations.** (See State Board Order No. 2001-15. Exhibit "16," p. 7; emph. added.) * * * We will general not require "strict compliance" with water quality standards through numeric effluent limitations and we will continue to follow an iterative approach, which seeks compliance over time. The iterative approach is protective of water quality, but at the same time considers the difficulties of achieving full compliance through BMPs that must enforced throughout large and medium municipal storm sewer systems. (*Id*. at 8.)	
9.32	Rutan & Tucker, LLP	In addition, the State Board recently convened a panel of recognized experts to address whether or not it is even feasible to develop numeric limits for storm water permits, including municipal storm water permits. In September of 2005, this Panel heard presentations and testimony from various regional board representatives, including the Los Angeles Regional Board, along with testimony from the regulated and the environmental communities. The Panel issued a report in June 2006 which concluded that ***"it is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban discharges."*** (Storm Water Panel Recommendations for the California State Water Resources Control Board, The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated With Municipal, Industrial, and Construction Activities, June 19,	See response to comment 9.30. The State Board has not as yet taken action on the panel's report, and therefore its contents have neither been adopted nor rejected by the State Board. Notably, full capture devices are BMPs, and they are BMPs that are deemed to comply with the WLAs.

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		2006, Exhibit "17," p. 8; emph. added.)	
9.33	Rutan & Tucker, LLP	In accordance with the above-referenced State and federal requirements, the 2007 TMDL should be revised to confirm that the WLAs need not be strictly complied with, and that they may instead be met through the use of iterative best management practices ("BMPs"), and further, that the interim and final WLAs are not to be incorporated into the Cities' NPDES permit or other WDRs or MOUs as strict numeric limits. To do otherwise would be to adopt a regulation that is directly contrary to State Board Order No. WQ 2001-15, as well as the conclusions of the State Board's Numeric Limits Panel, along with EPA's TMDL Policy Memo, "EPA recommends that the TMDL reflect this [compliance through the use of an iterative BMP process rather than requiring compliance with numeric effluent limits.]" (Exhibit "15," p. 5.)	See response to comment 9.30.
9.34	Rutan & Tucker, LLP	**The SED Is Fatally Defective Because It Does Not Contain An Accurate And Consistent Project Description,** The project description of an environmental impact report ("EIR") is the "*sine qua non*" (without which it could not be) of an informative, legally adequate EIR under the California Environmental Quality Act ("CEQA"). (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192 [if the project description is inconsistent, the EIR cannot serve as a vehicle for intelligent public participation in the decision making process and thus is defective under CEQA].) Without an accurate description on which to base its analysis, an EIR cannot serve its purpose of furthering public disclosure and informed	The SED dedicates an entire, discrete, chapter to a detailed project description of the TMDL. See Chapter 3: TMDL Overview and Program Objectives. The commenter has not identified how that description is inadequate, what integral components of the project are missing, and what is not accurate about the description. Nevertheless, a concise summary of the section has been added to address the

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		environmental decision making. A project description that omits integral components of the project results in an EIR that fails to disclose the actual impacts of the project. (Kostka & Zischke, *Practice Under the California Environmental Quality Act* § 12.14.) Not only must a project description be accurate and consistent, but it must also contain certain specified information, including a statement of the goals and objectives of the project, which aids the lead agency in developing a reasonable range of alternatives to evaluate in the EIR and in preparing findings or a statement of overriding considerations, if necessary. (14 Cal. Code Regs. § 15124 (b) (hereinafter "Guidelines").) Here, the SED fails to meet these requirements. First, there is no discrete section of the SED that sets forth the project description or the underlying goals and objectives of the project. This omission perhaps explains the SED's defective alternatives analysis, addressed below, because it is difficult, if not impossible, to determine what alternatives might attain most of the project's objectives, and therefore be viable, when those objectives are not set forth in the document.	commenters' suggestion that they do not understand the purpose of the project.
9.35	Rutan & Tucker, LLP	More importantly, the project description is inconsistent – that is, the project proposed for approval in the draft Resolution is not the same project evaluated in the SED. The draft Resolution purports to approve a TMDL with an implementation schedule of 9 years, with a 40% trash reduction in year 1 (Attachment A to Resolution, p. 7), while the SED evaluates a less intense schedule of 10 years, with a 30% trash reduction in year 1	It is clear from the Basin Plan Amendment language in Attachment A to Resolution, and the TMDL Staff Report that the SED evaluates a TMDL with an implementation schedule of 9 years, with a 40% trash reduction in the first

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		(SED, pp. 38, 40, 41). Simply stated, the environmental impacts from a 9-year plan and from a proposed 40% reduction in trash by the Fall of 2008 have never been evaluated. This defect is significant because the SED, itself, acknowledges that a more intense compliance schedule inevitably results in increased environmental impacts. (SED, p. 43, 284.) The SED also concedes that the 10-year plan, with the 30% first year trash reduction, is not only reasonable, but is "**as short as practicable**." (SED, p. 40.) Thus, it would be admittedly impracticable and unreasonable to approve a TMDL with the shorter 9-year, more aggressive 40% first year trash reduction schedule. Because the SED fails to consider any of the potential impacts of the more intense 9-year, 40% first year trash reduction compliance schedule, which is admittedly more aggressive than is "practicable," the SED is insufficient as a matter of law to support the approval of the TMDL set forth in the draft Resolution.	benchmark. All references to a 30% reduction are typographical errors which will be corrected in the final SED. In any event, the commenter has not suggested or set forth evidence explaining how the analysis of impacts for either a nine year or a 10 year schedule would differ. No evidence suggests that the one year difference would result in different means of compliance or different impacts. The commenter has pointed to none. It is of course assumed that any impacts are magnified by a more intensive schedule, however, quantifying the magnification by a one-year increment would be a speculative exercise given the variety of means that the many jurisdictions subject to the TMDL may choose to comply. Staff's conclusions about whether 30% or 40% is as short as practicable has not been adopted by the Board at the time these responses are being prepared. The Regional Board's conclusion will prevail.
9.36	Rutan & Tucker,	**The SED Fails To (1) Evaluate Reasonable Alternatives To**	Staff disagrees. The substitute

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	LLP	**The TMDL, Itself, (2) Provide An Adequate Analysis Of The Alternatives It Does Evaluate, Or (3) Evaluate The Reasonably Foreseeable Alternative Methods Of Compliance.** Under both the Board's certified regulatory program and CEQA, the SED must analyze alternatives **to the project** to minimize any potentially significant adverse impacts of the project. (23 Cal. Code Regs. § 3777(a)(2), 3780; Pub. Res. Code §§ 21002, 21081; Guidelines § 15126.6; see, also, Pub. Res. Code § 21080.5(d)(3).) In this iteration, the SED has finally recognized this obligation, but it still fails to comply with CEQA's requirements with regard thereto.	environmental documents evaluate alternatives to the project in Chapter 4 "Description of Alternatives". The documents also provide a detailed analysis of the foreseeable environmental impacts of the methods of compliance, including both structural and nonstructural BMPs. All reasonably foreseeable environmental impacts from installation and operation of trash capture devices were analyzed. The commenters did not suggest what other impacts they perceive to be reasonably foreseeable from the installation of these devices that are not discussed in the substitute environmental documents. The Commenters' failure to identify the specific perceived deficiency in the analysis prevents staff from generating a more substantive response.
9.37	Rutan & Tucker, LLP	**The SED Fails to Analyze a Reasonable Range of Alternatives to the Project.** First, under CEQA, the SED must evaluate a **reasonable range** of alternatives to the proposed activity being considered by the Board, here the Trash TMDL.3 Guidelines, § 15126.6 (a).) Although the SED purports to examine alternatives to the	The Substitute Environmental Document analyses all possible program alternatives (1) a Regional Board TMDL, (2) an EPA TMDL, and (3) No TMDL. The commenter does not identify any other program

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		project, that analysis is misleading and incomplete. That is, the SED represents at page 3 that it "analyzes **three** Program Alternatives. . . ." However, at page 40, the SED inconsistently states that it analyzes only "**two** Program Alternatives. . . ."4 In reality, however, neither representation is correct, for the SED fails to analyze **even one** alternative that meets the requirements of CEQA.	alternatives that could have been included, and does describe how the analysis is perceived to be inadequate. The Commenters' failure to identify the specific perceived deficiency in the analysis prevents staff from generating a more substantive response.
9.38	Rutan & Tucker, LLP	A "rule of reason" governs EIR alternatives review. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 565 (*Goleta II*).) In *Goleta II*, our Supreme Court held that to satisfy CEQA, the alternatives considered in an EIR must meet two requirements: (i) They must potentially offer **substantial environmental advantages** over the project proposed; and (ii) they must be potentially **capable of being feasibly accomplished** in a successful manner considering the economic, environmental, social, and technological factors involved. (*Id.* at 566.) Moreover, the alternatives selected to fall within these two parameters must be reviewed **in-depth** in the EIR. (*Id* at 569.) The purpose of the rule of reason is to allow the decision making body "a reasonable choice of alternatives so far as environmental aspects are concerned." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 406.) **The public must also be informed of their existence.** (*Sierra Club v. County of Napa* (1994) 121 Cal.App.4th 1490, 1504.) The high Court's alternatives selection criteria make eminent sense, for the whole purpose of an alternatives analysis is to discuss project alternatives that could meet most of the project's objectives at a	The "rule of reason" is "An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible...." (Cal.Admin.Code, tit. 14, § 15151.) Commenter does not explain how the identified alternatives fail the so-called "rule of reason" and how they fail to provide an analysis of those alternatives necessary to permit a reasoned choice by the Regional Board. The environmental

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		lower environmental cost. Thus, the failure to disclose a reasonable range of potentially feasible alternatives with potentially substantial environmental advantages over the project contravenes CEQA's purpose of ensuring that public agencies regulate activities that affect environmental quality so as to give major consideration to preventing environmental damage. (Pub. Res. Code §§ 21000 (g); 21001 (g); 21002.)	documents do analyze a range of alternatives to the project, however, none of the alternatives would both meet the project's purposes and result in substantial environmental advantages over the project as proposed.
9.39	Rutan & Tucker, LLP	As currently drafted, the SED offers no meaningful choice of alternatives to the Board, and fails to disclose a reasonable range of alternatives to the public, because it fails to analyze even one alternative that meets the *Goleta II* criteria. The SED discusses a "no project" alternative and the EPA Trash TMDL alternative ("EPA TMDL"), neither of which meets the rule of *Goleta II*. Even had these alternatives met the *Goleta II* test, the SED mischaracterizes effects of each alternative, thus negating the utility of the entire alternatives analysis. Regarding the "no project" alternative, the SED asserts that the failure to implement a Trash TMDL by the Board would be **unlawful** as contrary to federal and state law and the court ordered consent decree. If the SED were correct in this regard, which it is not (see discussion below), the "no project" alternative, on its face, would not meet the requirements of *Goleta II* because, as represented in the SED, it is legally forbidden and thus incapable of either being feasibly accomplished in a successful manner or meeting most of the objectives of the project. (SED, p. 42; see Guidelines § 15126.6 (c) [the range of potential alternatives to the proposed project "shall include those that could feasibly accomplish most of the basic objectives of the	Goleta's language is a limitation on the alternatives to be considered, Goleta does not require an agency to concoct or contrive alternatives that do not exist. To the contrary, "the consideration of alternatives need not be exhaustive," but "must reasonably reflect that due consideration was given to project alternatives." Mountain Lion Foundation v. Fish and Game Commission.(1997) 16 Cal.4th 105, 136.) We agree with the commenter that the no-project alternative is not a reasonable alternative. Moreover, as described in the SED, staff has concluded that no feasible alternatives exist that would result in substantially lessen significant adverse impacts, and achieve the project's purposes. Accordingly, the

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		project. . . ."].)5 Thus, the "no project" alternative does not meet the *Goleta II* standards for being a reasonable alternative.	SED examines several alternatives, and explains why they are not appropriate. That is the scope of the Water Boards' obligations under 15126.6 of the CEQA Guidelines. The choices available to the Board are clear While it is the Board's obligation to formulate alternatives to analyze, the complete failure of the commenter to suggest any alternatives that would both achieve the project's purposes and result in substantially lessen significant impacts support staff's conclusion, reflected in the SED, that none exist. At the end of the litigation surrounding the Metals TMDLs, the commenters suggested a variety of proposed "project alternatives", some of which the court already agreed were not proper project alternatives, and a variety of others, that were recently analyzed following that trial. That alternatives analysis has been circulated and is presently undergoing public review for a reconsideration of the Metals

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			TMDLs, consistent with the requirements of an anticipated writ of mandate. That alternatives analysis concludes that none of the alternatives would both achieve the project's purposes and result in substantially less significant environmental impacts than the project as proposed. Staff has considered all of those alternatives as well and has determined that the analysis is analogous, and the conclusions in that document are equally applicable, to the Trash TMDL. That document is appended hereto as Attachment B, and will be included in the administrative record for this proceeding. In short, a variety of project alternatives have been evaluated, but the SED's conclusion that no project alternatives would both achieve the project's purposes and result in substantially less significant environmental impacts than the project as proposed, remains unaffected.
9.40	Rutan & Tucker, LLP	Regarding the EPA TMDL, the SED expressly concludes that its environmental impacts "would be significantly more severe" than the proposed project's impacts due to the fact that the	See response to comment 9.39.

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		intensity of implementation actions would be greater and would occur within a shorter time frame. (SED, pp. 284, 43.) Thus, on its face, the EPA TMDL alternative does not potentially offer substantial environmental advantages over the project, and thus is not within the range of reasonable alternatives under *Goleta II*. In the end, then, the SED as drafted discloses **not even a single** feasible alternative with substantial environmental advantages over the project. At the risk of stating the obvious, zero alternatives (or even one alternative) is not a reasonable range. 6 Thus, the SED's alternatives analysis flies in the face of CEQA's requirement to "produc[e] . . . information sufficient to permit a reasonable choice. . . ." (*Village Laguna of Laguna Beach, Inc. v. Board of Supervisors* (1982) 134 Cal.App.3d 1022, 1029.) In short, the SED flat-out violates the rule of reason. 7 Perhaps more importantly, the SED compounds the inadequacy of the alternatives analysis by **mischaracterizing both alternatives**, and thus misleads the decision makers and the public regarding their actual effects.	
9.41	Rutan & Tucker, LLP	The SED mischaracterizes the "No Project" Alternative. First, the SED incorrectly asserts that the "no project" alternative, *i.e.*, the failure to implement a TMDL by the Board, would be unlawful as contrary to federal and state law and the consent decree. Not so. As recently as September 2006, the Board took the position that: "No authority exists to compel the Water Boards to establish a TMDL,. . . [and] nothing in the Writ, the judgment, the appellate decision, or even state or federal law compels the Water Boards to adopt a new Trash TMDL." (Exhibit "4," *Cities of Arcadia v. The State Water*	See response to comment 9.24 and 9.39. The Commenters recently lost the claim that a no-project alternative is a feasible alternative, in Cities of Bellflower v. LARWQCB.

