Response to Comments

City of Burbank
Burbank Water Reclamation Plant Revised Tentative NPDES Permit

This Table describes all significant comments received from interested persons with regard to the above-mentioned tentative permit. Each comment has a corresponding response and action taken.

Comment Number	Topic	Comment	Response	Action Taken
Comments received from the City of Burbank on February 6, 2017 - Main Cover Letter				
Burbank 1	Final effluent limitation for temperature	The City requests that a footnote be added to Table 4 of the Tentative Order and to Table F-13 in the fact Sheet with language regarding temperature that had been contained in the 2012 permit.	The 2012 National Pollutant Discharge Elimination System (NPDES) Order for the Burbank WRP contained final effluent limitations in both tabular and narrative format. In preparing the tentative 2017 renewal NPDES Order, the format in which the final effluent limitations were presented in the Order was streamlined to a tabular format. However, in doing so, some of the narrative language regarding temperature was inadvertently left out. The narrative language will be included in the Revised Tentative Order by inserting a new footnote.	A new footnote was added to the Temperature limitation in Table 4 of the WDR and in Table F-13 of the Fact Sheet.
Burbank 2	WQBELs reflective of performance	The City requests that if Performance Based Effluent Limitations (PBELs) are going to be assigned, they should not be characterized as Water Quality Based Effluent Limits (WQBELs).	The proposed average monthly WQBELs, which were developed in consideration of plant performance, are consistent with NPDES regulations at 40 CFR 122.44(d)(1)(vii)(B) that require that NPDES permits include effluent limitations developed consistent with the assumptions and requirements of any Waste Load Allocation (WLA) that has been assigned to the discharge as part of an approved Total Maximum Daily Load (TMDL). Section III.E.7 of the Fact Sheet describes the various TMDLs for the Los Angeles River that contain WLAs applicable to the Burbank Water Reclamation Plant (Burbank WRP). SectionsIV.C.2.ix and IV.C.4 of the Fact Sheet explain how the TMDL	None necessary.

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			WLA-based WQBELs were derived for ammonia and metals, respectively. The Fact Sheet also cites the following requirements: from the Los Angeles River Metals TMDL - "Regardless of the WER, for discharges regulated under this TMDL with concentrations below WER-adjusted allocations, effluent limitations shall ensure that effluent concentrations do not exceed the levels of water quality that can be reliably maintained by the facility's applicable treatment technologies existing at the time of permit issuance, reissuance, or modification…." and from the LA River Nitrogen Compounds TMDL - "Regardless of the SSO and SSO-derived WLAs, for discharges regulated under this TMDL with concentrations below site-specific water quality objectives, effluent limitations shall ensure effluent concentrations do not exceed the level of water quality that can be reliably maintained by the facility's applicable treatment technologies existing at the time of permit issuance, reissuance, or modification unless anti-backsliding requirements in Clean Water Act section 402(o) and anti-degradation requirements are met." This 2017 renewal continues the WQBELS that are reflective of plant performance that were contained in the Burbank 2012 Order, but were	

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			based on more recent data from the monitoring and reporting program. Footnote 13 of the 2012 order stated : "The performance-based Average Monthly and Maximum Daily effluent limitations for copper are derived from the 95th and 99th percentiles, respectively, using effluent data from December 2007 to August 2011. Consistent with the *Revised LA River Metals TMDL* (Resolution No. R10-003), these final effluent limitations ensure that mass and concentrations of copper in the treated effluent do not exceed the levels of water quality that can be attained by performance of this facility's treatment technologies existing at the time of permit issuance or reissuance." Since these final effluent limitations are based on TMDL requirements that protect water quality standards (both numeric criteria/objectives and anti-degradation standard protecting existing water quality), they should be characterized as WQBELs.	
Burbank 3	Removal of Performance Based Effluent Limitation for Ammonia & Copper	The City requests that the final effluent limitations for ammonia and copper, based on plant performance and a margin of safety factor (MOSF) be removed because they believe that Performance Based Effluent Limitations (PBELs) are not required by the nitrogen Total Maximum Daily Loads (TMDLs) and that antibacksliding and antidegradation requirements were addressed. The City also believes that PBELs should not be characterized as water quality based effluent limits because the Clean Water Act regulations prescribe two types of effluent limitations – technology-based and water quality-based. *See* 40 C.F.R. §122.44(a)(1) and (d)(1). The	Refer to response to Comment 2 above. In the 2012 Burbank Order, the WQBELs that are reflective of plant performance were calculated using the 95th and 99th percentiles in order to meet the TMDL and protect water quality standards (specifically including the anti-degradation water quality standard preserving existing in-stream water quality where, using SSOs, TMDLs have revealed that more assimilative capacity is present). However, as described on page F-33 of the Fact Sheet, the 2017 Revised Tentative "Order includes final	None necessary.

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		proposed Burbank WRP permit characterizes the ammonia and copper limits as water quality based effluent limits (WQBELs). However, this is a mischaracterization because the limits are not based on the applicable water quality objectives (WQOs) (e.g., the SSOs adopted by the Regional Board) or the TMDL.	water quality-based effluent limitations reflective of performance based on evaluating several options and incorporating one of the options that was discussed during the Regional Water Board staff-led stakeholder workgroup meetings. This calculation entails conducting a statistical analysis of the recent data considering the narrow range of values that comprise the ammonia dataset, and calculating a MOSF that would be added to the maximum effluent concentration (MEC)." The stakeholder workgroup consisted of staff from the Regional Water Board, City of LA, City of Burbank, County Sanitation Districts of Los Angeles County, Heal the Bay, LA Waterkeeper, and USEPA. While this approach yields numbers that are higher than the MEC and the 99th percentile, they were intended to provide the POTWs with operational flexibility and prevent the facilities from de-rating from existing design capacity. This is consistent with the LA River Nitrogen Compounds TMDL which states that: "It is not the intent for these performance based limits to have the effect of de-rating Water Reclamation Plants that are operating below their permitted design capacities. Regional Water Board staff may consider recommendations from a Regional Water Board-led workgroup that will be charged with evaluating alternative methodologies for calculating effluent limitations for discharges with concentrations below site-specific water quality objectives." The average monthly WQBELs proposed, which were developed in consideration of plant performance, are consistent with NPDES	

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			regulations at 40 CFR 122.44(d)(1)(vii)(B) that require that NPDES permits include effluent limitations developed consistent with the assumptions and requirements of any WLA that has been assigned to the discharge as part of an approved TMDL.	
Burbank 4	Ammonia Limits in Different Watershed	The City requests that the effluent limits for ammonia be based on the WLAs, without linking them to plant performance, consistent with the approach used in five other permits in the Los Angeles region: Whittier Narrows WRP Order No. R4-2014-0213-A01, Los Coyotes WRP Order No. R4-2015-0124; Pomona WRP Order No. R4-2014-0212-A01; Long Beach WRP Order No. R4-2015-0123; San Jose Creek WRP Order No. R4-2015-0070.	Four of the five examples cited are irrelevant and not comparable to the set of circumstances surrounding the calculation of the ammonia final effluent limitations for the Burbank WRP, the D.C. Tillman WRP, and the LA-Glendale WRP, in the Los Angeles River Watershed because those final effluent limitations are not based on a TMDL. The five permits referenced by the City are located within an entirely different watershed and are subject to WQOs intended to protect the specific waterbodies to which they discharge. All of the five referenced POTWs discharge to the San Gabriel River or a tributary that feeds the San Gabriel River. Of those five, only the Whittier Narrows WRP discharges intermittently through one of its three outfalls to the Rio Hondo, a tributary of the Los Angeles River. However, unlike the Los Angeles River, the San Gabriel River is not 303d listed for ammonia, nor is there an applicable Nutrient TMDL for the San Gabriel River watershed. The Whittier Narrows WRP fact sheet goes into great detail on how the ammonia final effluent limitations were calculated. Although the Ammonia 30-day SSO criteria was considered, it did not serve as the basis for the final effluent limitation because the one hour criteria was the most limiting criteria.	None necessary.