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		Board, Case No. GIC 803631, Respondents' Opposition to Petitioners' Motion to Strike Return, etc., p. 10.) The Board went on to make the point that the US EPA adopted a Trash TMDL once before when the Boards failed to timely do so, and the US EPA could do so again if the Boards failed to adopt a Trash TMDL. (*Id.*) Thus, it is erroneous to assert that the failure to implement a TMDL by the Board would be unlawful as contrary to federal and state law and the consent decree. Moreover, the "no project" alternative must discuss "what would reasonably be expected to occur in the foreseeable future if the project were not approved. . . . If disapproval of the project would result in predictable actions by others, this 'no project' consequence should be discussed." (Guidelines § 15126.6 (e) (2), (3).) Here, although the SED obliquely acknowledges that if the Board does not approve a TMDL, the USEPA would adopt its own Trash TMDL for the River (SED, p. 41), it utterly fails to disclose and discuss this reasonably foreseeable action by the US EPA in the "no project" context. Consequently, the SED fails to accurately describe the impacts of the "no project" alternative, which, as explained below, would be considerably less severe than the project's impacts. Thus, the "no project" analysis is inaccurate and misleads the decision makers and the public about the existence of less impactful alternatives and the environmental costs of proceeding with the project.	
9.42	Rutan & Tucker, LLP	The SED mischaracterizes the EPA TMDL. The SED also misleads the decision makers and the public by mischaracterizing the EPA TMDL. As stated, the SED	EPA has repeatedly stated to the Regional and State Board with respect to a variety of TMDLs that it

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		recognizes that the EPA TMDL would be established by the US EPA pursuant to the Consent Decree if the Board fails to adopt a TMDL. (SED, p. 41.) However, the SED erroneously assumes, without analysis or quantification, that the technical portions and the waste load allocations of the EPA TMDL would be essentially the same as those of the proposed project. In conclusory fashion, it then opines that because the EPA TMDL would be implemented through NPDES permit limits as permits are renewed, there would be no consideration given to a compliance schedule – instead, because each NPDES permit is renewed every 5 years, permitees "could be required to be in full compliance immediately following TMDL adoption by USEPA, or within 5 years." (SED, p. 42.) The SED thus rejects the EPA TMDL, concluding its environmental impacts "would be significantly more severe" than those of the proposed project because of the abbreviated compliance schedule. (SED, p. 284; see p. 43 [impacts of EPA TMDL "may be of greater severity [than the proposed project's] as the intensity of implementation actions will be greater to comply with the shorter time frame"].) Because the proposed project has a longer implementation schedule, the SED concludes that it will have less impact than the EPA TMDL. (*Id.*)	does not establish implementation schedules for EPA established TMDLs, a fact that staff confirmed, yet again, after receipt of this comment. Section 303(d)(2) requires EPA to approve, or in certain circumstances to establish, loads. That language does not suggest that EPA may approve or establish compliance schedules. Contrary to the suggestion in the comment, the 2002 US EPA Trash TMDL does not adopt a compliance schedule. The EPA TMDL merely recognized the (impending but not yet final) implementation approach adopted by the Regional Board, and "endorsed" the approach as reasonable. Section 6.1 is entitled "Implementation Recommendation", and section 6.1.5 states: "EPA recommends the implementation strategies in the Regional Boards TMDL" (emphasis added). That was a recommendation, not a regulatory action. Nothing in EPA's TMDL suggests that EPA had adopted that implementation schedule as its own, or that the state could implement it

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			without independent state regulatory action. (See email dated July 20, 2007, to Michael Levy from Suzette Leith, Office of Regional Counsel, EPA Region 9.) Furthermore, even if EPA had adopted the Regional Board's approach as its own, that would still merely result in the same impacts as the Regional Board adopted TMDL, and not substantially less impacts. Furthermore, for San Gabriel River, Ballona Creek, and two times for the Los Angeles River, EPA established or approved TMDLs requiring zero trash. The Regional Board has absolutely no basis to conclude, and the commenters have offered no evidence to suggest that EPA's has changed its position in this regard. The SED analysis is accurate. Should EPA choose to develop a TMDL independent of the Regional Board, permittees in fact could be required to be in full compliance with the zero WLAs, immediately following TMDL adoption by USEPA, or within 5 years, as federal regulations require NPDES permits

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			to include effluent limits consistent with the assumptions and requirements of available waste load allocations. In any event, an EPA established TMDL does not meet the project's purpose involved in state compliance with section 303(d). Rather, it would involve EPA compliance, which involves federal intervention in state water quality planning. That is inconsistent with the goals of the Regional Board, and section 13160, which delegates CWA responsibility to the Water Boards.
9.43	Rutan & Tucker, LLP	Contrary to the SED, however, the EPA TMDL has endorsed a phased implementation schedule similar to the one for the proposed project. It provided: The phased annual allocation goal (referred [to] as "Waste Load Allocation" in Regional Board's TMDL) represents a progressive reduction in the baseline quantity **over an implementation period of ten years**. **EPA regards a yearly reduction of 10% based on the refined or default baseline method as an interim goal for reaching the Waste Load Allocation of zero at the end of Implementation Year 10.** (Exhibit "9," EPA TMDL for Trash for Los Angeles River, dated March 19, 2002, p. 22, § 6.1.4.) Thus, the EPA TMDL would be virtually identical to the	See response to comment 9.42. The commenter submits no evidence to support the claim that US EPA would on its own initiative establish a TMDL that is less stringent or allows more time to comply than a state proposed TMDL. The evidence in the record is to the contrary. Even if EPA reestablished the 2002 TMDL (contrary to the evidence in the record), the commenters have submitted no

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		Regional Board's less aggressive 2001 TMDL because it has expressly endorsed interim waste load allocations of 10% a year (including for the first year), with annual 10% reductions over a 10-year period. The SED's unsubstantiated mischaracterization of the EPA TMDL, which mischaracterization is the very ground stated for its rejection, forecloses an accurate evaluation of its environmental impacts and precludes the Board from accurately identifying whether this alternative would substantially lessen the significant environmental effects of the proposed project, as mandated by CEQA. (Pub. Res. Code § 21102.) Indeed, because the SED acknowledges that more aggressive implementation (*e.g.*, a 40% or 30% trash reduction in year 1, as opposed to 10% reduction in year 1) inevitably leads to environmental impacts of "greater severity," the EPA TMDL must be deemed to be environmentally superior to the proposed project. Accordingly, CEQA mandates that this alternative, or one substantially similar, be adopted unless it would not meet most of the objectives of the project or is otherwise infeasible.	evidence that that schedule would result in "substantially" less environmental impacts from the schedule as proposed, especially given the efforts that many jurisdictions have already taken to comply.
9.44	Rutan & Tucker, LLP	Other feasible alternatives have not been analyzed, Other potentially feasible alternatives that offer substantial environmental advantages over the proposed project do exist.8 Although it is the Board's duty to formulate alternatives for inclusion in the SED, the Board fails to do so even though several alternatives are readily apparent to the Cities. For example: (1) The SED could evaluate a TMDL with a less aggressive implementation schedule. Although the Board concedes that it has discretion in setting various milestones in	No evidence exists that a different time schedule would result in different means of compliance, and thus the only difference between the proposed TMDL and a TMDL with a longer time schedule would be, as stated elsewhere, a lower magnitude of impacts precipitated by temporally spreading out the

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		achieving water quality standards (Draft Resolution, p. 7), the SED considers only a 10-year plan, with a 30% trash reduction in the first year and annual reductions of 10% in the subsequent years until the final numeric target of zero trash is reached in the 10th year, based on a rolling 3-year average. (SED, pp. 38, 40-41.) No explanation is provided as to why a longer plans or a less aggressive trash reduction schedules are not evaluated. This is particularly perplexing in light of the fact that the SED recognizes the correlation of the severity of environmental impacts to the intensity of the implementation actions and the length of the compliance period – that is, the more intense the implementation actions and the shorter the time frame in which to comply, the more severe the environmental impacts. (SED, pp. 43, 284.) The 2001 TMDL proposed a first year trash reduction of 10%. The proposed project described in the SED requires a 30% first year trash reduction, with no explanation for this significant increase.9 An alternative that evaluates a less aggressive schedule of implementation actions and a longer compliance period would inform the decision makers and the public of the environmental price that will be paid if the proposed project, with its highly aggressive implementation schedule, is approved. Indeed, it is astounding that the SED does not evaluate an alternative with a 10% per year trash reduction schedule over 10 years, given (i) the SED's admission that 10 years is "as short as practicable," and (ii) the fact that a 10% trash reduction was the target number used in the TMDLs proposed by both the Regional Board and the US EPA in 2001.	nominal impacts associated with each construction project, to the extent construction is used as a means to comply with the TMDL. Contrary to the comment, a variety of time schedules has been analyzed, both during the original adoption and presently, as the Regional Board is contemplating how much extra time to comply is reasonable to allow given the litigation, as compared to the need to restore standards, and the unacceptable impacts that continue to be forced upon the downstream communities and the watershed. The TMDL as proposed already delays restoration and ultimate compliance with standards from 2015 to 2016. Delaying the schedule by five years, as suggested, does not achieve the project purposes, and the duty of the Board to achieve compliance with water quality standards as expeditiously as feasible. The waterbodies of the Los Angeles River Watershed are impaired by trash. The proposed TMDL

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			implementation schedule accommodates planning, scheduling and budgeting issues by requiring this restoration to occur in reasonable time increments. This schedule is not aggressive, given the already 10 years of notice that this regulation is forthcoming. The 40% reduction is based on conditions that existed in the 2002/03 and 2003/04 storm years. By the time the first compliance point is to be met, at the end of the 2007/08 storm year, four years would have elapsed. This translates the 40% compliance requirement to an 10% annual reduction from the baseline (less if one considers that most entities began their trash reduction efforts following the adoption of the 2001 trash TMDL). Extending the time frame further only serves to extend the duration of the water quality impairment which in itself is a negative environmental impact to be avoided and hence should not be considered a feasible alternative. While the nominal impacts associated with storm drain

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			construction and maintenance exist every day in each jurisdiction, and are part of baseline conditions, the incremental magnification of those nominal impacts by a shorter schedule is obvious, and explained in the SED, but not really quantifiable, since many of those impacts relate to noise and nuisance related impacts, subject to the tolerance of receptors in an urban setting. The commenters have submitted no evidence to support how farther lengthening the schedule would result in "substantially" less significant impacts, nor how doing so would be justifiable given the impacts associated with current conditions. Essentially, the amount of time to comply is a policy call, subject to the Board's discretion and the balancing of equities. Indeed the commenters submitted evidence that if properly prioritized, controlling a mere 15% of the storm drains would result in a 50% reduction in trash. See response to comment 9.6.
9.45	Rutan & Tucker,	Another alternative would be a TMDL with a numeric target	A TMDL with a numeric target of

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	LLP	other than "zero" trash. The SED concedes that a higher (less intense) numeric target would have fewer environmental impacts, but rejects such a concept under the theory that it would constitute a "partial" TMDL that would not meet water quality standards, which is required by the Clean Water Act. (SED, p. 40.) But there is no evidence that "zero" trash is the only target that would preclude a nuisance or avoid adversely affecting the beneficial uses of the River. Indeed, the evidence shows that a target number above zero is acceptable. For example, although the load allocation in the 2001 TMDL for the National Forest and other nonpoint sources was zero, the Board indicated it would not enforce that target because the impact from nonpoint sources was *de-minimis*. (Exhibit "18," p. 2. July 29, 2002 Clarification Memo.) Thus, a target number above zero not only would be more reasonable, but also appears to be acceptable to the Board. Because alternative targets are not evaluated, stakeholders (the decision makers, the Cities, and the public) have no way of knowing whether such alternatives would be effective, while causing fewer environmental impacts. Rather than arbitrarily selecting a zero target, which is unreasonable on its face, the SED needs to investigate and determine, based on quantifiable factors, what threshold concentrations of trash would actually cause a nuisance or adversely affect the beneficial uses of the River. The Board and the public would then be apprised of whether the requirements of the Clean Water Act could be achieved at a lower environmental cost.	greater than zero trash does not achieve the project's purposes, is inconsistent with the water quality objectives and the requirements of section 303(d) and every other Trash TMDL. Zero is the only fair interpretation of the Basin Plan water quality standards that will guarantee protection of the beneficial uses of the Los Angeles River with an appropriate margin of safety. While the harmful impact of trash on aquatic organisms has been documented, no information on above-zero trash levels that "would not cause nuisance or adversely affect beneficial uses" is available. The TMDL provides a re-opener to reconsider the final Waste Load Allocation based on the findings of any future studies regarding the threshold levels needed for protecting beneficial uses. The commenters have already lost the claim that the Board's determination that zero is necessary was arbitrary in the *Cities of Arcadia* suit.
9.46	Rutan & Tucker,	The SED could evaluate a TMDL with implementation	Since the numeric target is zero,

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	LLP	schedules that either (a) include both load allocations as well as waste load allocations (as was done in the Trash TMDLs for Machado Lake, Legg Lake, Ventura River Estuary, Revlon Slough and Beardsley Wash, and Lake Elizabeth, Munz Lake and Lake Hughes), or (b) include varying waste load allocations. Varying the obligations of compliance could lower the environmental costs of compliance.	both waste load and load allocations are necessarily zero, and therefore expressly including load allocations would not result in different, much less, substantially less significant impacts. See response to comment 9.14. Varying compliance costs are not substantially less environmental effects. Waste load allocations of greater than zero is inconsistent with the project purposes. See response to comment 9.45.
9.47	Rutan & Tucker, LLP	Another alternative to the proposed project TMDL would be the "Catch Basin Prioritization and Protection Plan" ("Plan") which would be based on the recognition that "approximately 15% of all storm drain inlets account for 50% of waterborne trash. . . [and that if] verified by additional data, very significant pollutant reductions and cost savings can be achieved by first focusing compliance efforts on controlling trash loads at these locations."10 (Exhibit "10," Plan, p. 1.) The Plan would rely on individual community litter surveys, based on the Litter Index as developed by Keep America Beautiful, and would be used to prioritize catch basin drainage areas for installation of full-capture controls. Each city would submit its Plan, inventorying the catch basins and full-capture devices proposed by the city, either installed in the catch basins or after the catch basins and before the receiving waters. The Plan would contain a schedule of installation of the devices, and would be submitted to the Regional Board within 180 days from final adoption of the TMDL, and incorporation into an	This "Catch Basin Prioritization and Protection Plan", first submitted to the Regional Board on May 7, 2007, is an implementation strategy that could be used with some modification, at the commenters' discretion (Water Code section 13360), to achieve compliance with the TMDL. It is, however, not an independent alternative to the TMDL, but an alternative means to comply with the TMDL With respect to implementation through a catch basin prioritization method (using the Keep America Beautiful Litter Index or another method), the TMDL does not require a specific pattern or method of

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		MOU and/or WDRs. Fifteen percent (15%) of the catch basins in high trash generation areas would be protected in each of the first two years after the Regional Board's approval of the Plan, followed by the protection of an additional 20% of the catch basins in year three (for a total of 50% of the catch basins in the high trash areas). In the fourth year, a report to the Regional Board would be provided on the remaining unprotected areas of the community. This report would include an estimate of the numbers of catch basins that would require protection in the remaining high, medium, and low trash generation areas. The Plan is presented as a project alternative to reduce environmental impacts, to provide the Cities with a cost-effective option to the TMDL, and to achieve the Regional Board's goal of trash reduction in a timely manner.	implementation. Dischargers are encouraged to find the most cost-effective means of compliance. Regarding the use of the Keep America Beautiful Littering Index, as a means of determining compliance; while the TMDL clearly states that alternative compliance monitoring programs may be approved by the Executive Officer if the program provides a scientifically-based estimate of the amount of trash discharged from the storm drain system, it is unlikely that the Keep America Beautiful Litter Index could be used in a manner to determine compliance as it is a categorical method and not quantitative, and it has no QA/QC procedures. The purpose of the Baseline Monitoring Program was to quantify the amount of trash generated per land use and in doing so, identify high trash generation areas. This was accomplished during the 2002/03 and 2003/04 storm years and further characterization should not be necessary. However, nothing in the TMDL prevents individual cities from conducting

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			independent litter surveys. While the Regional Board encourages cost-effective compliance measures, CEQA Guidelines section 15126.6 does not require or contemplate an alternatives analysis directed to cost of compliance, or avoiding state regulation via MOUs or other instruments; rather, the alternatives analysis is directed to alternatives that achieve the project purpose and result in substantially less significant impacts that the project as proposed. In its proposed form, the Catch Basin Prioritization and Protection Plan ("Plan") would not achieve the project's purpose of obtaining zero trash targets, but only would require wasteload allocations of 50%, and only in high-trash generating areas. It contains no provisions for achieving the remaining 50% reductions in those areas or reductions elsewhere. Further, the proposal to implement the TMDL through an MOU or non-NPDES WDR permit appears to be inconsistent with federal law, and therefore infeasible. Finally, no showing is presented as to how the

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			alternative would result in substantially less significant impacts than the project as proposed. Nevertheless, staff is currently evaluating the proposal to determine its suitability as an implementation strategy. Based upon that analysis and subsequent discussions with the commenters, the strategy could be modified to ensure compliance with the TMDL. Staff presently believes the current TMDL provides adequate implementation flexibility that allows responsible agencies to devise agency-specific implementation strategies as long as they meet the compliance goals set forth in the TMDL. Therefore the TMDL's terms need not necessarily be revised to accommodate such plans.
9.48	Rutan & Tucker, LLP	The SED should also evaluate a "watershed TMDL;" *i.e.*, it should evaluate the implementation of all of the required TMDLs for the River (metals, trash, bacteria, nitrogen, etc.) as a single project. Such an alternative might well avoid the problems that could result from implementing the TMDLs *seriatim*, such as where the implementation of a set of controls for one TMDL could be altered or negated by the next TMDL in line or could exacerbate conditions for a future TMDL (*e.g.*,	While the environmental documents discuss cumulative impacts of TMDLs in the watershed, a watershed TMDL is not an appropriate project alternative. The comment is directed to the form of the regulation as opposed to the environmental impacts from the

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		installing wetlands to control metals, only to violate future bacteria standards). As conceded in the SED, the various TMDLs will impact each other. (SED, p. 235.) For example, the SED acknowledges that the placement of structural BMPs for the Metals TMDL, such as infiltration trenches or filters, in series with the systems being installed to meet the Trash TMDL, could result in more efficient operations and less maintenance in connection with those filters, which in turn would result in fewer, or less severe, environmental impacts. (SED, p. 235.) Consequently, because such an alternative could substantially lessen the significant environmental impacts of the proposed project, it should be evaluated in the SED.	regulation. All potential impacts emanating from the project as proposed result from the implementation actions selected to comply with the TMDL. No evidence has been submitted to support the claim that "such an alternative could substantially lessen the significant environmental impacts of this project." Indeed, the same types of structural and non-structural BMPs would be required to comply with a watershed TMDL. The Superior Court has already ruled against the commenters that a "super TMDL" is an appropriate alternative in *Cities of Bellflower*. Irrespective, see response to comment 5.2.
9.49	Rutan & Tucker, LLP	Finally, the SED should evaluate a water quality objective modification alternative. That is, the Water Boards have significant discretion in developing the various water quality objectives that are set forth in the Basin Plan, objectives which are then used to formulate TMDLs, such as the proposed 2007 TMDL. Pursuant to Water Code sections 13000 and 13241, a number of factors and policies are to be taken into consideration when water quality objectives are adopted, and once adopted, these water quality objectives are to be evaluated	See response to comment 9.17. Revising the objectives is not an appropriate project alternative for CEQA purposes. It is a different project, and it would not achieve any of the project's purposes of implementing the existing objectives.

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		every three years through what is known as the "triennial review" process. An alternative to the proposed TMDL project would be to review the water quality objectives in the Basin Plan, and to revise those objectives considering their application to storm water, consistent with the requirements under Water Code sections 13000, 13240 and 13241. For example, the water quality objectives could be revised recognizing that the Porter-Cologne Act does not require, and that it in fact does not even authorize, the development of water quality objectives based on mere "potential" beneficial uses. Revising the Objectives to delete references to "potential" beneficial uses would likely cause certain portions of the LA River presently deemed to be "impaired" and thus listed on the State's 303d list, to no longer be listed, thereby resulting in a more limited TMDL project and resulting in fewer environmental impacts from its implementation. Thus, one alternative to the proposed TMDL project should be to evaluate whether the exiting Objectives in the Basin Plan, as applied to storm water, were adopted consistent with the requirements of the Porter- Cologne Act, and if not, to revise the Objectives, after complying with the requirements of the Porter-Cologne Act, and to thereafter adopt a TMDL that is based on validly developed Objectives.	The commenters' interpretations of the terms "potential" and "probable future" uses, and the requirements of section 13241 are not supported in the statutes, and the court in *Cities of Bellflower* has already rejected the commenters' arguments in this regard. This alternative is also not feasible for a variety of additional reasons. First, there are no designated "probable future" uses. The designated uses, to which the listings and the consent decree applies, are designated "potential uses" which are the 303(c) "applicable" standards, to which the TMDL requirement applies. (CWA section 303(d)(1)(C).) Accordingly, a TMDL limited to a portion of the potential uses is illegal and therefore not feasible. To the extent you could bisect the potential uses (you cannot), a TMDL related to the remainder of the use would subsequently need to be established in any event, with its

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			attendant impacts. Therefore, TMDL limited to part of the use would amount to unlawful piecemealing of the project, for the purpose of claiming less impacts exist. That is a violation of CEQA. Moreover, of the 14 waters subject to the TMDL, all of them have at least one existing use designated, which must be protected. Therefore under any designation of the "uses to be achieved" or "not existing uses" that are relevant to those waters (see 40 CFR 131.10(a), (g)), whether termed "potential" or "probable future", the objectives apply equally to all the waters subject to the TMDL because they have designated existing uses. Thus, the manner of designation of not-existing uses related to any these waters is irrelevant. Finally, since trash does not assimilate (break down in the water column), and the water body is merely a conveyance mechanism, any upstream tributaries must be regulated to achieve the downstream

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			loading capacity of zero. TMDLs must account for all sources of a pollutant, and not merely those sources discharging directly to an impaired reach.
9.50	Rutan & Tucker, LLP	**The SED Fails to Provide an Adequate Review of the Alternatives it Does Evaluate** CEQA also requires that an EIR's alternatives review be an "in-depth" review. (*Goleta II* , 52 Cal.3d at 565.) Guidelines section 15126.6 (d) provides that an "EIR shall include **sufficient information** about each alternative to allow **meaningful evaluation, analysis, and comparison with the proposed project**." Thus, even were the inclusion of only the EPA TMDL and "no project" alternatives otherwise sufficient, the alternatives analysis would still violate CEQA because it is extremely cursory and is unsupported in the record. Indeed, the SED devotes less than a single page to the analysis. No evaluation is undertaken of the alternatives' impacts in each of the resource areas as compared to the project's impacts in those areas, and the conclusory statements in the SED are unsupported by any quantitative or comparative analysis. At a minimum, a matrix displaying the major characteristics and significant environmental effects of each alternative in each of the resource areas should have been included to summarize the comparison of the project and the alternatives, as recommended by Guidelines section 15126.6 (d). By offering no "factual informational underpinning" (*Laurel Heights Improvement Assn., supra,* 47 Cal.3d at 403) for its boilerplate conclusions or quantitative data for its bald characterizations, the SED offers no useful or reliable bases for comparisons.	The commenter appears to base the adequacy of the analysis of program alternatives on the number of pages dedicated to it as opposed to its content. Both the "EPA TMDL" and "Regional Board TMDL" alternatives outline the potential means by which they may be implemented and refer to Section 6 "Description of Implementation Alternatives" for a detailed description of these measures: The SED then goes on to analyze the impacts of these implementation measures in Section 7: "Setting Impact and Mitigation". The third alternative is the "No Program" option which, though acknowledged as unlawful, will require no implementation and thus produce no impacts to be analyzed. Nevertheless, analysis required when examining alternatives that are not feasible is not the same as the analysis of feasible alternatives (of

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		Moreover, as stated, the SED misleads the decision makers and the public by mischaracterizing both the "no project" and the EPA TMDL alternatives, ultimately rejecting both for erroneous and unsubstantiated reasons. Accordingly, the SED fails to provide an adequate review of the alternatives it does evaluate, thereby violating CEQA.	which there are none). See response to comment 9.39.
9.51	Rutan & Tucker, LLP	**The SED Fails to Analyze a Reasonable Range of Alternative Measures of Compliance with the Trash TMDL** CEQA requires that the Regional Board, when adopting performance standards such as a TMDL, also perform an environmental analysis of the reasonably foreseeable methods of compliance with the TMDL. (Pub. Res. Code § 21159; CEQA Guidelines § 15187.) Among other things, the environmental analysis must include (i) an analysis of **reasonably foreseeable of the methods of compliance** with the TMDL (§ 15187 (c) (1)), and (ii) an analysis of reasonably foreseeable **alternative means of compliance** with the TMDL which would avoid or eliminate the identified impacts (§ 15187 (c) (3)). The SED confuses the phrase "reasonably foreseeable methods of compliance with the TMDL," with the phrase "alternative means of compliance with the TMDL." Although these two concepts are separate and distinct, the SED conflates them, apparently assuming that discussing reasonably foreseeable methods of compliance somehow constitutes an analysis of alternatives to those methods of compliance, as well. It does not.	Staff disagrees. The substitute environmental documents provide a detailed analysis of alternative means of compliance, including structural BMPs such as trash nets, catch basin inserts, and vortex separators and non structural BMPs such as increased street sweeping and enforcement of litter laws. The substitute environmental documents also discuss how these alternatives can be implemented to avoid or eliminate identified impacts. The theory that foreseeable means of compliance is necessarily different from alternative means of compliance ignores the fact that the Regional Board cannot specify the manner of compliance (Water Code section 13360). The analysis in the SED thus analyzes all foreseeable means of compliance (whether

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			initially selected, or selected as alternatives). Where impacts were identified, alternatives were recommended. The universe of the foreseeable means of compliance is still the universe, whether one of them is used as alternative to another, or is selected as the initial means. In any event, both concepts have fairly been examined. Since the commenters have failed to suggest which foreseeable means, or alternative means, have not been analyzed, staff is unable to provide a further response to this comment.
9.52		Guidelines section 15187, subdivision (a), states that the Board must "perform an environmental analysis of the reasonably foreseeable **methods** by which compliance with [its] rule or regulation will be achieved." A different subdivision, (c)(3), states that the SED must also include an "analysis of reasonably foreseeable **alternative means** of compliance with the rule or regulation, which would avoid or eliminate the identified impacts." Thus, Guidelines section 15187 requires two separate analyses: Analysis No. 1 – The SED must analyze the impacts of the reasonably foreseeable method**s** of compliance (here, structural and non-structural BMPs); and Analysis No. 2 – The SED must also analyze alternative means of compliance with	See response to comment 9.51.

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		the TMDL which would avoid or eliminate the impacts identified in Analysis No. 1. The SED purports to perform Analysis No. 1, but makes no attempt to perform Analysis No 2. The fact that more than one method of compliance is proposed for compliance with the TMDL does not convert the discussion of those compliance methods into an analysis of alternatives to those compliance methods that would avoid the identified impacts of the compliance methods. Thus, the alternative measures of compliance discussion is inadequate.	
9.53		**The SED Segments The Project In Violation Of CEQA.** For purposes of CEQA coverage, a "project" is defined as comprising "**the whole of an action**" that has the potential of resulting in either a direct, or reasonably foreseeable indirect, physical change in the environment. (Guidelines § 15378 (a).) An agency must describe a project in a manner that will encompass the entire activity's potential impacts, and may not avoid preparing comprehensive environmental documents by segmenting a project into stages of approval, focusing on isolated parts; *i.e.*, an agency may not chop a large project into little ones, each with a minimal impact on the environment, to avoid full environmental disclosure. (Guidelines § 15003 (h); *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283.) The SED violates CEQA by engaging in just this sort of segmentation of the project. First, the lack of specificity in the mitigation measures discussed in the SED amounts to an illegal segmentation of the project because, by deferring until the project level stage, any review of the problems associated with	Staff disagrees. There is no segmentation of the TMDL in the analysis of impacts and discussion of mitigation measures. Both are addressed in sufficient detail. While alternative mitigation measures are provided, the SED stops short of emphatically selecting which ones should be applied as the authority for doing so rests entirely with the proponent of each project. The Superior Court, in the *Cities of Bellflower* case, already rejected the commenters' arguments in this regard.

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		the acknowledged environmental impacts that will result from the project, the SED illegally truncates the project and treats these various impacts as separate, independent projects. (See *Inyo County v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-193 ["A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and the public decision makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal . . . and weigh other alternatives in the balance. An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR"].)	
9.54		Second, under the consent decree, the "project" should be the establishment of a series of TMDLs for the Los Angeles River and other impaired waters in the Basin. However, instead of evaluating the whole series of TMDLs together, or even the series of TMDLs for the Los Angeles River alone, the Board has separated each TMDL into an individual project, thus focusing on the constituent parts of the real project, minimizing the real project's environmental impacts, and avoiding full environmental disclosure. Indeed, the SED concedes that the implementation of the various TMDLs for the Los Angeles River watershed impact one another and their effectiveness. (SED, p. 235.)The SED should evaluate the environmental impacts of developing all the TMDLs at the same time.	See response to comment 9.48.
9.55		**The SED Fails To Identify And Evaluate Cumulative**	The SED provides an adequate

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		Impacts Of The Project. An EIR must evaluate both project-specific and cumulative impacts for significance. There are two methods for satisfying the cumulative impacts analysis requirement: The list-of-projects approach and the summary-of-projections approach. (Guidelines § 15130 (b).) Under either method, the EIR must summarize the expected environmental effects of the project and related projects, provide an analysis of cumulative impacts, and examine options for mitigating the project's contribution to any significant cumulative impacts. The SED's cumulative impacts analysis does none of these things. Although it purports to analyze certain resource areas (SED, p. 235-6), it does so in cursory fashion in slightly over one page. Not only does the SED ignore several of the other resource areas, but it fails to disclose just what other projects may be contributing to cumulative impacts; indeed, the SED even fails to disclose upon which method of analysis (the list of- projects approach or the summary-of-projections approach) it is purportedly based. Nor does the SED even consider the impacts of the other TMDLs for the Los Angeles River that may make the incremental impacts of the project cumulatively considerable. (*See* Pub. Res. Code § 21083(b); Guidelines § 15065(c).) These fatal flaws render the SED defective under CEQA. (*Whitman v. Board of Supervisors* (1979) 88 Cal.App.3d 397, 406-411.)	analysis of the cumulative impacts related to other TMDLs (Chapter 9 – section 9.1). Again the commenter appears to base the adequacy of the analysis on the number of pages and not the content. The SED analyses cumulative impacts of all existing TMDLs in the Los Angeles River Watershed (including those already adopted and those being developed) in relation to the trash TMDL. It also provides an analysis of the cumulative impacts of project implementation in all resource areas determined to be susceptible to potential negative environmental impacts. The commenters' failure to suggest any specific cumulative impacts that have not been analyzed precludes a more detailed response to this comment.
9.56		**The Findings And Evidence Are Deficient.** The findings of the Resolution do not support the decision, and the evidence in the record does not support the findings. When an EIR identifies significant environmental impacts from a	Specific findings have been made for each impact in the SED. The tentative Resolution specifically "approves and adopts the CEQA

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		project, as here, the agency must make specific findings for each impact: That changes have been required in the project that will avoid or substantially lessen the impacts; that impacts are within the jurisdiction of another agency and the lead agency does not have concurrent jurisdiction to impose the suggested mitigation measures; or that specific economic, social, or other conditions render identified mitigation measures or project alternatives infeasible. (Pub. Res. Code § 21081; Guidelines § 15091.) Moreover, the agency must make findings concerning the project alternatives unless it finds that all of the project's significant impacts will be avoided or substantially lessened by mitigation measures. The Resolution is deficient in this respect because it fails to make any of these findings.	substitute environmental documentation, including all findings contained therein…" The commenter does not explain how the findings of the tentative Resolution do not comply with the requirements of 21081 and 15091, and therefore staff is unable to provide a more specific response.
9.57		Similarly, the Statement of Overriding Considerations is deficient. Although the SED concludes that the project may result in significant environmental impacts, it concludes that the project has "overriding considerations" that outweigh the project's significant impacts. Thus, it inappropriately **predetermines** that the undisclosed, unknown, and perhaps unmitigable adverse impacts are outweighed by the necessity of implementing this particular Trash TMDL. This determination is unsupported and uninformed by substantial evidence, and thus the analytic route of the Board is not disclosed, because the extent of the impacts has not even been evaluated by the Board (*e.g.*, there is no hint as to why a 10-year, 10% per year trash reduction schedule would not achieve most of the project's objectives at a fraction of the environmental cost). A Statement of Overriding Considerations cannot properly be made unless	Programmatic CEQA reviews can include a statement of overriding considerations. Staff agrees that the local agencies will be required to undertake their own CEQA analysis when determining how to comply with the regulation.

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		the potentially significant adverse impacts have been fully identified and analyzed and a conclusion has been reached that they are significant and cannot be mitigated. Further, such a conclusion cannot be reached until the significant impacts have been analyzed in comparison to the benefits that will result from the project. No such analysis has been conducted within the SED. Moreover, the Statement improperly preempts the decisions of local agencies, which as the lead agencies on the implementation decisions, are the appropriate bodies to determine whether the impacts of a particular implementation method are overridden by project benefits.	
9.58		**The SED Fails To Evaluate The Project's Impacts On Greenhouse Gases.** Global climate change alleged to be caused by the combustion of various fossil fuels and the emission of other materials is one of the most important and widely debated scientific, economic, and political issues in the United States. The science of global climate change is evolving and remains subject to extensive debate and uncertainties. Nevertheless, during the past five years, the United States government has allocated over $29 billion for scientific research into global climate change and for climate-change related programs. So-called greenhouse gas pollutants result from motor vehicle emissions, which are alleged to contribute significantly to global warming.13 As a general matter, the United States is responsible for emitting approximately 20% of the world's greenhouse gas emissions. California is responsible for a significant percentage of the	The projects impact on greenhouse gases, which include carbon dioxide, methane, nitrous acids and hydrocarbons, has been adequately addressed under Section 7.3: Air Quality.