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Burbank 5	Best Practicable Treatment Control	Again, the City of Burbank requests that the PBELs be removed after comparing the Burbank WRP to the Whittier Narrows WRP, arguing that both plants similarly use best practicable treatment or control (BPTC), which they consider to be tertiary treatment with nitrification/de-nitrification (NDN). The City equates the treatment processes at both facilities and believes that the NDN/Filtration treatment will assure that a pollution or nuisance will not occur; will maintain the highest water quality; and be consistent with maximum benefit to the people of the State. They conclude that treatment system thereby meets the requirements for the State's Antidegradation Policy (Res. No. 68-16) by citing language in the Whittier Narrows WRP Order.	Refer to response to Comment 4 above regarding the difference in waterbodies. There is also a difference between the treatment processes used at the Burbank WRP and the Whittier Narrows WRP. While it is true that both use NDN to remove ammonia from the influent, the Burbank WRP adds back ammonia in the disinfection process to prevent the formation of total trihalomethanes. Whittier Narrows WRP, on the other hand, does not because they use modern ultraviolet (UV) lamps in their disinfection process. Since the plants use different processes, BPTC that is appropriate for Whittier Narrows WRP is not appropriate for the Burbank WRP since Burbank WRP reintroduces the pollutant ammonia back into the effluent after the NDN and filtration processes. The concentration of the ammonia in the effluent is thus dependent on Burbank WRP's ability to control the ammonia addition. This is illustrated in the Process Flow Diagram on page C-1 of the Burbank 2017 revised tentative Order and was confirmed during an inspection of the Burbank WRP on January 24, 2017.	None necessary.
Burbank 6	Anti-backsliding & Antidegradation requirements	The City refers to the following language from the LA River Nitrogen Compounds TMDL that was cited in the Tentative Order (Page F-35): "Regardless of the SSO [site specific objective] and SSO-derived WLAs [wasteload allocations], for discharges regulated under this TMDL with concentrations below site-specific WQOs, effluent limitations shall ensure effluent concentrations do not exceed the level of water quality that can be reliably maintained by the facility's applicable treatment technologies existing at the time of permit issuance, reissuance, or modification ***unless*** antibacksliding requirements in Clean Water Act [CWA] section	The commenter is correct that antibacksliding and antidegradation were considered during the development of the TMDLs. However, NPDES regulations at 40 CFR Part 122.44 (l)(1) restrict the relaxation of final effluent limitations and the relaxation of standards or conditions contained in existing permits, with certain exceptions. The WER is the maximum standard that can be incorporated into the NPDES permit, but the Regional Board is still required to protect the antidegradation water quality standard and still consider anti-degradation and anti-backsliding in each individual permit. Because the City is able to attain a more stringent effluent limitation using	None necessary.

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		402(o) and anti-degradation requirements are met." The City concludes that since antibacksliding and antidegradation requirements were considered in the adoption of the TMDL, then PBELs for ammonia and copper are not required. The City requests the removal of PBELs and incorporation of SSO-derived WLA-based effluent limitations.	BPTC, to protect existing water quality the application of the less stringent full WER for Copper or the SSO for Ammonia would not be consistent with anti-backsliding and anti-degradation requirements in determining the maximum daily effluent limitation. The average monthly WQBELs proposed, which were developed in consideration of plant performance, are consistent with NPDES regulations at 40 CFR 122.44(d)(1)(vii)(B) that require that NPDES permits include effluent limitations developed consistent with the assumptions and requirements of any WLA that has been assigned to the discharge as part of an approved TMDL protecting water quality standards (SSOs and anti-degradation).	
Burbank 7	Performance Goals vs. Enforceable Limits	If the Regional Board feels it is necessary to include additional provisions to support the maintenance of current effluent quality, the City recommends incorporating an approach that incentivizes water quality improvements consistent with the findings of the 1994 Permit Reform Task Force[1] (Task Force) that addressed the issue of setting effluent limits more stringent than water quality standards. The Task Force found that limits in NPDES permits based on plant's capability rather than water quality criteria creates a disincentive for voluntary water quality improvements and can function as a 'no-growth' limit in the area tributary to the WRP. The City's proposed alternative approach is similar to the approach already utilized in the Los Angeles region for two ocean outfall permits (City of Los Angeles Hyperion Water Reclamation Plant and the Los Angeles County Sanitation District Joint Water Pollution Control Plant). Such an	The 1993 Task Force Report preceded the State Water Board's Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP) and was crafted in an era where the Inland Surface Water Plan had been rejected in litigation in state court challenging the SIP. The SIP and the USEPA *Technical Support Document for Water Quality- based Toxics Control* (TSD) contain procedures for calculating final effluent limitations. These procedures supersede recommendations from a task force that are over twenty years old. The use of performance goals has strictly been used for ocean outfalls where the reasonable potential calculation was inconclusive, and there was sufficient ambient water available to dilute	None necessary.

[1] The Task Force, which had a legal advisor from the State Water Board and two Regional Board advisors, as well as three Regional Board ex-officio members, two legislative ex-officio members, and representatives for agriculture, water, stormwater, POTWs, and non-governmental organizations, is discussed in more detail in the attached matrix.

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		approach includes establishing performance goals or water quality triggers, which if exceeded would require the submittal of a written report to the Regional Board describing the nature of the exceedance, the results of an investigation into the cause, and corrective actions taken or proposed with a timetable for implementation, if necessary. This region has historically utilized performance goals, and should do so again.	the discharge. However, in the City's case the data demonstrates that the Burbank WRP has reasonable potential to cause or contribute to an exceedance of the water quality standards for copper and ammonia. In addition, the Burbank WRP discharges to an effluent-dominated waterbody where there is insufficient ambient water upstream of the facility to dilute the discharge. Therefore, the use of performance goals is inappropriate for this inland discharge.	
Burbank 8	Legal authority for PBELs	The proposed effluent limits should be retitled as PBELs for which there is no legal authority in either federal or state law, except for when imposing interim effluent limitations under a compliance schedule. See *In the Matter of EBMUD and BACWA*, SWRCB Order No. 2002-0012 at p. 6 ("the challenged limits are not WQBELs. Instead, the Regional Board imposed interim limits based on current performance or the previous permit limit, with lengthy time schedules.")	WQBELs that are reflective of performance are consistent with the assumptions of the LA River Metals TMDL and the LA River Nitrogen Compounds TMDL. The legal authority for those WQBELs stems from NPDES regulations at 40 CFR 122.44(d)(1)(vii)(B) that require that NPDES permits include effluent limitations developed consistent with the assumptions and requirements of any WLA that has been assigned to the discharge as part of an approved TMDL protecting water quality standards (SSOs and anti-degradation). Interim limits are established when a facility is under a schedule of compliance and is not able to meet the final effluent limitations. The Burbank WRP is not under a compliance schedule and the data submitted in the Report of Waste Discharge and in its self-monitoring reports (SMRs) indicate that Burbank WRP will be able to comply with its final effluent limitations for ammonia and copper. Refer to Figure F-1 on page F-36 of the Fact Sheet to view the Ammonia performance data and FigureF-2 on page F-47 of the Fact Sheet to view the Copper performance data.	None necessary.