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		world's emissions. In 2006, the California State Legislature adopted AB 32, the California Global Warming Solutions Act of 2006. As a general matter, AB 32 requires the California Air Resources Board, the State agency charged with regulating statewide air quality, to adopt rules and regulations that would achieve greenhouse gas emissions equivalent to statewide levels in 1990 by 2020. Consistent with the public policy rationale underlying AB 32, the SED must fully analyze the project's impacts on greenhouse gas emissions. The project's contribution of these emissions should be evaluated, and impacts and mitigation measures should be analyzed, as the proposed project may contribute to global climate change.	
9.59		In short, the SED is fatally flawed and must be substantially revised and recirculated before adoption of the TMDL. It fails to set forth project objectives and contains an inconsistent and inaccurate project description, so that the draft Resolution purports to approve a project that was not even evaluated in the SED; it fails to evaluate a reasonable range of alternatives that meets the requirements of CEQA; it provides an inadequate analysis of the alternatives it does include and rejects a potentially environmentally superior alternative (the EPA TMDL) based on mischaracterizations of its implementation schedule and its impacts; it fails to evaluate reasonably foreseeable alternative methods of compliance with the TMDL; it unlawfully segments the project; it fails to analyze the cumulative impacts of the project; and it fails to evaluate the project's impacts on greenhouse gases and global warming. The	Staff disagrees. See responses to Comments 9.35 - 9.57

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		SED and draft Resolution are further fatally flawed as the findings and statement of overriding consideration are deficient.	
9.60		**THE 2007 TMDL AND PROPOSED BASIN PLAN AMENDMENT, AS DRAFTED, VIOLATE THE ADMINISTRATIVE PROCEDURES ACT** The 2007 TMDL imposes waste load allocations on the "municipal permittees" (which would include the County and the City of Los Angeles and the County Flood Control District) and "Caltrans," but the TMDL does not set forth who has what responsibility, as between these affected parties, for reducing the discharge of trash from the various storm drain systems discharging to the LA River. Specifically, the County, the Flood Control District and Caltrans maintain thousands of catch basins and storm drain lines within the jurisdictional boundaries of the affected cities, which drain to the LA River. Thus, these agencies should be responsible for addressing the discharge of trash from such systems and for installing the appropriate devices within these catch basins to control trash. It is the Cities' understanding that all such storm drain systems maintained by the County, the Flood Control District and/or Caltrans, are to be the responsibility of such parties, but, yet, the proposed requirements do not provide "clarity" on this issue. The 2007 TMDL, as a proposed regulation, must be adopted in accordance with the requirements of the Administrative Procedures Act ("APA"), Government Code sections 11300, et seq. Among other things, the APA requires "clarity" in California regulations. (Govt. Code § 11349.1.) The 2007	Staff disagrees. The waste load allocations are assigned on a per municipality/agency basis which defines the extent of their responsibility. Each affected party is responsible for all trash discharged from areas within their jurisdiction. Caltrans is responsible for all trash discharged from their rights-of-way. The cities are responsible for discharge from City- and County-maintained catch basins within their jurisdiction, and the County is responsible for all trash discharges from the unincorporated areas of Los Angeles County

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		TMDL is ambiguous as to whether the owner and/or operator of the catch basins and/or connecting storm drain systems are to bear the responsibility for complying with the WLAs set forth in the TMDL (which is the Cities' understanding), or whether the proposed TMDL regulation seeks to impose an extraordinary requirement upon the cities throughout the watershed to be responsible for another party's catch basins and storm drain lines. As such, as written, without clarification, the 2007 violates the requirement of "clarity" specified under the APA.	
9.61		The TMDL also violates this requirement for clarity by the ambiguity created with the conflict between the TMDL Report and the proposed Resolution and Basin Plan Amendment. Specifically, the Resolution confirms that at least one catch basin device that has been utilized by the cities of Glendale, Pasadena, La Canada-Flintridge, and Burbank, i.e., the Brush Catch Basin Insert, is considered a "full-capture" device, meaning that if these devices are installed in the relevant areas, "zero" trash will be deemed to be discharged from the affected areas. On the other hand, the TMDL Report characterizes "Catch Basin Inserts" as only "partial" capture devices. The TMDL Report should be corrected.	As previously mentioned, the Catch Basin Brush Insert device is regarded as "full capture" only when used in conjunction with a horizontal screen. The use of the horizontal screen within the catch basin is what sets this system apart from other catch basin inserts regarded as partial-capture systems.
9.62		Thirdly, the proposed Basin Plan Amendment/Regulation is ambiguous and lacks clarity in its definition of the "loading capacity" as set forth under Tables 7-2.1, where it provide that: "The loading capacity is defined in terms of **bacterial indicator densities**, which is the most appropriate for addressing public health risk, and is equivalent to the numeric targets, listed above." This description of the "loading capacity"	As previously mentioned this reference to "bacterial indicator densities' is clearly a typographical error which will be corrected in the final Basin Plan Amendment.

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		for a Trash TMDL is nonsensical and appears to be the loading capacity description for a "bacteria" TMDL, rather than a "trash" TMDL. Fourth, the definition of "Full-Capture System" utilizes a design storm event, which, on its face, is not objectionable, but which is different than the design storm events utilized for other storm water requirements, creating an ambiguity which should be explained in the TMDL Report.	As stated previously, the design storm events for the "other storm water requirements" referred to will not meet the "full-capture" performance level for trash BMPs.
9.63		Finally, the proposed TMDL lacks clarity and violates the requirements of the APA in its reference to the required reopener "once a reduction of 50% has been achieved and sustained." (See proposed Basin Plan Amendment, Table 7.2.3, fn 2.) Clarity is needed to further delineate for the regulated community precisely when the reopener will occur and what the various cities' obligations are, if any, once they have achieved the 50% trash reductions in their respective jurisdictions. Further clarity is needed as to whether all affected entities must reach the 50% reduction requirement in trash, or whether the Watershed on the whole is to achieve the 50% reduction levels before the reopener is to occur, and again, whether those Cities that reach 50% within their respective jurisdictions may cease implementation of further measures, and thus avoid ongoing costs, until such time as the reopener hearing has been conducted and a determination is made on revisions to the Trash TMDL. The proposed regulation lacks the "clarity" required by the	The TMDL Staff Report (p.21) states that "The Regional Board will review and reconsider the final Waste Load Allocations once a reduction of 50% of the Baseline Waste Load Allocation has been achieved." This 50% compliance point is to be attained by the third year of implementation (p 29 Table 6 in the Staff Report, and p 7 Table 7.2.3 in the Basin Plan Amendment) The baseline Waste Load Allocations for the municipal permittees are assigned on a city by city basis. Therefore each permittee is responsible for meeting the target 50% reduction for their jurisdiction. As all responsible jurisdictions

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		APA.	should have achieved a 50% reduction of their baseline waste load allocation by the third year. Responsible agencies that achieve the 50% compliance point prior to the scheduled time, though encouraged to do so, are under no obligation to move ahead of schedule. This clarification will be provided in the Basin Plan Amendment language.
9.64		**THE "ECONOMIC" ANALYSIS REQUIRED UNDER STATE LAW HAS NOT BEEN COMPLIED WITH** First, the initial 40% reduction in trash requirement to be achieved by 9/30/08, will impose a significant financial hardship upon the Cities, over a very short period of time and will create a strain on City resources. It will further potentially adversely impact other City services such as police, fire and other services that are of significant importance to the residents of the Cities and the County.	The commenters' insinuation that the jurisdictions in the region have not commenced compliance efforts is unsupported.
9.65		Second, the cost assumptions set forth in the TMDL Report are in error. For starters, the catch basin protection device costs are significantly higher than the dated $800 cost estimates in the TMDL Report. (See, e.g., Exhibit "20," an American Stormwater, Inc. invoice for a catch basin screen of $1,375; and Exhibit "21," which is a cost comparison matrix prepared by John Hunter & Associates, Inc., comparing the costs of various Trash TMDL implementation measures described in the TMDL	The exhibit referenced by the commenters was considered in the cost section of the TMDL Staff Report. The cost section shows a range of costs depending on the compliance methods chosen and includes both less expensive catch basin devices and more expensive

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		Report, with the actual costs of various measures used in connection with the Hamilton Project14 ("Cost Comparison Matrix") – the Cost Comparison Matrix shows the actual cost of a catch basin protection device at $4,300; also see Exhibit "23," *A Trash TMDL Implementation Plan [Presentation],* by Shahram Kharaghani, Program Manager, City of Los Angeles, February 28, 2005, p. 19, showing the cost for installing a catch basin device at $1,200 per unit.) Thus, the actual costs to the Cities to install various catch basin protection devices have been significantly higher than the estimates utilized in the TMDL Report. Accordingly, the Regional Board's $800 per catch basin unit estimate as set forth in the TMDL Report, which is exactly the same number used in and undoubtedly pulled from the 2001 TMDL, is not only dated but is inaccurate, as shown by evidence on the actual costs to install these types of units. Correspondingly, the $120 million cost estimate to implement the catch basin implementation measure described in the TMDL Report is significantly understated, by tens of millions, if not hundreds of millions of dollars.	devices such as large capacity vortex separation systems. Staff has developed CEQA analysis based on information provided by municipalities, Caltrans, and vendors on trash removal devices used to comply with the previous trash TMDL. Trash removal devices implemented by municipalities in compliance with the previous trash TMDL have proven to be more cost effective. For example, the City of Glendale, installed continuous broom brushes along the upper edge of storm drain inlets to prevent trash from entering it. The estimated cost is approximately $800 per catch basin. The commenters' challenges to adequacy of the economics analysis have already been rejected in the *Cities of Arcadia* case.
9.66		Third, the estimates for installing and maintaining the full-capture Vortex Separation Systems (VSS) totaling up to approximately $2 billion, is significantly understated, with the actual cost of utilizing this implementation measure being closer to $10.5 billion. (See Exhibit "19," a report entitled "Market-Based Strategies For Reducing Trash Loading to Los Angeles Area Watersheds – An Initial Assessment" prepared by the Coalition for Environmental Protection, Restoration and	The exhibit referenced, a report dated March 2006, is based on an assumption of vortex separation systems as the key means of compliance with the full capture device definition. The Regional Board has also certified gross mass separation devices and catch basin

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		Development, and partially funded by U.S. EPA Grant ID # XP-97979001-0, and dated March, 2006, also see Exhibit "21," Cost Comparison Matrix, showing an error in the TMDL Report on the costs of the VSS units, and showing an actual capital cost for the VSS unit used for the Hamilton Bowl Project of $661,750.)	inserts with screens and trash nets. These costs range from ½ to 1/10 of the VSS systems. Trash removal devices implemented by municipalities in compliance with the previous trash TMDL have proven to be more cost effective. For example, the City of Glendale, installed continuous broom brushes along the upper edge of storm drain inlets to prevent trash from entering it. The estimated cost is approximately $800 per catch basin. The commenters' challenges to the adequacy of the economics analysis have already been rejected in the Cities of Arcadia case.
9.67		In the Market-Based Strategies for Reducing Trash Loadings to Los Angeles Area Watersheds' Report (Exhibit "19"), the Board's estimate of the vortex full-capture devices and the other costs for various implementation measures, is analyzed, and the Report concludes that the actual implementation costs, of "installing vortex 'full capture' basin devices may be substantially higher than original estimated in the trash TMDLs (see Section II-E)." (Exhibit "19," p. II-1.) The Report further concludes that: Significant planning, engineering, construction and related expenses would be incurred to restructure the watershed drainages to be certain that the VSS units intercept all the trash	See response to Comment 9.66

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		loads that may enter the watershed through each inlet and do not reduce the hydraulic capacity of the system. The TMDLs do not appear to have considered these expenses. VSS and similar units may also increase the concentration of other pollutants (e.g., indicator bacteria) that would require additional control measures and generate standing water in some locations that might stimulate mosquitoes or other disease vector organisms. The TMDLs do not account for, or estimate, these additional implementation costs. . . . The City's [City of Los Angeles] analysis notes that several catchment devices may also generate surface flooding, are prone to fouling, or may not be feasible to install due to the size of catch basin piping and other physical characteristics. The secondary effects generate additional engineering and management costs that have yet to be fully analyzed. (Exhibit "19," p. II-24.) The Report then considers the experiences of the County of Los Angeles and the City of Los Angeles, and concludes as follows: In general, the City and County full-capture device cost estimates suggest that installation of full capture units will be significantly more expensive than estimated by the Regional Board in the trash TMDLs. If a full capture unit costs approximately $500,000 to install per drain and incurs an annual $100,000 O&M expense (the approximate County and City estimate), and each drain conveys flow from about 20 of the 183,000 watershed catch basins (or approximately 10,000 units), the TMDLs would cost $5 billion in capital costs and incur O&M expenses of $1 billion per year after full deployment. The initial ten year installation and O&M costs	

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		associated with full capture devices under these assumptions would be approximately $10.5 billion, assuming an annual phase-in of approximately 1,000 units over that period. These expenses range from approximately 5 to 22 times higher than estimated in the TMDLs. (Exhibit "19" p. II-25.)	
9.68		Also, in a report entitled "Municipal Best Management Practices for Controlling Trash and Debris in Storm Water and Urban Runoff" largely funded by the State Water Resources Control Board (Exhibit "24" – hereafter "Municipal BMPs Trash Report"), the vortex full-capture devices are evaluated and described as having "limited application," and further that they should "only be considered case-by-case for smaller size storm drains and high trash generation areas due to their high cost and some operational considerations." (Exhibit "24," p. 19.) The Municipal BMPs Trash Report also refers to the City of Los Angeles pilot study reflected in the February 28, 2005 presentation entitled "Trash TMDL Implementation Plan" by the City of Los Angeles (Exhibit "23" – hereafter referred to as "City Trash TMDL Implementation Plan.") In the City Trash TMDL Implementation Plan, the City of Los Angeles estimated that the vortex full-capture cost for the City of Los Angeles alone (which comprises approximately one-half of the LA River watershed), would be $836,373,774 for the first 10 years. (Exhibit "23.") The operation and maintenance cost estimate by the City of Los Angeles for the first 10 years for the vortex full-capture devices was $23.7 million, which presumably is based on the assumption that at any given time, one-half of the	Staff agrees that implementing agencies should select the most effective combination of full capture devices, or other implementation measures, to address site specific conditions. Staff notes that the Regional Board has included a full capture certification procedure that municipalities can pursue in compliance with the TMDL. The pilot study referred to is of limited consequence as agencies (including the City of Los Angeles) will be opting to use recently certified vertical and horizontal catch basin trash capture devices in lieu of the more costly vortex separation systems, in most instances. The TMDL Staff Report includes a cost analysis of such full capture catch basin trash capture devices.