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Burbank 9	Triggers for Ammonia and Copper instead of WQBELs	The City requests that if PBELs for ammonia and copper are not removed as requested and modified into performance goals/triggers, that they be clearly distinguished from WQBELs and retitled as PBELs.	Refer to response to Comments 2, 3, and 8 above.	None necessary.
Burbank 10	TST	The TST is the comparison of 100 percent effluent to a control without the use of a multi-concentration dose response, and without the Percent Minimum Significant Difference (PMSD) being used to determine the effect of toxicity. These all represent unpermitted and unauthorized modifications to the approved regulatory test methods for determining chronic toxicity contained in the 2002 Methods formally adopted by USEPA in 40 C.F.R. Part 136. Because there is no longer an approved Alternate Test Procedure (ATP) in California allowing these modifications, their use is unlawful and should not be included in the Burbank WRP permit. Federal regulations binding on the regional board require that monitoring must be based on Part 136 methods. *See* 40 C.F.R. §122.41(j)(4); §122.44(i).	This MRP does require that chronic toxicity sampling for the Facility be conducted according to the *Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms* (USEPA 2002, EPA-821-R-02-013), which is the appropriate test method referenced in 40 CFR Part 136 for compliance purposes with the chronic toxicity final effluent limitation. The State permitting authority, here, the Regional Water Board, has the discretion to select the statistical approach for analyzing whole effluent toxicity (WET) test data that is most appropriate for use in a particular permit to protect the Basin Plan WQO for toxicity. (See Section 9.4.1.2 of *Short-term Methods*, October 2002, EPA-821-R-02-013 ("[T]he statistical methods recommended in the manual are not the only possible methods of statistical analysis.")) The Regional Water Board has selected the TST statistical approach for use in this Order. The 2017 Order contains quality assurance measures using the Test of Significant Toxicity (TST) for conducting statistical analysis of the toxicity results. The TST statistical t-test approach is described in the *National Pollutant Discharge Elimination System Test of Significant Toxicity Implementation Document* (EPA 833-R-10-003, 2010), Appendix A, Figure A-1, Table A-1 and Appendix B, Table B-1. Also, see *National Pollutant Discharge Elimination System Test of Significant Toxicity Technical Document (*(EPA	None necessary.

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			833-R-10-004, 2010). The Fact Sheet explains why appropriate interpretation of the measurement result from the TST statistical approach is independent from the concentration-response patterns of the toxicity tests for those samples. Regarding the use of variability criteria (USEPA 2000) recommended PMSD criteria are not implemented as a component of the statistical endpoint calculation for a toxicity test. Rather, the PMSD criteria are implemented as a chronic toxicity test review step for only some of USEPA's 2002 WET methods. The upper PMSD criterion is used to invalidate highly variable/insensitive tests to control within test variability **as an incentive** for laboratories to implement within test precision. The lower PMSD concentration is used to avoid penalizing laboratories that achieve very high within-test precision. These PMSD criteria are intended specifically for multi-concentration toxicity tests in which the NOEC-LOEC are determined by hypothesis testing. This is because a multi-concentration toxicity test's PMSD includes exactly that variability affecting determination of the NOEC and LOEC, providing control over the total within test variability. It is reasonable and appropriate for the Regional Board to conclude that the PMSD tool for evaluating test variability is not applicable to this permit because it does not include chronic toxicity limits expressed as TUc or NOEC. While section 10.2.8.2 of the WET Test Method specifies that "When NPDES permits require sublethal hypothesis testing endpoints from Methods 1000.0, 1002.0, or 1003.0 (e.g., growth or reproduction NOECs and LOECs), within-test	

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			variability must be reviewed and variability criteria must be applied as described in this section (10.2.8.2)" (emphasis added), the WET Test Method section does not always require the use of the PMSD. Subsection 10.2.8.2.1 describes how to calculate the PMSD and subsequent subsections describe how to compare the PMSD to see if the PMSD falls within an acceptable range; i.e. if the test's PMSD is within the upper and lower bounds. Subsection 10.2.8.3 states: "To assist in reviewing within-test variability, EPA recommends maintaining control charts of PMSDs calculated for successive effluent tests (USEPA, 2000b). A control chart of PMSD values characterizes the range of variability observed within a given laboratory, and allows comparison of individual test PMSDs with the laboratory's typical range of variability. Control charts of other variability and test performance measures, such as the MSD, **standard deviation or CV of control responses, or average control response, also may be useful** for reviewing tests and minimizing variability. The log of PMSD will provide an approximately normal variate useful for control charting." (emphasis added) As described above, USEPA sometimes requires use of PMSD criteria when the hypothesis test has endpoints expressed in terms of growth or reproduction NOECs and LOECs. However, the Burbank WRP permit does not have endpoints expressed as NOEC/LOEC, but not in terms of Pass or Fail and Percent Effect. In addition, under this permit, within-test variability of the WET test data utilized for the TST statistics will be reviewed and variability criteria will be applied by using	

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			control charts and coefficient of variation, as allowed by Subsection 10.2.8.3 of the WET Test Method. Therefore, the permit disallows the PMSD approach to evaluate variability of the WET test data because that approach is applicable to the NOEC/LOEC statistical analysis and not the TST statistics required by the permit.	
Burbank 11	Failure Rates of POTWs	POTWs using the TST have reported unexpectedly high failure rates for toxicity testing using the TST. The Sanitation Districts of Los Angeles County have recently evaluated the reliability of the method based on their experience with high failure rates. Using outside laboratories, they found that half of the non-toxic blank samples were identified as "toxic" using the TST.	The commenter's allegation cannot be substantiated because the submittal was unaccompanied by any relevant data from the "outside laboratories" such as: the raw toxicity data, the control charts for laboratory performance, or the standard operating procedures, to support the claim. . The Regional Board has reviewed the validity of the TST as follows: The TST statistical approach for use in the statistical analysis of WET test data has undergone an extensive external peer review process by both the USEPA and the State Water Board. The approach was published in *Environmental Toxicology and Chemistry* (Denton et al. 2011). Data from over 2,000 WET tests were used to develop and evaluate the TST approach. The TST was tested for nine different WET test methods with 12 biological endpoints (e.g., reproduction, growth, survival) representing most, if not all of the different types of WET test designs currently in use. Over one million computer simulations were also used to select error rates meeting EPA's RMDs (Regulatory Management Decisions) for the TST. The TST statistical approach has been shown to perform as well or better than the NOEC-LOEC statistical analysis of multi-concentration data.	None necessary.

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			The results of TST statistical analysis was compared to analysis using the NOEC-LOEC approach in a "Test Drive Analysis" conducted in California. The results of the test drive are provided in a report dated December, 2011 and published in *Environmental Toxicology and Chemistry* (Diamond et al. 2013). The findings of the peer-reviewed journal article by Diamond et al., 2013, found that the TST statistical analysis improves understanding of the discharge condition by correctly identifying toxic and non-toxic samples more often than when the NOEC-LOEC statistical approach is used.	
Burbank 12	Toxicity trigger vs. final effluent limitation	The City requests that the Burbank WRP permit maintain the trigger approach based on chronic toxicity units (TUc) contained in the current permit and mandated by the State Water Resources Control Board in binding, precedential orders. *See* SWRCB Order Nos. WQO 2003-012 and 2003-12.	The numeric effluent limitation for chronic toxicity in this Order employs in part the TST. The TST is recommended by the most recent USEPA guidance as an appropriate test for chronic toxicity. This Regional Board and other regional boards are choosing to use the TST to determine compliance with numeric effluent limitations for toxicity. Additional information about and the basis for utilizing a TST-based limit is included in the fact sheet on pages F-52 through F-55. The commenter raises two issues regarding the effluent limitations for chronic toxicity. First, whether the limit should serve as a numeric effluent limitation or, rather, as a trigger for additional evaluation of toxic constituents in the effluent. Second, whether the TST is the appropriate test to determine compliance with the numeric limit, whether that limit be a numeric effluent limitation or a trigger for further analysis. This Order must include effluent limitations that will achieve and maintain compliance with water	

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			quality standards in the Basin Plan for the Los Angeles Region, which includes a narrative water quality standard for toxicity that requires all surface waters to "be maintained free of toxic substances in concentrations that are toxic." Effluent limitations in this Order must assure that the discharge will not cause or contribute to a violation of this standard. Federal regulations establish an explicit presumption that a numeric effluent limit – rather than a non-numeric limit – is required by the Clean Water Act to make reasonable further progress toward the goal of eliminating pollutants into the nation's waters. Non-numeric effluent limits may only replace numeric effluent limits in an NPDES permit if a numeric limit is "infeasible." (40 C.F.R. § 122.44). This presumption of a numeric limitation applies to effluent limitations for toxicity: "A limit on whole effluent toxicity refers to a numeric effluent limitation ...." 54 Fed. Reg. 23868, 23871. Because a numeric limit for chronic toxicity is feasible, a numeric limit must be included in this Order. The State Water Board has declined to make a determination regarding the propriety (and feasibility) of numeric effluent limitations for chronic toxicity. (See WQ Orders 2003-0012 and 2003-0013). The State Water Board declared in the 2003 Orders that the issue would be better addressed through a modification to the SIP. The State Water Board replaced the numeric effluent limits for toxicity in the permits at issue with narrative effluent limits (i.e., a series of actions performed by the permittee intended to address effluent toxicity), with the expectation that the SIP would soon be	

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			modified. Nearly fifteen years and two NPDES permit cycles have since passed, and no such modification has been made. (See draft Policy for Toxicity Assessment and Control, SWRCB, October 2012). Concerns about the application of mandatory minimum penalties for violations of a numeric toxicity effluent limitation have also been statutorily corrected. (See Water Code § 13385(h)(2)(i)(1)(D)).This Regional Water Board must therefore exercise its own discretion to determine whether numeric effluent limitations for chronic toxicity are feasible and appropriate at this time. This approach was consistent with the State Board's then-recent determination that a definite instruction regarding effluent limitations for chronic toxicity would soon be provided by the SIP. Today, two permit cycles later, numeric testing methods for chronic toxicity are endorsed by USEPA. The TST simplifies interpretation of toxicity test results and increases confidence in the results compared to other statistical approaches. The "trigger" approach has been criticized by USEPA in public comments (2008 and 2014 letters regarding) and during quality reviews of California's NPDES program (2008 final report, 2014 draft report). USEPA's current criticism of this approach is not new. More than 25 years ago, in the 1989 preamble to 40 CFR 122.44(d)(1) [NPDES rules governing water quality based permitting], responding to public comment requesting that whole effluent toxicity (WET) not be used as an enforceable effluent limit, USEPA stated: "EPA requires [WET] limits where necessary to meet water quality standards. EPA does not believe that a whole	

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			effluent toxicity trigger alone is fully effective because it does not by itself, restrict the quantity, rate, or concentrations of pollutants in an effluent." 54 Fed. Reg. 23868, 23875. Later, in response to comments on the Great Lakes Initiative (GLI) that permits should include monitoring with a TRE trigger and any limit should serve only as the objective for a TRE, USEPA replied: "While EPA agrees that TREs are valuable tools in identifying and eliminating whole effluent toxicity, EPA does not agree that TREs can be used as a substitute for WET limits in permits." The Regional Board concurs with USEPA's criticism of the "trigger" approach. USEPA's updated guidance regarding whole effluent toxicity in the "National Pollutant Discharge Elimination System Test of Significant Toxicity Implementation Document" (June 2010), describes the TST as a feasible method to implement effluent limitations. USEPA formally endorsed the TST as an improved hypothesis testing tool to evaluate data collected using WET methods following an extensive external peer review process. This approach has undergone a "test drive" in California and been published in peer reviewed toxicological journals. The TST improves understanding of the discharge condition by correctly identifying toxic and non-toxic samples more often than when using the NOEC-LOEC. The permit's proposed numeric effluent limits for chronic toxicity, expressed in terms of the TST hypothesis test, unambiguously achieve the requirements for NPDES effluent limits under the CWA and its implementing regulations. Because of the availability of toxicity testing methods and applicable EPA guidance	

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			endorsing these methods, the Regional Board finds that numeric effluent limits for toxicity are both feasible and appropriate to protect water quality standards. This permit is not the first in the state to adopt a numeric effluent limitation for chronic toxicity, or to utilize the TST. (See, e.g., R9-2013-0026 (General NPDES Order for discharges from boatyards); R8-2012-0035 (NPDES Order for Orange County Sanitation District)). The State's Ocean Plan also sets numeric limits for chronic toxicity that have been incorporated into NPDES permits as numeric effluent limitations. This Regional Board has already endorsed the TST and is implementing it in the Los Angeles MS4 permit, NPDES wastewater permits, and individual industrial stormwater permits. With these actions, this Regional Water Board will fully integrate chronic toxicity testing programs and their results across the Region. A numeric chronic toxicity effluent limitation utilizing the TST was also included in several NPDES permits for industrial facilities (Order No. R4-2013-0172 - NPDES permit for the University of Southern California, adopted by the Regional Water Board on November 7, 2013 and NPDES permit Order No. R4. 2014-0033 - NPDES permit for the Calleguas Municipal Water District Regional Salinity Management Pipeline). A numeric chronic toxicity effluent limitation utilizing the TST was also included in several NPDES permits for inland POTWs in the San Gabriel River, Santa Clara River, and Calleguas Creek Watersheds.	

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Comments received from the City of Burbank on February 6, 2017 - Enclosure A				
Burbank A1	Duplicate provisions	Tentative Order, Section III.A, Page 3 ; Tentative Order, Section VI.A.2.i., Page 10 The City requested the removal of one of the two provisions because they consider them to be duplicative: III. DISCHARGE PROHIBITIONS A. Discharge of treated wastewater at a location different from that described in this Order is prohibited. *And* VI.A.2.i. Discharge of wastes to any point other than specifically described in this Order is prohibited.	The two provisions are not duplicative because "treated wastewater" is different from "wastes." Both need to be met to protect water quality.	None necessary.
Burbank A2a	Effluent Limitations without Calculated Reasonable Potential Oil & grease, settleable solids, chloride, sulfate, and Methylene Blue Activated Substances (MBAS	Tentative Order, Section IV.A.1.a, Table 4 – Final Effluent Limitations, page 4 ; Attachment F, Section IV.D.3., Table F-13 The proposed permit contains effluent limitations without a demonstrated calculation of reasonable potential (RP), including oil & grease, settleable solids, chloride, sulfate, and Methylene Blue Activated Substances (MBAS). For constituents not regulated by the SIP, no authority exists for BPJ-based limits where MEC<WQO. Therefore, these limits need to be removed prior to adoption. *See* SWRCB Order No. WQO-2003-0009 at pgs. 7-9.	Page F-22 of the Fact Sheet explains that the limits for BOD, TSS, pH are consistent with the State Water Board precedential decision, State Water Board Order No. WQ 2004-0010 for the City of Woodland. Conclusion III.5 of WQO 2004-0010 held that the "Regional Board properly exercised its discretion in requiring Woodland to meet tertiary treatment requirements." Here, tertiary treatment requirements are necessary to achieve compliance with water quality standards and prevent degradation of the existing quality of the receiving waters consistent with the anti-degradation policy and the Basin Plan. The following language has also been added to the Fact Sheet: "The principal design parameter for wastewater treatment plants is the daily BOD and TSS loading rates and the corresponding removal	None necessary.

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			rate of the system. In applying 40 CFR Part 133 for weekly and monthly average BOD and TSS limitations, the application of tertiary treatment processes results in the ability to achieve lower levels for BOD and TSS than the secondary standards. In addition to the average weekly and average monthly effluent limitations, a daily maximum effluent limitation for BOD and TSS is included in the Order to ensure that the treatment works are not organically overloaded and operate in accordance with design capabilities." Page F-27 of the fact sheet contains justification for the daily maximum effluent limitation for oil and grease. The numeric limits are empirically based on concentrations at which an oily sheen becomes visible in water. It is impracticable to use a 7-day average limitation, because spikes that occur under a 7-day average scheme could cause a visible oil sheen. A 7-day average scheme would not be sufficiently protective of beneficial uses. The monthly average and the daily maximum limits cannot be removed because none of the anti-backsliding exceptions apply. Both limits were included in the previous permit (Order No. R4-2012-0059) and the Burbank WRP has been able to meet both limits. Page F-28 of the fact sheet contains justification for the MBAS limitation. Given the nature of the facility which accepts domestic wastewater into the sewer system and treatment plant, and the characteristics of the wastes discharged, the discharge has reasonable potential to exceed the narrative WQO for the prohibition of floating material such as foams and scums. Therefore an effluent limitation for MBAS is required.	