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		required units for the City of Los Angeles would have been installed, bringing the annual total at approximately $48 million for one-half of the watershed. Thus, extrapolating out the City of Los Angeles' estimated operation and maintenance cost for the entire watershed would result in approximately $96 million in costs on an annual basis, once all vortex full-capture devices are installed. (Also see the Cost Comparison Matrix – Exhibit "21" – for a comparison of the operation and maintenance costs assumed in the TMDL Report, versus actual costs incurred by cities.)	Also, see response to Comment 9.66
9.69		Fourth, the estimated costs in the TMDL Report for compliance with the 2007 TMDL through the use of "end of pipe nets" (again the TMDL Report figure is identical to the numbers used in the 2001 TMDL Report), are inaccurate and significantly understated. As described in the Cost Comparison Matrix (Exhibit "21,"), the actual cost to install an end of pipe net for a1.5 foot diameter pipe was $56,000 in comparison to the $10,000 cost estimate included in both the 2001 and 2007 TMDL Reports for a 3 foot diameter pipe. Further, the actual cost to install a trash net system for a 5 foot diameter pipe, as a part of the Hamilton Bowl Project, was $77,000, as compared to the $20,000 estimate for a trash net for a 5 foot diameter pipe set forth in the 2001 and 2007 TMDL Reports. (Also see the cost differences to maintain the end of pipe nets as set forth in the Cost Comparison Matrix, Exhibit "21.")	Comment noted. Also see response to comment 9.68
9.70		Finally, as mentioned, the cost estimates for all of the implementation measures in the 2007 TMDL Report are identical to the estimates the Regional Board included in the	The economic analysis presented in the staff report is neither flawed nor outdated. The economic analysis is

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		2001 TMDL Report, i.e., the cost estimates are six years old, have never been updated by the Board, and insufficient consideration has been given to inflation and the actual expected costs to implement these measures.	based on the area of the Los Angeles River watershed, an estimate of the number of catch basin inserts, vortex separators and end of pipe nets required to implement the TMDL and unit costs for the number of catch basins in the Los Angeles River watershed, and the unit costs for the device. This is a standard cost estimating protocol used widely in the engineering and construction industries, and the unit. The assumptions used to estimate watershed area and the capacity and costs for catch basin inserts, vortex separators, and trash nets are reasonable and the cost estimate is valid. Also, agencies are opting to use the more recently certified vertical and horizontal catch basin trash capture devices in lieu of the more costly vortex separation systems. The TMDL Staff Report includes a cost analysis of such full capture catch basin trash capture devices.
9.71		The enormous economic burden on the Cities from attempting to comply with the 2007 TMDL is further exacerbated because of the likely impact on the "pricing" of the catch basin protection devices from a heightened demand for such devices	It is expected that each responsible agency will select their implementation strategy based on considerations such as cost-

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		over a very short period of time, i.e., over a four month period or so to achieve the 40% reduction. The economic burden created by the need to install such a significant number of catch basin protection devices over such a short period of time, along with the significantly higher cost of these devices, above the dated cost estimates provided by the Regional Board, as well as the market forces which will likely drive up the per unit cost of these devices, have not been considered by the Board in connection with the development of the subject 2007 TMDL. As such, the 2007 TMDL is arbitrary and capricious and has not been adopted in accordance with the law because of its deficient "economic" analysis.	effectiveness and available funding mechanisms. Full capture BMPs can be as simple and cost-effective as the catch basin brush inserts and screens being installed by some smaller cities, or as complex as vortex separation systems being installed by the County. There is a wide range of costs associated with the various BMPs which allows agencies great flexibility in complying with the TMDL requirements while simultaneously being cost-conscious. Furthermore, there has been sufficient time since the 1998 listing and the adoption of the 2001 trash TMDL for municipalities and agencies to take appropriate actions to reduce trash discharges such as the installation of catch basin protection devices. While it is true that that increased demand may increase the cost per unit in the short term, increased demand may likewise reduce the cost in the long term as more companies move to supply the needs of the region when the regulation is in place and enforceable. No

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			evidence suggests that these market forces undermine the relevant integrity of the costs estimates.
9.72		In *Arcadia v. State Board, supra*, 135 Cal.App.4th 1392, one of the issues raised was whether the Boards were required to comply with Water Code section 13241, and specifically, to consider "economics" when adopting the now invalidated 2001 TMDL. The trial court in fact invalidated the 2001 TMDL on the grounds that the Boards had failed to consider "economics" in accordance with the requirements of section 13241. On appeal, the Court of Appeal reversed this aspect of the decision, but did not decide the issue of whether the Water Code section 13241 factors applied, finding instead that with respect to economics, "given the lack of any definition for 'economic considerations' as used in Water Code section 13241, and on deference to the Water Boards' expertise, we conclude the Trash TMDL discussion of compliance costs is adequate and does not fulfill the arbitrary or capricious standard." (*Id*. at 1417-18.) However, since the adoption of the initial Trash TMDL in September of 2001, actual experiences with the implementation measures have lead to far better evidence on the likely costs to comply with the TMDL, which evidence shows that the economic analysis in the 2001 and 2007 TMDLs is significantly understated, and that the actual cost to comply with the 2007 TMDL will be far greater.	See response to comment 9.70.
9.73		In addition, at the time the Regional Board adopted the initial Trash TMDL in September of 2001, it did not have the benefit of the calculations set forth in the USC Study (Exhibit "25"),	The USC report and other cited studies are not applicable to the economic considerations for the Los

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		showing that the cost to fully comply with all water quality standards over the next twenty-five years, including trash, could exceed $283.9 billion. Nor did the Regional Board consider the various Caltrans Reports (see Exhibits. "26," "27" and "28"), showing that the cost for municipalities to comply with the water quality standards in the Basin Plan would approach $54 billion. Also attached hereto [are reports that] further confirm the significant burden the municipalities are being asked to undertake with regulations such as the proposed Trash TMDL, without the Boards ever giving any true consideration to the section 13241 factors or section 13000 policies.	Angeles River trash TMDL because the trash TMDL does not require "strictly complying with all water quality standards". First, the trash TMDL requires only control of trash that is greater than 5 mm in size. Second, the trash TMDL certifies compliance if "full capture systems" are implemented. This designation has been granted to devices other than vortex separation systems. Thus, these reports are not an accurate representation of costs for compliance with the trash TMDL. Further, in estimating public resources that would be diverted through adoption of the TMDL, the USC report uses a proprietary model, which is not fully described in the report. The economic analysis presented in the staff report is consistent with the analysis performed for the 2001 TMDL, which was upheld in *Cities of Arcadia* against similar challenges. The analysis is appropriate, and adequate. The

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			economic analysis is based on the area of the Los Angeles River watershed, an estimate of number of catch basin inserts, vortex separators and end of pipe nets required to implement the TMDL and unit costs for the number of catch basins in the Los Angeles River watershed, and the unit costs for the device. This is a standard cost estimating protocol used widely in the engineering and construction industries, and the unit. The assumptions used to estimate watershed area and the capacity and costs for catch basin inserts, vortex separators, and trash nets are reasonable and the cost estimate is valid.
9.74		In addition, the Regional Board should consider a report entitled *A Guide to Consideration of Economics under the California Porter-Cologne Act*, by David Sunding and David Zilberman, University of California, Berkeley, March 31, 2005, in its consideration of "economics" before adopting the Trash TMDL (a copy of this Report is attached hereto and marked as Exhibit "31"). In Exhibit "31," the authors reviewed the requirements of the Porter-Cologne Act regarding the need to consider "economics" and the other factors under section 13241, and concluded that: While the requirement to consider economics under Porter-Cologne is **absolute**, the legislature and the courts have done	The requirement to consider economics under Porter-Cologne is situational, and depends upon what action the Regional Board is taking at the time. While section 13241 does not apply to the establishment of TMDLs, in view of the repeated comments over the years, staff routinely undertakes such an analysis when performing TMDL, for the benefit of the stakeholders, public, and the Board in reaching a

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		little to particularize it. This report is an attempt to fill the gap and provide the Board with guidance as to how economics can and should be considered as required by Porter-Cologne. We write from our perspective as professional economists and academics who have engaged in water quality research and who have extensive experience with the application of economics to environmental regulation. (Exhibit "31," p. iv.)	decision. Doing so, however, is not compelled by law. While the referenced document has not been adopted as a protocol by the State or Regional Board, it is notable that the economic analysis provided in the staff report is indeed consistent with "A Guide to Consideration of Economics Under the California Porter-Cologne Act."
9.75		The study of Messrs. Sunding and Zilberman, and their research and conclusions, should be evaluated by the Board before adopting the subject TMDL and true consideration must be given to the impacts created by the Board's decision in adopting the TMDLs, including the proposed implementation measures and the inclusion or lack thereof of MEP compliant BMPs to comply with the TMDL. Consideration should further be given to the conclusion of these authors that: Water quality regulations are necessary in a state like California, and a careful analysis of their consequences can provide a road map for investment of scarce resources. Ideally, our recommended approach will increase the transparency of the rule-making process under Porter- Cologne. Further, it is our hope that adoption of the approach could help avoid the legal and political conflicts that have adversely affected recent water quality protection efforts in the state. (Exhibit "31," p. v.)	See response to Comment 9.74. The Cities of Arcadia case rejected the commenters' claims that the concept of MEP applies to TMDLs, and the County of Los Angeles case rejected the commenters' claims that the concept of MEP would allow the Regional Board to relax the requirements of a TMDL in a storm water permit. Moreover, similar to the County of Los Angeles case, the commenters have submitted no evidence to support their suggestion that complying with the TMDL is not practicable.

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9.76		These additional costs, as described in the USC Study and the various other studies and reports attached hereto, must be considered by the Board at this time before adopting the TMDL. The 2007 TMDL is one of many TMDLs to be adopted by the Board, and from an economic perspective, the significant financial resources needed for the next ten years to comply with the TMDL may not be available in light of the extensive costs to comply with this and other TMDLs adopted or to be adopted by the Boards, e.g., the nearly $15 billion that may be necessary to comply with the Metals TMDL for the LA River. (See Exhibit "32," p. 5, Addendum to August 2004 Analysis of the TMDL for Metals on the LA River and Tributaries, May 2005; and Exhibit "33," the Socio-Economic Factors and Environmental Justice Impacts of the Metals TMDL for the LA River.)	See response to 9.73.
9.77		Further, as discussed in EPA's "Guidance for Developing TMDLs in California, dated January 7, 2000 ("EPA California TMDL Guidance") (Exhibit "13"), EPA, although recognizing its regulations do not require "any particular form of economic analysis," recognized that "the Office of Chief Counsel, State Water Resources Control Board, issued the following memorandum addressing economic analysis requirements under State law." This memo is the Chief Counsel Memo discussed above, which, in part, concludes that: **Porter-Cologne requires that the Regional Water Boards take "economic considerations," among other factors, into account when they establish water quality objectives**.	See response to comment 9.25.

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		. . . Attached to this memorandum is a 1994 memorandum containing guidance on the consideration of economics in the adoption of water quality objectives. The key points of this guidance are: **The Boards have an affirmative duty to consider economics when adopting water quality objectives**. At a minimum, the Boards must analyze: (1) whether a proposed objective is currently being attained; (2) if not, what methods are available to achieve compliance with the objective; and (3) the cost of those methods. **If the economic consequences of adoption of a proposed objective are potentially significant, the Board must state on the record why adoption of the objective is necessary to ensure the reasonable protection of beneficial uses or the prevention of nuisance**. (Exhibit "14," Atwater Memo, p. 5.)	
9.78		The State Board's Chief Counsel TMDL Memo further provides that the Regional Water Boards must comply with CEQA when they amend their basin plans. (Id. at 4.) CEQA requires the Water Boards to conduct an environmental analysis of the reasonably foreseeable methods of compliance with performance standards or treatment requirements. In doing so, "**[t]hey must consider economic factors in this analysis**." (See Exhibit "14," Vassey Memo, p. 5; and PRC § 21159.)15 The Chief Counsel concluded as follows: **Thus, the Regional Water Board must identify the reasonably foreseeable methods of compliance with the wasteload and load allocations and consider economic factors for those methods. This economic analysis is similar**	See response to comment 9.25. The substitute environmental documents adequately discuss costs as required by Public Resources Code section 21159.

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		to the analysis for water quality objectives discussed above. (*Id*. at 6, emphasis added.) accordingly, pursuant to Water Code sections 13241 and 13000, and PRC section 21159, as underscored by the administrative interpretation provided in the Chief Counsel's TMDL Memo, the Board is required to consider "economics" before adopting the TMDL.	
9.79		There is significant additional evidence developed since the initial Trash TMDL was adopted in September 2001, as discussed above, showing that the Board's cost figures are exceedingly low, both with respect to the catch basin protection devices and the VSS devices, and that the actual costs to comply with the TMDL through full-capture measures may "range from approximately 5 to 22 times higher than estimated in the TMDLs." (Exhibit "19," p. II-25; also see Exhibit "21," Cost Comparison Matrix.)	See response to comments 9.66 and 9.70.
9.80		Similarly, many of the other costs assumed in the TMDL Report appear to be unrealistic and without any factual basis. For instance, the Staff Report estimates that reducing litter through increased enforcement of litter laws will cost the municipalities less than $1,000,000 over a ten year period, implying that the only real cost will be a $250,000 database system, because "[r]evenues from fines assessed [will] offset increased law enforcement cost. (TMDL Report, p. 44.) Yet the Board fails to include any authority for its assumption that revenues from fines will completely offset increased enforcement costs, and law enforcement officials commenting on the 2006 TMDL strongly disagree with the Board's	The commenter misreads the Staff Report. First, the Staff Report does not suggest that the revenues from litter fines completely offset the costs of increased law enforcement. Second, the commenter fails to note that the Staff Report Table 14 (page 40) includes capital, maintenance and capital, and servicing costs. The capital and maintenance and capital costs are provide "over 10 year" and "after 10 years" respectively. The

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		assumptions. (See, e.g., Exhibit "34," July 26, 2006 Comment Letter from Roy Campos, Chief of Police for the City of Downey, pp. 1-2 [stating estimated enforcement cost "has no basis in fact" and noting the annual salary, including benefits, of a single entry-level police officer averages over $100,000].) The $1,000,000 the Board estimates for increased enforcement over a ten year period would pay for ***only one*** new police officer to enforce litter laws, and thus could hardly be expected to have a significant impact over the 584 square mile watershed." (*Id*. at 2.)	servicing costs are presented on an "annual basis." Thus, based on the information provided in the comment of annual costs of a single police officer at $100,000 per year, the TMDL cost estimate assumes a reasonably foreseeable number of law enforcement officials of 10 per year over 10 years of the program, not the single officer stated by the commenter. No contrary evidence has been submitted by the commenters.
9.81		Funding the Trash TMDL will, moreover, be difficult. A survey conducted by the Charlton Research Company, in October of 2002, throughout Los Angeles County on the public's willingness to pay new storm water fees and taxes shows the difficulty municipalities have in funding storm water projects. (Exhibit "35.") Therefore, whatever "economic" consideration by the Board occurred before the adoption of the 2001 TMDL is not sufficient to satisfy the requirement of 13241(d) for **this new TMDL**. Nonetheless, the Regional Board has refused to consider "economics" in adopting the TMDL, insisting: The TMDL does not establish water quality objectives, but is merely a plan for achieving existing water quality objectives. **Therefore cost considerations required in Section 13241 are**	The survey conducted by the Charlton Research Company, a "new storm water system", is not a reasonably foreseeable method of compliance given that full capture devices have been certified by the Regional Board that only entail minor modifications to the existing system. It also appears that the survey focuses on willingness to pay increased taxes when other funding mechanisms appear to be viable. Regional Board staff note that over

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		not required for this TMDL. (TMDL Report, p. 38 [emph. added].) Accordingly, the cost analysis set forth in the TMDL Report is wholly deficient, and the requirement to consider "economics" pursuant to Water Code sections 13000, 13240 and 13241 has not been complied with.	the past several years, voters in the City of Los Angeles and the State of California have approved numerous bond measures for clean water and sewer upgrade projects. In addition, the Court of Appeal rejected claims that the previous Trash TMDL violated section 13241 or 13000. (Arcadia 135 Cal.App.4th 1392, 1415-18.) A TMDL is not a water quality objective. (See Memorandum from Staff Counsel Michael Levy to Ken Harris, dated July 12, 2002, "*The Distinction Between a TMDL's Numeric Targets and Water Quality Standards.*") Finally, the Regional Board's position that section 13241 does not apply to establishment of a TMDL does not in any way undercut the analysis actually performed. See response to comment 9.74.
9.82		Justice Janice Rogers Brown in her concurring opinion in *Burbank v. SWRCB*, made a number of significant comments regarding the importance of considering "economics," in particular, and the section 13241 factors, in general, under the Porter- Cologne Act, and the problems that have resulted from	Staff will not respond to this ad hominem except to note: 1) The administrative record to establish the water quality objectives relevant to the *Cities of Burbank* case was not

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		the Los Angeles Regional Board's failure to date to consider "economic considerations" in developing water quality standards. Justice Brown also commented on the "unseemly bureaucratic bait-and switch" approach that the Regional Board has engaged in to date when it comes to considering economics, as well as on what Justice Brown called the Board's game of "gotcha" with the cities in that case, writing in her concurring opinion, as follows: Applying this federal-state statutory scheme, it appears that throughout this entire process, the Cities of Burbank and Los Angeles (Cities) were unable to have economic factors considered because the Los Angeles Regional Water Quality Control Board (Board) – the body responsible to enforce the statutory framework – failed to comply with its statutory mandate. For example, as the trial court found, the Board did not consider costs of compliance when it initially established its basin plan, and hence the water quality standards. The Board thus failed to abide by the statutory requirements set forth in Water Code section 13241 in establishing its basin plan. Moreover, the Cities claim that the initial narrative standards were so vague as to make a serious economic analysis impracticable. Because the Board does not allow the Cities to raise their economic factors in the permit approval stage, they are effectively precluded from doing so. As a result, the Board appears to be playing a game of "gotcha" by allowing the Cities to raise economic considerations when it is not practical, but precluding them when they have the ability to do so. (*Id.* at 632, J. Brown, concurring.)	before the *Burbank* court and thus no basis to make such a determination existed. Notably, the concurring opinion in the *Burbank* case was not joined by the other justices; 2) this TMDL has nothing to do with the process that was used to adopt the permit in the Burbank case; 3) Furthermore, see response to comment 9.74. The relevant analysis has been performed in this proceeding.

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9.83		Justice Brown also concluded that the last time the narrative water quality objectives for "toxicity" contained in the Basin Plan were reviewed and modified was in 1994, a fact not denied by the Regional Board, and went on to state: Accordingly, the Board has failed its duty to allow public discussion – including economic considerations – at the required intervals when making its determination of proper water quality standards. What is unclear is why this process should be viewed as a contest. State and local agencies are presumably on the same side. The costs will be paid by taxpayers and the Board should have as much interest as any other agency in fiscally responsible environmental solutions. . . . In light of the Board's initial failure to consider costs of compliance and its repeated failure to conduct required triennial reviews, the result here is an unseemly bureaucratic bait-and-switch that we should not endorse. (*Id.* at 632-33, J. Brown concurring.) Justice Brown concluded her comments by stating that the Regional Board's actions in that case: "***makes me wanna holler and throw up both my hands***." (*Id.* at 634.)	See response to comment 9.82.
9.84		The Board's continued refusal to consider the Water Code section 13241 factors and section 13000 policies, in connection with the Trash TMDL, similarly makes the Cities "wanna holler and throw up [their] hands," as the Board has consistently refused to give genuine consideration to the real economic impacts the subject TMDL will have on the public and the	See response to comment 9.25, 9.74, 9.81

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		municipalities. The Regional Board's steadfast refusal to properly and fully consider the true "economic" impacts of its decision is particularly troubling given the clear evidence that the issue of "economics" has never been considered in the establishment of the existing water quality standards, and particularly, in connection with the application of such water quality standards to urban runoff and storm water. (*See Burbank v. SWRCB, supra,* 35 Cal.4th 613, 623 [noting that the trial court "found no evidence that the Los Angeles Regional Board had considered economic factors" when it adopted the Basin Plan]; see also Declaration of Susan Paulson, dated September 16, 2003, and the attached report entitled "A Review of the Los Angeles Basin Plan Administrative Record," dated February 2003, both of which are collectively attached hereto as Exhibit "36," concluding that at the time the Basin Plan was first adopted for the Los Angeles Region, it did ***not*** contemplate applying the stated water quality objectives to nonpoint sources or to storm water and urban and rural runoff.) The economic impacts of the 2007 TMDL have not been fully evaluated.	
9.85		**THE TRASH TMDL WILL RESULT IN UNFUNDED MANDATES IN VIOLATION OF THE CALIFORNIA CONSTITUTION AND OTHER STATE AND FEDERAL LAWS** Article XIII B, Section 6 of the California Constitution prohibits the Legislature or any State agency from shifting the financial responsibility of carrying out governmental functions to local governmental entities. Article XIII B, Section 6 provides in relevant part as follows:	See response to comment 8.3. The commenters already lost this claim at trial in *Cities of Arcadia.*

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		Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local governments for the cost of such program or increased level of service. . . . This reimbursement requirement provides permanent protection for taxpayers from excessive taxation and requires discipline in tax spending at both state and local levels. (*County of Fresno v. State* (1991) 53 Cal.3d 482, 487.) Enacted as a part of Proposition 4 in 1979, it "***was intended to preclude the state from shifting financial responsibility to local entities that were ill equipped to handle the task***." (*Id.*) As noted, the costs to implement the Trash TMDL will be enormous. Despite the massive compliance and implementation costs, however, there are no provisions within the TMDL that provide any funds or funding mechanisms for the cities throughout the Basin to comply with the mandated targets imposed by the TMDL.16 Due to the numerous unfunded mandates to be imposed on the Cities without a funding source, the TMDLs are unfunded mandates that violate Article XIII B, Section 6 of the California Constitution. (*County of Fresno*, 53 Cal.3d at 486; *see also Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1570.)	
9.86		Significantly, the unlawful unfunded mandates imposed by the TMDL are underscored by Proposition 218's severe limitations on the Cities' ability to impose fees upon residents as a means to alleviate the enormous compliance costs imposed. (*Howard Jarvis Taxpayers Association v. City of Salinas* (2002) 98	See response to comment 8.3. Staff disagrees that abating a municipality's unlawful disposal of trash in the streets and though the storm drains to downstream

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		Cal.App.4th 1351, 1353-1354, 1358-59.) There, the Court struck down the City of Salinas' "Storm Water Management Utility Fee" because it was not enacted by a required majority vote of affected property owners. (*Id.*) Proposition 218 shares identical purposes with Proposition 4, i.e., to provide permanent protection for taxpayers from excessive taxation and to provide discipline in tax spending at both State and local levels. (*See County of Fresno*, 53 Cal.3d at 486.) Therefore, as the Trash TMDL imposes a number of unfunded mandates upon the Cities, as a State regulation, it cannot and should not be imposed until appropriate funding has been provided to the Cities to implement its terms. The Regional Board's attempt to transfer these mandates down to municipalities, who in turn necessarily must attempt to recoup the costs from taxpayers, violates the California Constitution.	communities is properly a state responsibility rather than a responsibility of the municipality generating the trash.
9.87		**THE 2007 TMDL IS ARBITRARY AND CAPRICIOUS AND CONTRARY TO LAW IN THAT IT DOES NOT CONTAIN A "LOAD ALLOCATION" OR AN IMPLEMENTATION PLAN FOR NONPOINT SOURCES OF TRASH** Under the Federal Regulations, 40 CFR 130.2(i), the term "Total Maximum Daily Load (TMDL)" is defined as follows: The sum of the individual WLAs for point sources and LAs for nonpoint sources and natural background. If a receiving water has only one point source discharger, the TMDLs is the sum of that point source WLA plus the LAs for any nonpoint sources of pollution and natural background sources, tributaries, or adjacent segments. TMDLs can be expressed in terms of either mass per time, toxicity or other appropriate measures. If Best	See response to comment 8.2. Notably, since a zero trash TMDL necessarily allocates zero trash to point sources and nonpoint sources, there is nothing to offset or tradeoff, as referenced in 130.2(i). Since the commenters are point source dischargers, this comment is not relevant to their discharges in any

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		Management Practices (BMPs) or other nonpoint source pollution controls make more stringent load allocations practicable, then waste load allocations can be made less stringent. Thus, the TMDL process provides for nonpoint source control tradeoffs. (40 CFR § 130.2(i).) Similarly, the proposed resolution, on the adoption of the 2007 TMDL, confirms that the elements of a TMDL are defined in 40 CFR § 130.2, where it provides that: "A TMDL is defined as the sum of the individual waste load allocations for points sources, load allocations for nonpoint sources and natural background. (40 CFR 130.2.)" (Proposed Resolution, p. 1, ¶ 4.) The 2001 TMDL, through a Clarification Memorandum dated July 29, 2002, from the Regional Board to US EPA, contained a load allocation of "zero" for non-point sources. This Clarification Memorandum provides, in this regard, as follows: "Since the numeric target is zero, implicitly both the load allocation and the Waste Load Allocation must be zero. This clearly was our intent. As described in Table 7-2.1 of the Basin Plan Amendment the 'Load Allocations' are zero." (Exhibit "18;" July 29, 2002 Clarification Memo from Jonathan Bishop to David W. Smith, USEPA, Region IX.) All other Trash TMDLs developed or proposed for the Los Angeles Basin have similarly contained an express "load allocation" for nonpoint sources. (See Exhibit "11;" the East Fork San Gabriel River Trash TMDL, and Exhibit "12," a series of proposed Basin Plan Amendments for Trash TMDLs for Legg Lake, Machado Lake, Ventura River Estuary, Revolon Slough and Beardsley Wash, Lake Elizabeth, Munz Lake, and Lake Hughes.) The 2007 TMDL, however, contains no such "load allocation," and thus the TMDL was not developed in accordance with law.	event.

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9.88		In addition, the 2007 TMDL is arbitrary and capricious and contrary to law as it fails to include an implementation plan to reduce trash to the LA River from nonpoint sources. As referenced above, in the federal regulations, if more stringent "load allocations" for nonpoint sources are practicable, then waste load allocations for point sources can be made less stringent, with the TMDL process, therefore, providing for "nonpoint source control tradeoffs." Here, because no load allocation or implementation plan for nonpoint sources of trash have been developed, the subject TMDL is contrary to law and is arbitrary and capricious.	See response to comment 9.87.
9.89		Moreover, although in *Arcadia v. State Board, supra,* 135 Cal.App.4th 1392, the Court of Appeal rejected the Cities argument that the Water Boards acted contrary to the CWA when they failed to develop an implementation plan for nonpoint source pollution controls (*Id.* at 1431), the Cities maintain that federal law requires the Boards do more to address nonpoint source contamination, particularly when its failure to do so increases the burden on the point source dischargers, such as the Cities. (See 40 CFR § 130.2(i).)	See response to comment 9.87.
9.90		The CWA's comprehensive regulation of water pollution prevention plainly "focuses on ***two*** possible sources of pollution: point sources and ***nonpoint sources***." (*BayKeeper*, 297 F.3d at 880.) Also, in EPA's California TMDL Guidance, EPA described the importance of establishing load allocations for nonpoint sources, and stressed	See response to comment 9.87. The commenters already lost the claim that EPA's guidance documents have binding effect, and that a methodology was not articulated for the zero targets and WLAs in *Cities*

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		the need for discussing the methodology "in detail." Load allocations for nonpoint sources may be expressed as specific allocations for specific dischargers or as "gross allotments" to nonpoint source discharger categories. Separate nonpoint source allocations should be established for background loadings. Allocations may be based on a variety of technical, economic, and political factors. **The methodology used to set allocations should be discussed in detail**. It is advisable to include some assessment of the feasibility of the allocations in order to increase the likelihood that the TMDL can actually be attained through implementation actions and, accordingly, is sufficient to be approved by EPA. (EPA California TMDL Guidance, Exhibit "13," p. 5.) Thus, EPA plainly confirmed both that a separate allocation is required for nonpoint sources and that a "detailed" methodology to set the allocation is required.(*Id*.) The "load allocation" analysis for nonpoint sources is not only an important part of the "legal" analysis, it is similarly an important part of the "practical" analysis. EPA has found that "54% of California's substandard rivers and waters are impaired by nonpoint sources and another 46% are impaired by a combination of point and nonpoint sources." (*Pronsolino v. Marcus* (N.D. Cal. 2000) 91 F. Supp. 2d 1337, 1337-38.) Yet the TMDL contains a series of implementation measures directed only at point sources, i.e., an Implementation Plan requiring that only municipalities and Caltrans prevent ***all*** trash from entering the River, and fails to include a single implementation measure for a nonpoint source, even though it expressly recognizes that trash is being discharged into the	*of Arcadia*.

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		River from various nonpoint sources.	
9.91		In the trash TMDL for the East Fork of the San Gabriel River, the only "load allocation" that was assigned was assigned to a nonpoint source, i.e. the U.S. Forest Service. And directly contrary to the position taken by the Board with respect to this trash TMDL, in the East Fork San Gabriel River Trash TMDL, the Boards expressly adopted an implementation plan that imposes various obligations upon a nonpoint source of trash. (See East Fork San Gabriel River Trash TMDL, Exhibit "11," p. 13.) The Regional Board is similarly developing trash TMDLs for other water bodies which are specifically directed at addressing nonpoint sources of trash, with specific "load allocations" being developed for all such nonpoint sources. (See Exhibit "12," various proposed Basin Plan Amendments for Trash TMDLS for Legg Lake, Machado Lake, Ventura River Estuary, Revolon Slough and Beardsley Wash, Lake Elizabeth, Munz Lake, and Lake Hughes.) Nonpoint sources of trash account for a significant portion of the trash in the LA River, but yet the Board has arbitrarily transferred the obligation of removing such nonpoint source trash onto the Cities. For example, the 2007 TMDL Report recognizes that approximately 225 square miles of area drained by the LA River "consists of the Los Angeles National Forest and other uses." (TMDL Report, p. 6.)	See response to comment 9.87. The other TMDLs referenced in the comment relate to waters where non-point sources are significant sources of trash in the applicable areas. That is not the case for the Los Angeles River TMDL.
9.92		EPA has stated in its California TMDL Guidance and its regulations, that storm water discharges from sources that are not currently subject to NPDES permits should be addressed by the "load allocation" component of the TMDL, i.e., they are to	See response to comment 9.87. The TMDL makes the Cities responsible for the trash that they discharge through their storm drains, i.e., their

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		be considered nonpoint sources. (40 C.F.R. § 130.2(g); EPA California TMDL Guidance, p. 1, Exhibit "13.") Yet, the TMDL lacks any consideration of the nonpoint source load allocation component, such as trash from universities, school districts, State and federal facilities, and other large institutions, that would qualify as "storm water discharges associated with industrial activities." (40 C.F.R. § 122.26(b)(14).) Because these facilities are not subject to permits, and thus "WLAs" have not yet been allocated to these facilities (see 40 C.F.R. § 130.2(g)), these facilities are "existing" nonpoint sources to be accounted for in setting the "load allocation" in the TMDL. (*Id.*) As such, the Board is required to develop "implementation measures" not only for the homeless and aerial sources of trash, but also for the other nonpoint sources of trash consisting of State and federal facilities, and other facilities not yet subject to NPDES permits. The CWA does not authorize the Water Boards to transfer the load allocation for all nonpoint sources of trash to the Cities. To the contrary, the regulations provide for the opposite.	point source discharges. Nothing in the TMDL renders the Cities responsible for nonpoint source deposition of trash to the Los Angeles River.
9.93		Finally, the Board's failure to develop implementation measures for nonpoint sources of trash will also result in the elimination of possible federal funding under 33 U.S.C. section 1329 of the Act, resulting in the loss of a valuable resource needed to remedy what is undeniably a societal/behavioral problem of controlling litter. In addition, CWA section 1329 requires the Board to develop a nonpoint source management program that utilizes a process that includes "intergovernmental coordination and public participation for identifying BMPs and	See response to comment 9.87. The availability of section 319 funding (33 USC section 1329) has no bearing upon whether the Regional Board develops implementation measures for the nonpoint source discharges to the river. The Cities have submitted no evidence supporting their claim that they have

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		measures to control each category and subcategory of nonpoint sources and, where appropriate, particular nonpoint sources" that "add significant pollution to each portion of navigable waters" governed by TMDLs. (33 U.S.C. § 1329(a)(1)(B) & (C).) The Board's failure to develop implementation measures and an implementation plan to address the recognized nonpoint source contribution of pollution is designed to allow the Board to forego its responsibility to establish a process and a public participation plan to address the problem of trash in the LA River, and has adversely impacted the Cities' ability to seek federal funding to address this problem.	sought and been denied federal funding because of any of the provisions of the Trash TMDL.
9.94		**THE BOARD HAS FAILED TO UTILIZE A "TRANSLATOR" IN ESTABLISHING THE TMDL.** The purpose of a TMDL is to translate existing narrative water quality objectives into "numeric targets." As set forth in the regulations to the Clean Water Act, it is necessary for the Regional Board to develop a "translator" to allow for the conversion of a narrative water quality standard into a particularly when setting a limitation for a toxic pollutant. (See 40 C.F.R. § 122.44(d)(1)(vi).) Here, the purported narrative water quality objectives described in the staff report are to be achieved with the Trash TMDL are as follows: □ *Waters shall not contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses.* □ *Waters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial uses.* (TMDL Report, p. 15; emphases in original.)	See response to comment 1.19. The fact that this TMDL is not a permitting action has already been adjudicated against the Commenters in the *Cities of Arcadia* decision. 135 Cal.App.4th 1392. In any event, trash is not a "toxic" pollutant. The objectives are broadly stated to encompass any types of floating, suspended, or settleable materials. These descriptors logically include trash. The commenters have presented neither evidence nor explanation to explain how trash, or any other specific pollutant, was intended to or should logically be excluded from the purview of these

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		Of course, nothing in these stated objectives says anything about trash, and the development of a trash TMDL based on these water quality objectives alone, is therefore improper. Further, there is no "translator" which explains how these narrative objectives for floating materials and solid, suspended or settleable materials are translated into a numeric TMDL for trash. As such, without a translator, the TMDL was improperly developed. pollutant specific numeric effluent limitation.	objectives. The commenters already lost the claim in Cities of Arcadia that a TMDL for trash was inappropriate, on a variety of grounds rejected by the court.
9.95		In EPA's California TMDL Guidance, EPA clearly recognized the importance of having a translator to translate narrative water quality objectives into numeric limits: In situations where applicable water quality standards are expressed in narrative terms or where 303(d) listings were prompted primarily by beneficial use or antidegradation concerns, **it is necessary to develop a quantitative interpretation of narrative standards**. Since a TMDL is an inherently quantitative analysis, it is necessary to determine appropriate quantitative indicators of the water quality problem of concern in order to calculate a TMDL. (Exhibit "13," p. 3.) Citing 40 C.F.R. § 130.7(c)(1), EPA concluded: "**Numeric water quality target(s) for TMDL must be identified, and an adequate basis for target(s) as interpretation of water quality standards must be specifically documented in the submittal**." (*Id*, emphasis in original.) The water quality objectives relied on by the Board in developing this TMDL are "floating materials" and "solid, suspended, or settleable materials." (TMDL Report, p. 15.)	Comment noted. See response to comment 9.94. The quantitative target that has been proposed, and previously sustained by the *Arcadia* court, is zero as defined in the TMDL.