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			Page F-28 of the fact sheet contains justification for the TDS, chloride and sulfate limitations. They are based upon the Basin Plan WQO specifically assigned to the Los Angeles River, between Sepulveda Flood Control Basin and Figueroa Street, including Burbank Western Channel. Limitations for TDS, chloride and sulfate have been included in this Order because, based upon Best Professional Judgment, these constituents are always present in potable water which is the supply source of the wastewater entering the Treatment Plant. The limits imposed in the WDR/NPDES permit are required in order to protect the beneficial uses designated in the Basin Plan for the given waterbodies.	
Burbank A2b	Effluent Limitations without Calculated Reasonable Potential	The proposed permit contains effluent limitations without a demonstrated calculation of reasonable potential (RP) for radioactivity. In addition, gross beta/photon emitters in millirems/year cannot be measured directly in wastewater. The gross beta/photon emitters calculation is based on Strontium (Sr-90) and Tritium parameter data and no data for these parameters was available to submit as part of the 2016 ROWD. The only (gross beta/photon emitters) result available to date is based on August 2016 monitoring data, was only 6.4% of the proposed limit, and would not have triggered RP relative to the limit. The State Water Resources Control Board (SWRCB) has held that "the antibacksliding exception for new information applies where new monitoring data indicate that the discharge of a pollutant does not have reasonable potential to cause or contribute to a water quality standards violation." SWRCB Order No. WQO 2003-0009 at p. 9. In that matter, it was stated that limits should not be maintained where the data did not indicate RP. Here, the Regional	Page F-32 of the fact sheet contains justification for retaining the radioactivity limitation which is currently contained in the Facility's 2012 permit and was also contained in the previous permit, Order No. R4-2010-0058. Section 301(f) of the CWA contains the following statement with respect to effluent limitations for radioactive substances: "Notwithstanding any of other provisions of this Act it shall be unlawful to discharge any radiological, chemical, or biological warfare agent, any high-level radioactive waste, or any medical waste, into the navigable waters." Chapter 4.4 of the CWC contains a similar prohibition under section 13375, which reads as follows: "The discharge of any radiological, chemical, or biological warfare agent into the waters of the state is hereby prohibited." The effluent limitation for radioactivity of the discharge applies more broadly than the prohibition on radiological	Additional justification was included in the Fact Sheet on page F-39.

Comment Number	Topic	Comment	Response	Action Taken
		Board is using non-data justifications for including effluent limits, which are not required. All effluent limits that do not have data demonstrating RP should be removed.	warfare agents and high-level radioactive waste. Radioactivity was detected in the effluent, therefore it has reasonable potential to contribute to an exceedance, and none of the anti-backsliding exceptions apply. The limit is based on the Basin Plan incorporation of Title 22, CCR, Drinking Water Standards, by reference, to protect the surface water GWR beneficial use and the groundwater MUN beneficial use. Therefore, the accompanying Order will retain the limit for radioactivity to protect the GWR beneficial use. An additional notice and comment period is not necessary to incorporate future revisions to the Maximum Contaminant Levels as effluent limitations in this Order. Adequate notice has been provided that these limits are to be incorporated prospectively. A California Appellate Court rejected the argument against prospective incorporation of MCLs into the Basin Plan in Cal. Ass'n of Sanitation Districts v. State Water Resources Control Board (2012) 208 Cal.App.4th 1438. The Court explained that the Legislature had granted to the California Department of Public Health the responsibility to administer "all … provisions relating to the regulation of drinking water to protect public health," and the MUN beneficial use designation is inextricably tied to California drinking water standards. And unlike the prospective incorporation at issue in California Assn. of Nursing Homes, the drinking water standards adopted by CDPH must be approved pursuant to the Administrative Procedures Act, which provides for public participation. Prior to any change in an MCL that would affect this Order, the discharger would have an opportunity to participate in the public process in which CDPH	

Comment Number	Topic	Comment	Response	Action Taken
			determines whether the limit is necessary to protect the public health. USEPA's letter dated February15, 2002, fully approved the Basin Plan's criterion for Chemical Constituents, which states, "Surface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated use. Waters designated for use as Domestic or Municipal Supply (MUN) shall not contain concentrations of chemical constituents in excess of the limits specified in the following provisions of Title 22 of the California Code of Regulations which are incorporated by reference into this plan: Table 64431-A of Section 64431 (Inorganic Chemicals), Table 64431-B of Section 64431 (Fluoride), and table 64444-A of Section 6444 (Organic Chemicals). This incorporation by reference is prospective including future changes to the incorporated provisions as the changes take effect. (See Tables3-5, 3-6, and 3-7)". USEPA's letter states, "This Chemical Constituents criterion functions as a numeric criterion which relies on MCLs in the State's Title 22 regulations to protect waters with the MUN use designation. Consequently, no further information is required under 40 CFR 131.11(a)(2) and this criterion is fully approved."	
Burbank A3	General – LA River Metals TMDL references and corresponding requirements need to be updated	Section IV. A.1.a. Table 4, page 6 ; Attachment F, Section III.E.7a., page F-22 – F23 ; Attachment F, Section IV.C.4.b, page F-45 - F-48,F-57 The Los Angeles River Metals TMDL was amended by the Regional Board on April 9, 2015 and approved by USEPA on December 12, 2016. The Tentative Order references the previously effective TMDL. All references, discussions, and effluent limits related to the LA River Metals TMDL should be	The findings regarding the approval of Resolution R15-004 with a revised copper Water Effects Ratio (WER) were updated. However, since the lead WLA was based on criteria that is less stringent than the California Toxics Rule (CTR), the final effluent limitations for lead cannot be implemented until after USEPA headquarters de-promulgates the CTR lead criteria.	Revised findings on Fact Sheet pages F-22 through F-46, and F-56.

<table>
<tr><th>Comment Number</th><th>Topic</th><th>Comment</th><th>Response</th><th>Action Taken</th></tr>
<tr><td></td><td></td><td>updated to reflect the 2015 Amendment, which was approved by USEPA in December 2016.</td><td>Refer to CTR preamble at page 31703:
“Site-specific criteria, variances and other actions modifying criteria are neither prohibited nor limited by the CTR. The State, if it so chooses, still can make these changes to its water quality standards, subject to EPA approval. However, with this Federal rule in effect, the State cannot implement any modifications that are less stringent than the CTR without an amendment to the CTR to reflect these modifications. EPA will make every effort to expeditiously accommodate Federal rulemaking of appropriate modifications to California's water quality standards. In the preamble to the proposed CTR, and here today, EPA is emphasizing that these efforts to amend the CTR on a case-by-case basis will generally increase the time before a modification can be implemented.”</td><td></td></tr>
<tr><td>Burbank A4</td><td>Effluent Limits – Incorrect Ammonia MDEL Multiplier</td><td>Attachment F, Section IV.C.2.b.ix, page F-30 – F37

The Tentative Order Fact Sheet contains several equations on page F-33 and F-34 that list the correct terms and correct answers to the calculations; however, intermediate numbers are incorrect. The following table identifies those instances and presents the appropriate correction:
<table>
<tr><th>End Point</th><th>Current Equations (incorrect # bolded)</th><th>Requested Revision (correct # bolded)</th></tr>
<tr><td>$LTA_{1\text{-hour}/99}$ =</td><td>4.71 x 0.44 = 8.1 mg/L</td><td>18.43 x 0.44 = 8.1 mg/L</td></tr>
<tr><td>$LTA_{4\text{-day}/99}$ ELS Absent =</td><td>5.664 x 0.643 = 5.214854 mg/L</td><td>8.11 x 0.643 = 5.214854 mg/L</td></tr>
<tr><td>$LTA_{30\text{-day}/99}$ ELS Absent =</td><td>2.27 x 0.846 = 2.744 mg/L</td><td>3.24 x 0.846 = 2.744 mg/L</td></tr>
</table></td><td>The typographic errors were corrected, but it did not affect the final effluent limit calculations.</td><td>Revised typographic errors.</td></tr>
</table>

<table>
<tr><th>Comment Number</th><th>Topic</th><th>Comment</th><th>Response</th><th>Action Taken</th></tr>
<tr><td></td><td></td><td>
<table>
<tr><th>End Point</th><th>Current Equations (incorrect # bolded)</th><th>Requested Revision (correct # bolded)</th></tr>
<tr><td>MDEL</td><td>1.917 x 2.27= 6.2 mg/L</td><td>2.744 x 2.27= 6.2 mg/L</td></tr>
<tr><td>AMEL</td><td>1.917 x 1.12 = 3.1 mg/L</td><td>2.744 x 1.12 = 3.1 mg/L</td></tr>
</table>
</td><td></td><td></td></tr>
<tr><td>Burbank A5</td><td>Recycled Water Feasibility Study</td><td>Tentative Order, Section VI.A.2.z, page 12

The City has conducted ongoing recycled water planning as part of their program over the past 10 years. As part of those efforts, the City has evaluated opportunities to maximize recycled water utilization; thereby reducing discharges via the NPDES Order. In 2010, the City completed an update to its 2007 Recycled Water Master Plan (RWMP) identifying new opportunities and is currently implementing projects based on the outcome of that study. As described in the City's recycled water permit (Order No. R4-2016-0144,Section IV.), the City submitted a Title 22 Engineering Report in July 2014 fully describing the City's recycled water uses and updating the City's approved recycled water uses to include the new uses identified in the RWMP. The Engineering Report was subsequently approved by DDW in 2015. The City requests that the Recycled Water Feasibility Study requirement be removed because it is duplicative of efforts already under way as described in the RWMP and the City's 2016 WDR/WRR. The City would be happy to provide updated information at the permit hearing or another time regarding its assessment and implementation of expanding recycled water opportunities.</td><td>The language was revised to require annual updates instead of a new study in the WDR as follows:

State Water Board Resolution 2009-0011, Adoption of a Policy for Water Quality Control for Recycled Water (Revised January 22, 2013, effective April 25, 2013), directs the Regional Board to encourage recycling. Consistent with the Policy, the Permittee shall submit a feasibility report evaluating the feasibility of additional recycling efforts to reduce the amount of treated effluent discharged ~~via this~~ as authorized in this ~~NPDES~~ Order and a recycled water progress report describing any updates to the development of increased recycled water production and/or distribution. These reports shall be included in the annual report submittal, as described in the Monitoring and Reporting Program (MRP)."

By April 15 of each year, the Permittee shall submit an annual report containing a discussion of the previous year's influent/effluent analytical results, ~~and~~ receiving water monitoring data, and the recycled water feasibility report as well as a recycled water progress report describing any updates to the development of increased recycled water production and/or distribution.</td><td>Some revisions were made in WDR page 12, MRP page E-27, and Fact Sheet pages F-16 and F-69.</td></tr>
</table>

Comment Number	Topic	Comment	Response	Action Taken
Burbank A6	Reopener language related to PBELs	Section VI.C.1.n, page 14; Attachment F, Section IV.D.1.b, page F-58 Notwithstanding the City's previous comments on the Performance Based Effluent Limitations (PBELs) contained in the Tentative Order, the City has concerns that if the PBEL's are incorporated the proposed reopener language will not provide the intended level of support for reconsideration of the PBELs. Although historical data indicates the BWRP effluent will currently meet the proposed PBELs, the City is concerned that this will not be the case in the future due to factors outside of the BWRP's control (e.g., water conservation, impacts related to climate change, etc.). While the City appreciates the addition of a reopener, this reopener would not protect the City from mandatory minimum penalties (MMPs) should a PBEL be exceeded for reasons beyond its control. And, ironically, if a data point occurs above the PBEL, that would create an argument why the PBEL was not appropriately performance-based and should be modified. This was the reason why Burbank has continually argued that these should be performance goals, and not effluent limits. Further, the City wants to make sure that no future backsliding issues arise related to these PBELs should performance differ in the future due to factors outside of the BWRP's control. To address these concerns, the City requests the following minor changes be made to the permit and fact sheet. a. Tentative Order: This NPDES permit may be reopened for modification to recalculate the final ~~water quality based~~ performance based effluent limitations for Ammonia as Nitrogen and/or Copper, to incorporate a revised margin of safety factor reflective of plant performance consistent with and up to the maximum limits allowed by the applicable TMDLs and SSOs, if the discharger provides new information to the Regional Board showing the flow conditions or other extenuating circumstances cause a significant change in the water reclamation plant's treatment	See response to Comments 2, 3, 4, 8, and 9 above for WQBELs that are reflective of performance. When implementing the NPDES regulations, Anti-backsliding and the Anti-degradation Policy and the California Water Code, it is within the Regional Water Board's discretion not to authorize the utilization of the full waste assimilation capacity in a waterbody. See Water Code section 13263. Consistent with its authority, this permit only applies the ammonia SSO when establishing the average monthly effluent limitation, but not the maximum daily effluent limitation. Since current conditions have not been assessed, Section VIII.B of the Monitoring and Reporting Program requires confirmatory monitoring of ammonia in the receiving water consistent with the LA River Nutrient TMDL. This receiving water monitoring will confirm that the ammonia WQO is not being exceeded in the receiving water downstream of the discharge. Regional Water Board staff incorporated a margin of safety factor (MOSF) into the calculation of final average monthly effluent limitation (AMEL) for ammonia as nitrogen and the copper AMEL taking into consideration the potential for changes in plant flow and de-rating. With respect to ammonia for publicly owned treatment works (POTWs), page 31 of the staff report to the *Proposed Amendments to the Water Quality Control Plan - Los Angeles Region- to Incorporate Site Specific Ammonia Objectives for Select Inland Surface Waters in the San Gabriel River, Los Angeles River, and Santa Clara River Watershed*, considered:	Some modifications were made.

Comment Number	Topic	Comment	Response	Action Taken
		performance. b. Fact Sheet: In addition, this Order includes a reopener that allows for modification of the NPDES Order to recalculate the ~~WQBEL~~ performance based effluent limitations for ammonia as nitrogen and/or copper, to incorporate a revised margin of safety factor reflective of plant performance consistent with and up to the maximum limits allowed by the applicable TMDLs, if the discharger provides new information to the Regional Board that shows the flow conditions or other extenuating circumstances cause a significant change in the water reclamation plant's treatment performance.	fluctuations in plant flows due to weather, time of day, ammonia influent concentrations, and the biological NDN process. It concluded that "Individually, each of these variations in influent conditions and biological process performance, along with the disinfection process issues described earlier, may result in only minor or insignificant increases in treated effluent ammonia concentrations. However, in combination, all these factors result in typical concentrations of ammonia in the final treated effluent between 1-2 mg/L, with occasional increases that can approach 3 mg/L." Therefore, Burbank WRP is expected to meet its Average Monthly Effluent Limitation of 2.1 mg/L and its Maximum Daily Final Effluent Limitation of 6.2 mg/L. Moreover, the City of Burbank successfully met the State's mandated potable water reductions during the drought. As such, the data considered during this permit cycle reflects Burbank WRP's performance during both drought and non-drought conditions. None the less, the reopener language will be revised slightly as follows: This NPDES permit may be reopened for modification to recalculate the final water quality based effluent limitations (WQBELs) for Ammonia as Nitrogen and/or Copper, to incorporate a revised margin of safety factor (MOSF) reflective of plant performance consistent with and up to the maximum limits allowed by the applicable TMDLs and SSOs, if the City provides new information to the Regional	