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		However, the Board has failed to explain how or why the pollutant "trash" is to be included in the terms "floating materials" and "solid, suspended, or settleable materials." (See id.) The TMDL also fails to explain why these "objectives" are to include "trash," and further fails to include a defined "translator" necessary to allow for the conversion of a narrative water quality standard into a pollutant specific numeric effluent limitation. (See 40 C.F.R. § 122.44(d)(1)(vi) [requiring translator for toxic pollutants].) Without an explanation on how the objective was "translated" into "zero" trash, the Board has failed to perform the necessary analysis required for the development of a TMDL.	
9.96		In the *City of Arcadia* case, which invalidated the 2001 TMDL, the trial court relied upon the lack of a "translator" as one of several bases for invalidating the TMDL, finding that: Without an explanation of how the "objective" was translated into the "numeric target" petitioners conclude the TMDL must be overturned. (40 C.F.R. section 122.44(d)(1)(vi) [requiring a "translator" for toxic pollutants].)The Court finds petitioners are correct. (Exhibit "2," Statement of Decision, p. 14.) The Court of Appeal, although overturning the trial court's decision on several grounds (but upholding the trial court's decision on CEQA), failed to address the lower court's decision invalidating the trash TMDL on the ground that the Respondents failed to include a translator. Here as well, the Board has again failed to include a "translator" for translating the "narrative" objective into the numeric objective, and the 2007 TMDL remains defective.	This comment was adjudicated adverse to the commenters in Arcadia v. SWRCB, 135 Cal.App.4th 1392. The Court of Appeal stated: "We reverse the judgment to the extent it is based on other [non-CEQA] grounds." 135 Cal.App.4th at 1402. See response to comment 9.94 and 9.95.

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9.97		**THE TRASH TMDL IS NOT SUITABLE FOR CALCULATION AND DOES NOT PROVIDE FOR A "DAILY" LOAD WHICH THE MUNICIPALITIES CANCOMPLY WITH.** A TMDL can be established only when the pollutant at issue is "suitable for such calculation[,]" and [s]uch load allocations shall be established at a level ***necessary*** to implement the applicable water quality standards . . . ." (33 U.S.C. § 1313(d)(1)(C), emphasis added.) Based on a 1978 EPA regulation, a TMDL is "***suitable for calculation***" only under "***proper technical conditions.***" (43 Fed. Reg. 60665; Exhibit "37," emphasis added.) "Proper technical conditions" require "the availability of the analytical methods, modeling techniques and data base necessary to develop a technically defensible TMDL." (*Id.*) The critical importance of adequate scientific data, and the negative impact on the development of TMDLs without such data, is underscored by the extensive problems identified in EPA's proposed TMDL program. In its August 9, 2001 ruling, EPA delayed implementation of a July 13, 2000 TMDL rule because of concerns expressed by the regulated community that "***there is not enough data to support TMDLs, that some pollutants are not suitable for calculation, that 303(d) lists are not based on scientifically defensible data, or that the listing criteria is too inflexible***." (66 Fed. Reg. 41817, 41819; emphasis added.) Despite comprehensive efforts to address the problem and extensive public commentary on the issue, the unresolved concerns resulted in EPA again delaying (66 Fed. Reg. 41817, 41819), and then abandoning altogether, the proposed rule	Comment noted, however, EPA determined that all pollutants are suitable for TMDL calculation. EPA affirmed that trash is included in "all pollutants" when it established its own trash TMDL, and when it approved California's. The commenters already lost the claims that trash is not suitable for TMDL calculation, that the TMDL lacked a proper scientific or technical foundation, and that the rejected 2000 TMDL rule had any relevance, in Cities of Arcadia v. Water Boards (2006) 135 Cal.App.4th 1392, 1434. The term "necessary" as used in section 303(d)(1)(C), is not a limitation, but a directive, to ensure standards are met. In fact, the requirement to include a "margin of safety" contradicts the commenters' interpretation of the statute as requiring loads to be set "only at a level necessary" to attain standards, and such an interpretation would not be consistent with the purposes of the Clean Water Act. See response to comments 9.94 and 9.95.

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		because the controversial regulations could not serve as an "efficient and effective TMDLs program without significant revisions." (68 Fed. Reg. 13608.) In a Report issued for Congress by the National Research Council ("NRC"), a member of the National Academies of Science, entitled "*Assessing the TMDL Approach to Water Quality Management*," dated September, 2001, (see Exhibit "38"), the NRC concluded as follows: Many debates in the TMDL community have centered on the use of "phased" and "iterative" TMDLs. Because these terms have particular meanings, this report uses a more general term – adaptive implementation. Adaptive implementation is, in fact, the application of the scientific method to decision-making. It is a process of taking actions of limited scope commensurate with available data and information to continuously improve our understanding of a problem and its solutions, while at the same time making progress toward attaining a water quality standard. (Exhibit "38," p. 90.) Here, the TMDL documents are devoid of any indication the Board has: (1) identified any analytical methods, (2) developed any modeling techniques, or (3) prepared a database to develop a technically defensible TMDL. Instead, the existing record reveals the TMDL has been developed without supporting technical data and without the use of modeling techniques or a database on which to base the TMDL.	
9.98		To adhere to the CWA, the Board is required to determine how, and to what degree, the beneficial uses of the LA River are	See response to comments 9.94 through 9.97.

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		actually impaired as a result of the existence of trash, so it can establish proper analytical parameters to determine what level of pollutants would not unreasonably impair the beneficial uses. Without scientifically defensible data, an assimilative capacity study, and a baseline established by adequate monitoring, "***proper technical conditions***" for the TMDL did not exist. Because the TMDL is not "suitable for calculation," its adoption would be contrary to law.	
9.99		In the *City of Arcadia v. State Board, supra,* 135 Cal.App.4th 1392, the Court of Appeal rejected the City's argument that the 2001 TMDL was not "suitable for calculation," on the grounds that EPA had also approved the trash TMDL, and had previously approved a trash TMDL for the East Fork of the San Gabriel River. Thus the Court concluded that EPA's 1978 regulation should not be viewed as prohibiting a TMDL for trash. (*City of Arcadia, supra,* 135 Cal.App.4th 1392, 1434.) However, subsequent to the *City of Arcadia* case, the U.S. Court of Appeal for the District of Columbia, struck down a TMDL because it did not establish a "daily" load as required by the Clean Water Act. The Court then recommended that EPA reconsider its position in the 1978 regulation (referenced by the *City of Arcadia* Court of Appeal), that "all pollutants . . . are suitable for the calculation of total maximum daily loads." (*Friends of the Earth, Inc. v. Environmental Protection Agency* (D.C. Cir. 2006) 446 F.3d 140, 144 ("*Friends of the Earth*").)	See response to comment 9.16, 9.94 through 9.97. The commenters have failed to explain or set forth evidence supporting how trash is somehow unique or otherwise inherently infeasible for TMDL calculation. In fact, the various trash TMDLs that have already been adopted (including the first version of this TMDL) prove the contrary. In any event, the question is not whether the commenters or even the Regional Board believe trash is suitable for TMDL calculation (of course, the Regional Board does), but whether USEPA has determined it is. USEPA consistently has, and has offered no indication it intends to change its determination in this regard.
9.100		In *Friends of the Earth*, the District of Columbia Court of	See response to comment 9.16.

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		Appeal also held that the CWA was not ambiguous, and found that it required a TMDL be expressed as a "daily" load. "The law says 'daily.' We see nothing ambiguous about this command. 'Daily' connotes 'everyday.'" (*Id.* at 144.) Here, not only has the Board developed a TMDL that is not yet "suitable for calculation," it has moreover adopted interim waste load allocations that are based on percentage reductions of trash on an annual basis. For example, by 9/30/08, the TMDL requires that the Cities achieve a reduction in trash from the baseline of 40%. This 40% is identified as the "interim waste load allocation." Each year thereafter a 10% reduction in trash must be achieved, with the Board establishing compliance points and subjecting the Cities to enforcement action if these interim waste load allocations are not met. However, with the exception of the final waste load allocation of "zero," the interim waste load allocations are clearly not expressed as "daily" loads, in spite of the fact that the CWA unambiguously requires a "daily" load. (See, *Friends of the Earth,* 486 F.3d 140, 144; also see 33 U.S.C. § 1313(d)(C) and (D).) In light of the plain language of the CWA, as well as the recent U.S. Court of Appeal decision in *Friends of the Earth*, the subject TMDL is improper as trash is "not suitable for calculation" at this time, and as the Board has improperly included interim waste load allocations which are not "daily" loads. (*See also* EPA Memorandum, dated November 15, 2006, regarding "Establishing TMDL 'Daily' Loads in Light of the D.C. Circuit Decision in *Friends of the Earth*," Exhibit "39.") Clearly, the establishment of waste load allocations which are not "daily" loads, is contrary to law.	
9.101		**THE BOARD HAS FAILED TO PERFORM A COST**	The Court of Appeal already ruled

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		BENEFIT ANALYSIS OR TO INDICATE THAT SUCH AN ANALYSIS WILL BE CONDUCTED AS REQUIRED BY THE CALIFORNIA WATER CODE. Water Code sections 13267, 13225(c) and 13165 all require that a cost/benefit analysis be conducted whenever the State or Regional Boards require a local agency to investigate and report on technical factors involved in water quality control, or require that a local agency obtain and submit analyses of water, including technical or water monitoring programming reports. (Water Code §§ 13165, 13225(c) & 13267).17 Under such circumstances, the State and Regional Boards are required to consider the burdens of conducting such analyses and monitoring reports, and may only require the same where "the burden, including costs, of such reports" bears a "reasonable relationship to the need for the report and the benefits to be obtained there from." (*Id.*) Further, under Water Code § 13267, the Regional Board is required to provide "a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the report." (Water Code § 13267.)	against the commenters on this contention, and determined that these sections do not apply until an order is actually issued pursuant to those sections. (Arcadia, 135 Cal.App.4th at 1413-15.)
9.102		Likewise, under Water Code § 13225(c), the Regional Board only has the authority to "require as necessary any state or local agency to investigate and report on any technical factors involved in water quality control or to obtain its analyses of water" where it has conducted a mandatory cost/benefit analysis. Thus, without first conducting the cost/benefit analysis, the Board is without any statutory authority to impose such requirements upon a local agency.	See response to comment 9.101.

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		The 2007 TMDL includes significant monitoring requirements, and the Amendment to the Basin Plan specifically references Section 13267, providing, under the heading "Implementation," that: "This TMDL will be implemented through storm water permits and via the authority vested in the Executive Officer by section 13267 of the Porter-Cologne Water Quality Control Act: (Water Code section 13000 et seq.)." (See Proposed Basin Plan Amendment, Table 7-2.1.) But there is no evidence that a cost/benefit analysis of such monitoring requirements has been performed by the Regional Board.	
9.103		In the *Arcadia v. State Board, supra,* 135 Cal.App.4th 1392, the Board took the position that a cost/benefit analysis of monitoring requirements necessitated by a TMDL is not required until the adoption by the Board of an actual order requiring a monitoring plan (i.e., a cost/benefit analysis is not required before the adoption of the TMDLs). That position was upheld by the Court of Appeal. (*See City of Arcadia v. State Water Resources Control Bd.* (2006) 135 Cal. App. 4th 1392, 1414.) The Cities continue to maintain that the requirements of Water Code §§ 13165, 13225(c) and 13267 are not triggered solely by an Order under said sections. However, recognizing the Court's decision in the *City of Arcadia* decision, at a minimum, the Board should recognize that it is clearly more practical to conduct the required analysis now, in conjunction with the development of the TMDL itself, rather than wait until the adoption of an actual order implementing the monitoring program required by the TMDLs, only to conduct a cost/benefit analysis of the already adopted TMDL. In either case, it is clear that a cost benefit analysis must be completed	See response to comment 9.101. It is not practical to comply with the requirements of those sections until the Board is issuing an order under those sections, because the analysis depends upon the terms of the actual order that is ultimately issued. Specifically, the considering the burdens of generating data and reports necessarily depends upon what data and reports are required, and the specific circumstances of the entity to whom it is directed.

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		before the adoption of an order requiring monitoring and/or reports necessitated by the TMDL. (*See Arcadia v. State Board,* 135 Cal.App.4th 1392, 1414.)	
9.104		**THE BOARD HAS FAILED TO BASE THE TRASH TMDL ON PROPERLY DEVELOPED AND ADOPTED WATER QUALITY OBJECTIVES.** The 2007 TMDL cannot lawfully be adopted at this time, since, as proposed, it is to be based upon water quality objectives that were ***not*** adopted in accordance with the requirements of State law. When preparing the Basin Plan for the Los Angeles Region, the Regional Board was required to "establish such water quality objectives and water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance." (See Water Code § 13241.) The various factors to be considered by a Regional Board when adopting "water quality objectives" include, among other things, the "past, present and probably future beneficial uses" of the subject water, the "environmental characteristics of the hydrographic unit under consideration," the "water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area," "economic considerations," and "the need for developing housing within the region." (Water Code § 13241(a)-(e).) Similarly, Water Code section 13000 requires that the Boards develop water quality requirements to obtain "the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total value	See response to comment 9.17.