Comment Number	Topic	Comment	Response	Action Taken
			Water Board showing the flow conditions or other extenuating circumstances cause a significant change in the water reclamation plant's treatment performance, and if antibacksliding and antidegradation requirements are met.	
Burbank A7	Burbank WRP Flow Schematic - Update Needed	Attachment C, C-1 The flow schematic in the Tentative Order is not the most current diagram submitted by the City of Burbank as part of the 2016 Report of Waste Discharge (ROWD). An updated, balanced, flow schematic was submitted to the Regional Board on September 21, 2016. Please use the updated schematic for Attachment C.	The older flow schematic was replaced with the newer version on page C-1.	The diagram was replaced.
Burbank A8	Influent Monitoring - Pentachlorophenol Sample Type	Attachment E, Section III Table E-3, page E-7 Table E-3 requires Pentachlorophenol monitoring on a Sample Type "Grab". The City requests that the Sample Type for Pentachlorophenol be changed to "24-hour composite" consistent with the other constituents analyzed using the same analytical method.	The sample type was corrected for Pentachlorophenol on Tables E-2 and E-3.	Made correction on MRP pages E-7 & E-11.
Burbank A9	Influent, Effluent, and Receiving Water Monitoring - New PCBs as Congeners Requirement	Attachment E, Section III. Table E-2, page E-8 ; Section IV. Table E-3, page E-12 ; Section VIII. Table E-5, page E-21 Influent, Effluent, and Receiving Water monitoring contains a new requirement for "PCBs as congeners." The CTR criteria are compared to PCBs as aroclors and appropriate monitoring is included for those aroclors. A footnote associated with the PCBs as congeners does not provide information supporting the need for inclusion of the additional constituents and notes that the data cannot be used to regulate the BWRP as the analytical method proposed by the Regional Board is not an approved method under 40 CFR 136. Furthermore, the footnote requires monitoring for any detected congener in perpetuity. The addition of the unapproved method results in duplicative monitoring requirements and a potential ongoing cost generating data that cannot be used to regulate the BWRP. As such, the City	The 2012 NPDES Order contained a requirement for monitoring PCBs as aroclors on a semiannual frequency in the influent, effluent, and receiving waters. Since there was no data available for PCBs as congeners, this new monitoring requirement was added. To offset some of the cost of the additional monitoring, the frequency of monitoring for PCB as aroclors was reduced from semiannually to annually in the 2017 Order. In addition, the footnote for PCBs as congeners already contains language specifying that this monitoring can be discontinued for the remaining life of this Order if none of the PCB congeners are detected using EPA method 1668c.	None necessary.

Comment Number	Topic	Comment	Response	Action Taken
		requests that requirement to analyze PCBs as congeners be removed. At a minimum, the collection should be done once per permit term or cease at the end of three years regardless of the results.		
Burbank A10	Effluent Monitoring - Total Phosphorus Requirement	Attachment E, Section IV. Table E-3, page E-10 Total phosphorus was newly added to the list of Effluent monitoring requirements, yet the BWRP discharge and receiving water monitoring data have not shown reasonable potential to exceed a Basin Plan water quality objective. As such, the City requests that this monitoring requirement be removed.	On page 6 of its Report of Waste Discharge (ROWD), on EPA Form 3510-2A, Part A, the City of Burbank indicated that the Burbank WRP is not designed for phosphorus removal. Also on page 8 of the ROWD, Part B6, the City of Burbank did not include any total phosphorus data, which implied that none was available. Since phosphorus is a nutrient, monitoring is required to assess whether the Basin Plan nutrient WQO is met and in order to be able to conduct future reasonable potential analysis (RPA).	None necessary.
Burbank A11	Receiving Water Monitoring Requirements - Organic Nitrogen & Total Nitrogen Sample Type	Attachment E, Section VIII. Table E-5, E-19 Table E-5 references Sample Type "grab" for the parameters organic nitrogen and total nitrogen. Both are calculated parameters and the City requests that the Sample Type be revised to "calculation," consistent with Chromium III, another calculated parameter.	The correction was made in the MRP.	Corrected MRP pages E-10 & E-19.
Burbank A12	Receiving Water Monitoring - Selenium Monitoring Frequency	Attachment E, Section VIII.C, page E-22 Table E-5 contains selenium (Se) monitoring on two separate rows creating duplicative and conflicting requirements as one requires monitoring Monthly and the other Quarterly. The City requests that the monthly monitoring requirement be removed.	The redundant quarterly monitoring was removed. The monthly monitoring for Selenium will be used to determine compliance with the final WQBEL.	Deleted redundant quarterly monitoring on MRP page E-20.
Burbank A13	Bioassessment Monitoring Program	Attachment E, Section VIII.C, page E-22 The MRP in the Tentative Order contains language requiring the City to conduct bioassessment monitoring on an annual basis. In an Regional Board letter, dated August 11, 2009, to the City of Burbank regarding “Monitoring Offsets for the Burbank Water Reclamation Plant”, bioassessment monitoring and other permit-mandated compliance	The language was revised to allow the City of Burbank to submits information to justify waiving bioassessment monitoring in exchange for providing resources to the LASGRWC, as follows: “The City of Burbank may submit an updated proposal, for approval by the	Some modifications were made.

Comment Number	Topic	Comment	Response	Action Taken
		monitoring were waived "in 2009 and future years" in exchange for the City providing annual funding to the Council for Watershed Health (formerly Los Angeles San Gabriel River Watershed Council (LASGRWC)) for use as part of the Los Angeles River Watershed Monitoring Program (LARWMP), which performs watershed wide monitoring (including bioassessment), special studies, and production of annual and five-year interpretive reports.	Executive Officer, requesting that the bioassessment monitoring requirements VIII.C. 1 through VII.C.4 be waived in exchange for continued participation in the Los Angeles River Watershed Monitoring Program that is currently being coordinated by the Council for Watershed Health (formerly known as the Los Angeles and San Gabriel River Watershed Council). The submittal should include, but not be limited to: a description of the changes to the watershed-wide monitoring program that have taken place since it was originally approved in 2009; documentation showing the City's participation and allocated resources; a summary of bioassessment data generated from 2012 to the present (including the deficient annual report summaries); and the Standard Operation Procedures (SOPs) for the Bioassessment Monitoring Program. However, the annual reporting requirement to submit bioassessment data , as required by MRP section X.D.2, will not be waived."	
Burbank A14	Authorized Person to Sign and Submit Reports	Attachment F, Section I, Table F-1. Facility Information Please replace 'Bonnie Teaford' with 'Daniel Rynn'.	The change has been made.	Made revision on Fact Sheet page F-3.
Burbank A15	Operator name correction	Attachment F, Section I.A, Page F-3 Please replace 'Suez (formerly known as United Water Services)' with 'SUEZ Environmental Services'.	The change has been made.	Made revision on Fact Sheet page F-3.

Comment Number	Topic	Comment	Response	Action Taken
Burbank A16	TDS Effluent Limit violation incorrectly listed	Attachment F, Section II.D Table F-3, page F-12 Table F-3 lists a permit violation for TDS based on an effluent limit of 900 (sample result was 910), but the effluent limit was 950. The City has no record of an effluent limit violation for TDS during the permit term. Please remove the incorrectly stated violation from Table F-3.	The information regarding violations was taken from the CIWQS database. However, it listed the violations of the NPDES order as well as those of the WRR order. The 910 mg/L result was a violation of the 900 mg/L limit contained in the WRR Order. It will be deleted from the table since it does not pertain to the surface water discharge.	The correction was made.
Burbank A17	Inconsistency in data limitation	Attachment F, Section IV.C.2.b.ix, Page F-35 The Tentative Order Fact Sheet (Page F-35) states the following: "…in order to be consistent with the findings and assumptions of the TMDL, only the most recent three years of data was used in the calculation of ammonia nitrogen effluent limitations." However, the TMDL only references limiting the dataset used to the most recent three years of monitoring data when referring to pH and temperature data. As such, the Fact Sheet should be revised to be explicit that only the most recent three years of pH and temperature data were used in the calculation of ammonia nitrogen effluent limitations. Data used to consider performance, which is not limited in the TMDL, should consider performance of the BWRP since the last treatment process change that would affect effluent concentrations (i.e., 2010 when the equalization basin came on line), or at a minimum, the Permit term dataset (i.e., last 5 years).	The ammonia criteria is dependent upon pH and temperature, so it is implied that if the TMDL recommends using only the most recent three years of pH and temperature data, that it also recommends using the most recent three years of ammonia data.	None necessary.
Burbank A18	Antibacksliding and antidegradation for ammonia and copper	The cited language indicates that if the antibacksliding and anti-degradation requirements are met, the TMDL does not require PBELs (i.e., such as those established for ammonia and copper). Antibacksliding and antidegradation requirements have been met for ammonia and copper and, therefore, PBELs are not required by the TMDLs.	Refer to response to Burbank Comments 3 and 6 above.	None necessary.