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		involved, beneficial and detrimental, economic and social, tangible and intangible." (Water Code § 13000.)	
9.105		Moreover, under the Porter-Cologne Act, basin plans are to be "periodically reviewed and may be revised" (Water Code § 13240). Under federal law, Basin Plan reviews are to be conducted every three years (33 U.S.C. § 1313(c)(1)), i.e., triennial reviews. To date there is no evidence the Regional or State Boards have ever considered the requisite factors under Water Code sections 13241 or 13000 when developing the water quality objectives in the Basin Plan, as such Objectives are to be applied to storm water. In fact, a comprehensive review of various documents within the Boards files conducted by Dr. Susan Paulson has shown that at no time since the adoption of the Basin Plan, and at no time in the course of any of the triennial reviews of the Basin Plan, have the requisite factors and policies required to be considered under State law, ever been considered with respect to the application of said Objectives to storm water. (See Declaration of Susan Paulson dated September 16, 2003, and the Report attached thereto entitled "A Review of the Los Angeles Basin Plan Administrative Record," dated February 2003, both of which are attached hereto and marked as Exhibit "36.") Although the initial Basin Plan was adopted in 1975, it was not until 1987 that the Clean Water Act was amended to require NPDES permits for the regulation of storm water discharges. The only significant amendments to the Objectives in the Basin Plan subsequent to 1987 (beyond the adoption of various TMDLs starting with the 2001 Trash TMDL in 2002), were the 1994 Amendments. Yet, there is no evidence in connection with	Parts of this comment appear to duplicate the comment made above, for which staff incorporates here by reference its response. The comment appears to differ, however, by focusing on the application of water quality objectives to storm water. Thus, it seems that the commenter is challenging the application of water quality objectives for Solid, Suspended, or Settleable Materials and Floating Material because the TMDL is applied through the MS4 permit. These same parties have previously challenged the MS4 permit, in which they argued that the Board was required to consider the economic and housing effects of the permit's requirement to comply with water quality objectives of the Basin Plan. That decision, and its collateral effects, is binding upon the commenters. The Court of Appeal rejected their argument and found substantial evidence in the record for the MS4 permit that the Board had

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		the 1994 Amendments or otherwise, that the various factors and policies set forth under Water Code sections 13000 and 13241 have ever been considered in connection with the application of the water quality objectives to storm water. (See Exhibit "36.") As such, there is no evidence that the various factors, including the need to consider the "past, present and probable future beneficial uses" of the LA River, the "environmental characteristics of the hydrographic unit under consideration," the "economic considerations" involved in applying water quality objectives to storm water," or the "need for developing housing within the region," were ever evaluated by the respective Boards when developing the water quality objectives in issue. In fact, on the face of the Basin Plan, it is apparent that the requirements in Water Code sections 13000 and 13241 were not complied with. Specifically, a number of the proposed "beneficial" uses of the LA River are expressly designated as "potential" beneficial uses, rather than existing or "probable future" beneficial uses, as required by State law (Water Code § 13241(a)), or as actual "uses to be made of such water," as provided by federal law. (See 33 U.S.C. § 1313(d)(1)(A)(C); and 40 CFR § 130.2(d).)	considered the economic and housing factors of 13241. (County of Los Angeles v. State Water Resources Control Bd. (2006) 143 Cal.App.4th 985.) Similarly, substantial evidence exists to support a finding that the Board considered the remaining 13241 factors when deciding to apply the relevant water quality objectives. Finally, none of the authorities cited by this commenter define beneficial use as being limited to an "actual" use and there is no authority within either the Porter-Cologne Water Quality Control Act or the federal Clean Water Act supporting the assertion. Moreover, in a recent challenge by the commenters to the metals TMDL, the trial court upheld the Regional Board's definition and use of potential beneficial uses, finding that "probable future" is included within the definition of "potential." *Cities of Bellflower v. LARWQCB.*
9.106		Moreover, neither federal nor State law supports the Boards' position that either an Objective or a TMDL may be established based upon a mere "potential," theoretical use of the water body. Nor does the Porter-Cologne Act or the CWA allow an	See response to comments 9.17, 9.49, 9.105. The TMDL is based upon beneficial uses that are identified in the Basin Plan, that

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		Objective to be adopted to avoid an adverse impact of any kind, regardless of the past, present or probable future "uses to be made" of the water body or the definable impact on such uses. Accordingly, the development of a TMDL that relies on "***potential beneficial uses***," rather than the "***uses to be made***" of the River contravenes federal law. One purported "potential use" improperly relied upon for the development of the 2007 TMDL is the use of the River as "camps" by the homeless who have "cut fences" to access certain reaches of the River. (TMDL Report, p. 8.) Even the Water Boards themselves have acknowledged that recreation for fenced off areas is ***specifically prohibited by law*** in substantial portions of the River. (See Transcript of February 6, 2002 State Board Workshop on the 2001 TMDL, p. 22.) Plainly, an "illegal" use should not be a "use to be made" of the water body.	have been duly approved by US EPA under section 303(c), consistent with federal regulations set forth a 40 CFR section 131.10. The Court of Appeal already determined against the commenters in this regard, holding that even if some of the designated uses were not appropriate, the Commenters have not made a showing that the TMDL would be any less stringent, and thus there is no prejudice. (Arcadia, 135 Cal.App.4th at 1432-33.)
9.107		In the *Arcadia v. State Board* decision, the Court of Appeal denied the Cities' request for relief on this issue because it found that the Cities made "no showing of prejudice," finding that swimming and bathing were the only two examples the Cities had identified as being listed as "potential" uses of the LA River, and that there was no suggestion that the "zero" target would have been less stringent in light of the other beneficial uses identified in the Basin Plan. Yet, in addition to the "potential" beneficial use of swimming, the Basin Plan improperly identifies numerous "potential" beneficial uses for various portions of the LA River. (See TMDL Report, pp. 10-13.) For example, The "LA River to Estuary" segment alone lists the following "potential" beneficial uses: municipal and	See responses to Comments 9.104 through 9.106.

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		domestic supply; industrial service supply; industrial process supply; migration of aquatic organisms; spawning, reproduction and/or early development; and shellfish harvesting. (TMDL Report, p. 10.) Other segments of the LA River have similarly lengthy lists of "potential uses." (See TMDL Report, pp. 10-13.) The attempted development of a TMDL based on "potential beneficial uses," and the desired development of the 2007 TMDL based on Objectives not developed in compliance with the requirements of the Porter-Cologne Act, requires that the 2007 TMDL not be developed and adopted until such time as appropriate and lawful Objectives have been developed and incorporated into the Basin Plan.	
9.108		**THE BOARD HAS FAILED TO DETERMINE THE "LOADING CAPACITY" OF THE L.A. RIVER, AS REQUIRED BY THE FEDERAL REGULATIONS BEFORE DEVELOPING THE TMDL.** Under the Act, "[e]ach State ***shall establish*** for the waters identified in paragraph (1)(A) of this subsection, and in accordance with the priority ranking, the total maximum daily load for those pollutants which the Administrator identifies under section 1314(a)(2) of this title as suitable for such calculation." (33 U.S.C. § 1313(d)(1)(C), emphasis added.) Thus, each state must "***establish***" the TMDL "at a level necessary to implement the applicable water quality standards." (*Id*., emphasis added.) As set forth in the CWA and EPA's regulations and policy directives, to establish the maximum pollutant loading level,	Federal regulations require the Board to establish for the water body the total maximum daily load of the pollutant, considering seasonal variations and a margin of safety. For all relevant intents and purposes, the terms "loading capacity" and "total maximum daily load" are essentially synonymous. (See, e.g., "Water Quality Control Policy for Addressing Impaired Waters: Regulatory Structure and Options", p. 7 (definitions); and "The Distinction Between a TMDL's Numeric Targets and Water Quality

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		states must analyze the amount of a pollutant that the entire water body can accommodate without preventing the attainment of the water body's designated uses. That is, to establish a TMDL, it is necessary to analyze the water body's "***loading capacity.***" EPA regulations define "loading capacity" as "***the greatest amount of loading that a water can receive without violating water quality standards***." (40 C.F.R. § 130.2(f), emphasis added.) Thus, EPA's regulations expressly require that the "loading capacity" of a subject water body be established as part of the TMDL development process. (See 40 C.F.R. § 130.2(f), and the definition of "load allocation" and "waste load allocation," which are both based on the water's "loading capacity." (40 C.F.R. § 130.2(g) & (h).))	Standards", fn. 5. See also 40 CFR 130.2(f), through (i). See also *"Guidance for Developing TMDLs in California, EPA Region 9*".) The numeric targets, the loading capacity, and the total maximum daily load in the Trash TMDL all refer to the allowable load of zero trash. The Court of Appeal already determined that the load of zero trash, as established in the previous trash TMDL, was not an abuse of the Regional Board's discretion, or arbitrary and capricious. (Arcadia, 135 Cal.App.4th at 1427-30.) The Court of Appeal specifically held that federal law does not require the Regional Board to conduct an assimilative (loading) capacity study before determining that the loading capacity of the LA River was zero trash. (Arcadia, 135 Cal.App.4th at 1411-12.) Further, the Court held that the evidence amply supported the Regional Board's decision not to conduct an assimilative capacity

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			study since most trash materials are undiluted by water, pose a danger to wildlife even in small amounts, and such a study would be difficult to conduct and of little value at the outset. (1412-13)
9.109		In the *Arcadia v. State Board* decision, the Court of Appeal overturned the trial court's decision invalidating the TMDL because the Water Boards had failed to prepare an "assimilative capacity study." (*Arcadia v. State Board, supra,* 135 Cal.App.4th 1392, 1409-13.) The Court, however, failed to even reference, let alone analyze, the specific regulations cited above, which clearly require a determination of the "loading capacity" of a water body before any TMDL can be developed. The Court specifically ignored the express requirements in the regulations which not only define "loading capacity," but also condition the establishment of the "load allocations" and "waste load allocations" on the establishment of the "loading capacity" of the water body. (40 C.F.R. 130.2(f), (g) & (h).) Instead, the Court of Appeal presumed that the appellants' analysis was based solely on EPA's Guidance Memo for developing TMDLs in California, and concluded that such Guidance Memo did not impose legally binding requirements on EPA or the State of California. Although the EPA Guidance Memo clearly supports the Cities' position in this regard, as discussed below, the basis for the authority cited in the Guidance Memo comes directly out of the federal regulations themselves, regulations which were not discussed by the Court of Appeal.	See response to comment 9.108.

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9.110		The EPA California TMDL Guidance Memo cites to various portions of the governing regulations and provides that the "loading capacity" of the TMDL must be established in developing the TMDL: An understanding of pollutant loading sources and the amounts and timing of pollutant discharges **is vital** to the development of effective TMDLs . . . . [P]ollutant sources or causes of the problem need to be documented based on studies, literature reviews or other sources of information. Because the source analysis provides the key basis for determining the levels of pollutant reductions needed to meet water quality standards, and **the allowable assimilative capacity**, TMDL, wasteload allocations, and load allocations, quantified source analyses are required. . . . The TMDL document must describe the relationship between numeric target(s) and identified pollutant sources, and estimate total assimilative capacity (loading capacity) of the waterbody for the pollutant of concern [citing 40 C.F.R. § 130.7(d) and 40 C.F.R. § 130.2(i) and (f)]. (Exhibit "13," p. 2-3, emphasis added.) EPA's California TMDL Guidance Memo summarizes the data necessary for the State to "establish the TMDL." The need for understanding the pollutant loading sources, including both point sources and nonpoint sources, and the importance of documenting the causes of the problem and estimating the "total assimilative capacity" of the water body, are all "vital" to determine the "loading capacity," that is, the "greatest amount of loading that a water can receive without violating water	See response to Comment 9.108.

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		quality standards." (40 C.F.R. § 130.2(f).) Thus, although the Memo itself is not "legally binding," the regulations are legally binding, and the Board has no authority to adopt a TMDL without complying with the requirements of federal law, including the requirement that it determine the "loading capacity" of the subject water body before developing the TMDL. (See 40 CFR 130.2(f), (g) and (h).)	
9.111		CWA section 1313, of which TMDLs are but one component, demonstrates the importance of adequate data development and analysis in setting TMDL levels. Section 1313 requires that states develop a "Continuing Planning Process" ("CPP") for the attainment of water quality standards. (33 U.S.C. § 1313(d)(1).) EPA's regulations implementing the CPP require that states "establish appropriate monitoring methods and procedures (including biological monitoring) necessary to compile and analyze data on the quality of waters of the United States and, to the extent practicable, groundwaters." (40 C.F.R. § 130.4(a).) The purpose of these data collection and quality assurance and control programs is to *"assure scientifically valid data"* underlie TMDLs and other regulatory programs. (40 C.F.R. § 130.4(b), emphasis added.) Further, TMDLs must analyze existing ambient water quality through the determination of "pollutant loadings" from all possible sources. (40 C.F.R. §§ 130.2(e)- (h), 130.7(b); *Dioxin/Organochlorine Center, et al. v. Clarke,* (9th Cir. 1995) 57 F.3d 1517, 1520 ("*Clarke*").) Each analysis of pollution levels, pollution sources, and the water body's ability to handle the pollutant forms a component in the final TMDL level. (40	See response to Comment 9.108.

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		C.F.R. § 130.2(e)-(i), *Clarke,* 57 F.3d at 1520.) Such analyses is part and parcel of the need for the State to establish the water body's "loading capacity," i.e., the "greatest amount of loading" the water can receive without being impaired (*see* 40 C.F.R. § 130.2(f)). Yet, here, the Board has failed to gather and analyze data regarding the quantity of trash—the "greatest amount of loading"—that the River could "receive without violating water quality standards," and has wrongly adopted an absolute "zero" standard, without the data or analysis to justify that standard.	
9.112		**THE BOARD HAS FAILED TO CONSULT WITH LOCAL AGENCIES AND TO COORDINATE WITH OTHER AGENCIES, SUCH AS THE SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS, AS REQUIRED BY STATE AND FEDERAL LAW.** Pursuant to Water Code section 13240, in the process of formulating basin plan, "the Regional Boards ***shall consult with and consider*** the recommendations of affected state and local agencies." (Water Code § 13240.) A similar obligation is imposed upon the State Board under Water Code § 13144, whereby the California Legislature provided that during the process of formulating or revising state policy for water quality control, the State Board "***shall consult with and carefully evaluate*** the recommendations of concerned federal, state and local agencies." (Water Code § 13144.) Further, under the CWA, the process of establishing BMPs and a program to control nonpoint source discharge is to include inter-governmental coordination and public participation to identify best management practices, as well as measures to control	See response to comment 9.20.

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		nonpoint sources so as "to reduce, to maximum extent practicable, the level of pollution resulting" from such nonpoint sources. (33 USC § 1329(a)(1)(C).) Similarly, EPA's TMDL Guidance for California provides: "EPA strongly encourages the State to develop detailed workplans to guide the technical analysis and stakeholders participation aspects of the TMDL ***before*** starting the TMDL." (See EPA's TMDL Guidance for California, Exhibit "13," p. 19.) Yet, the record is devoid of substantial evidence showing sincere consultation with local agencies in the development of been sufficient inter-governmental coordination, or prior public participation, in the process of developing the "zero" waste load allocations set forth in the TMDL. the 2007 TMDL, or evidence that there has	
9.113		Consultation, moreover, in this case is critical, given the lengthy delays that have already occurred with the subject TMDL, and the ongoing concerns the Cities have expressed and continue to have with appropriate implementation measures to achieve the WLAs in the TMDL. The Cities contend that, at a minimum, further dialogue on appropriate alternatives and deemed compliance methods is needed (see, e.g., Exhibit "10," the Catch Basin Alternative), as well as additional dialogue on the costs to implement the measures referenced in the TMDL Report, on the SED's analysis and conclusions, and on the issue of responsibility for catch basins and storm drain systems that are not maintained by the Cities. All such dialogue is necessary before an effective and enforceable Trash TMDL for the LA River can be adopted. In short, dialogue with the impacted local governments is essential to achieving the stated objectives of the TMDL.	See response to Comment 9.112. Also, Regional Board Staff has engaged in further dialogue with representatives from the Coalition for Practical Regulation (meetings on April 30, 2007, May 25, 2007 and July 3, 2007) and remain committed to open communication and exchange of ideas with stakeholders.

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9.114		Moreover, the 2007 TMDL addresses a regional problem and proposes treatment devices which will need to be installed throughout the Watershed. Yet there is no evidence of any coordination by the Regional Board with Southern California Association of Governments (hereinafter "SCAG") in developing the subject TMDL. SCAG, as the Regional Council of Governments, is independently responsible pursuant to state and federal statutes for a number of regional activities such as transportation planning, water planning, housing needs planning, and air quality planning. SCAG has been designated as an Areawide Waste Treatment Management Planning Agency pursuant to 33 U.S.C. Section 1288 (a)(2) (Section 208 of the Clean Water Act). As such, SCAG is responsible for a continuing areawide waste treatment management planning process under the Clean Water Act.	See response to Comment 9.112.
9.115		Given the fact that the implementation of a Trash TMDL for the LA River has already been delayed for over five years, in part because of the Regional Boards' failure to adequately consult with local agencies, particularly with respect to the Boards' CEQA analysis and obtaining achievable goals through practical implementation measures, it is critical at this juncture that the Board work with such agencies now, so that a valid, workable TMDL can be implemented as soon as possible.	Implementation of the trash TMDL has not been delayed for over five years; an approved and valid trash TMDL was in place for nearly four years and many municipalities and agencies have been implementing various trash control measures in compliance with the TMDL. This TMDL was set aside July of 2006, so there has been no trash TMDL for approximately one year. See responses to Comments 9.112 and 9.113. The basis for the judgment

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			setting aside the TMDL did not include an alleged failure to consult with local agencies.
9.116		State and federal law require consultation between the Boards and State and local agencies, and in this case, with a zero trash TMDL that all parties recognize can never realistically be complied with (i.e., achieving zero is a fiction that can only be met through the "deemed" compliant full-capture alternatives), consultation with local agencies is a necessity. (See *Draft Strategy for Developing TMDLs and Attaining Water Quality Standards in the Los Angeles Region, California Regional Water Quality Control Board, State Water Resources Control Board,* U.S. Environmental Protection Agency- Public Review Draft, December 2002, pp. 14-15, Exhibit "40," discussing importance of stakeholder involvement in the development of TMDLs and water quality standards.)	See responses to Comments 9.112 and 9.113

Late Comments were received from the City of San Gabriel on May 14, 2007, six days after the comment deadline. These comments

are identical to those from the City of Commerce, responded to in Series 2, above.