Comment Number	Topic	Comment	Response	Action Taken
Burbank A19	Antibacksliding exception	Clean Water Act (CWA) section 303(d)(4)(A) provides an antibacksliding exception under CWA section 402(o)(1) that effluent limitations may be relaxed if the cumulative effect of all revised effluent limitations based on the TMDLs or WLAs will assure the attainment of the applicable water quality standard. Here, the applicable water quality standards are still deemed "impaired" since the Los Angeles River continues to be subject to TMDLs for metals and ammonia. Even if the waters are no longer deemed impaired for these constituents, backsliding would still be allowed under CWA section 303(d)(4)(B) because the revised effluent limits would be consistent with the State's Antidegradation Policy.[2]	Refer to response to Burbank Comments 3 and 6 above.	None necessary.
Burbank A20	Performance based effluent limitations (PBELs)	The Regional Board has not provided any justification or regulatory authority for the use of performance-based effluent limits ("PBELs"). Both the TMDL-based Wasteload Allocations ("WLA") and the SSO contain embedded margins of safety.	Refer to response to Burbank Comments 3 and 6 above.	None necessary.
Burbank A21	Consideration of existing and projected facility flows for the permit term and the corresponding effect on the facility's capability to reduce ammonia concentrations is	The PBELs included within the Tentative Order do not include any indication that the WRP capacity or its existing and projected facility flows were considered in the development of the proposed PBELs, despite the following language included in the Los Angeles River Nitrogen TMDL (emphasis added): During the workgroup meetings, the City provided information to the Regional Board showing that the WRP is currently operating below its permitted capacity. The City	Refer to response to Burbank Comments 3 and 6 above. During an inspection of the Facility on January 24, 2017, Regional Water Board staff confirmed that the Burbank WRP does have control of the ammonia that is discharged through its outfall. The Burbank WRP has an industrial automation control system called Supervisory Control And Data Acquisition (SCADA) which is used to	None necessary.

[2] Several other statutory antibacksliding exceptions would also apply in this instance. For example, under section 402(o)(2)(A), backsliding would be allowed since "material and substantial alterations or additions to the permitted facility" occurred after permit issuance that justify the application of a less stringent effluent limitation. Under section 402(o)(2)(B)(i), backsliding would also be allowed since "information is available which was not available at the time of permit issuance …which would have justified the application of a less stringent effluent limitation at the time of permit issuance." As acknowledged by the TMDL Draft Staff Report at pg. 14, Section 5, "the WER based SSOs provide new information and therefore the POTWs may meet the backsliding exception under CWA section 402(o)(2)." (*See also* SWRCB Order No. WQO 2003-0012 at pgs. 15-17.) Under section 402(o)(2)(C), limits can be relaxed where a less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy. In this case, water conservation and lower inflows have increased concentrations, thereby requiring relaxation of limits. Such relaxation is authorized under the CWA because external forces are causing these changes and the cities have no control, particularly where water conservation requirements exist. Thus, the antibacksliding rules authorize less stringent limits, up to the applicable water quality standard (e.g., the WER/SSO). (33 U.S.C. §1342(o)(3), CWA §402(o)(3).)

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	absent.	also showed that, due to several factors and variables of wastewater treatment, the magnitude of historical daily and monthly averages of plant flow and influent ammonia concentrations (i.e., the two components that constitute ammonia plant loading) are not sufficient to provide a basis for accurate projections of the level of water quality that can be reliably maintained by the WRP's treatment technologies in the future, as is required for setting PBELs. PBELs incorporated into the Tentative Order without consideration of the WRP capacity or its existing and projected facility flows are inconsistent with a stated requirement in the TMDL language. Further, consideration should also be given to the effects of increased water conservation on plant performance. Because the average flows to the WRP have decreased in recent years, influent ammonia concentrations, which comes primarily from human sources, have been increasing. However, resulting higher effluent concentrations should still be below the SSO.	monitor several treatment processes at the plant including the ammonia dosage pump. The computer system is equipped with alarms that notify the operators when something is not within operational parameters. The Burbank WRP removes ammonia through its nitrification/ denitrification biological nutrient removal process, but adds back ammonia to prevent the formation of total trihalomethanes. Ammonia dosing is governed by the Ammonia (NH3) ratio set point that is visibly displayed on screen by the SCADA system.	
Burbank A22	Regional Board actions should be consistent with the findings of previous recommendations presented by multi-stakeholder Task Forces established by the Regional Board and Cal-EPA.	PBELs are not explicitly required by the TMDL, are not necessary for the protection of beneficial uses, and are not otherwise required by law. The PBELs included within the Tentative Order are also contrary to the Los Angeles Regional Board's 1993 Final Report of the Water Quality Advisory Task Force, "Working Together for an Affordable Clean Water Environment." That advisory group recommended: "In cases where it is appropriate to regulate a pollutant based on performance, the Regional Board should do so by the use of numeric goals instead of permit limits." The text goes into further detail, stating: "The Task Force believes that use of numeric goals based on performance, along with numeric limits based on the Statewide Water Quality Plans, would still accomplish the primary objectives of minimizing pollutant loadings, yet would also do the following:	Refer to response to Burbank Comment 7 above.	None necessary.

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Burbank A23	The Regional Board should implement an approach which incentivizes voluntary improvement of water quality.	To accomplish the purpose of ensuring that effluent concentrations do not exceed what can be reliably maintained by existing technologies, and in lieu of PBELs, the City recommends the following approach to establishing metrics to minimize pollutant loading, while maintaining the incentive for future voluntary improvement of water quality, whenever feasible, without the imposition of more stringent limits based on improved performance:	The receiving water conditions in the Los Angeles River differ from that of the San Francisco Bay, in that the Los Angeles River lacks vast amounts of water to dilute the million gallons of effluent discharged by publicly owned treatment works (POTWs). In addition, page 1-1 of the *Copper Site-Specific Objectives in San Francisco Bay Proposed Basin Plan Amendment and Draft Staff Report* explains that: "Although the proposed amendment relaxes the existing copper water quality objectives, the **proposed implementation plan contains pollution prevention and source control actions designed to prevent any increases in ambient copper concentrations and thus prevent any lowering of existing water quality in the Bay segments affected by this amendment** (emphasis added). This report demonstrates why the proposed SSOs are necessary and protective of the Bay's most sensitive beneficial uses." That same report states that The San Francisco Bay system is the largest coastal embayment on the Pacific Coast of the United States (Nichols and Pamatmat 1988); that the Bay is broad, shallow, and turbid, which makes sediment an important factor in the fate and transport of pollutants; and that sediment movement within the Bay is driven by daily tides, the spring-neap tide cycle, and seasonally variable wind patterns. In contrast, the Los Angeles River near the point of discharge is not subject to tidal influences nor to wind patterns. Neither the LA River Nitrogen Compounds TMDL nor the LA River Metals TMDL implementation plans require pollution	None necessary.

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			prevention or source control actions for the POTWs. Therefore, the proposed 2017 Orders do not follow San Francisco Bay's receiving water trigger approach.	
Burbank A24	The implementation of the TMDL through PBELs is not required by federal law; thus, the State must comply with Water Code sections 13263 and 13241.	The draft permit does not discuss why the proposed PBEL approach is legally required by federal or state law, or whether the proposed approach is beyond the requirements of federal law. The implementation of the TMDLs through PBELs appears to be a new requirement being established by the Regional Board, not authorized or required by federal statute or regulation. Thus, the requirement to meet PBELs is one of state law only, and is more stringent than required by federal law. As such, the Regional Board must comply with Water Code sections 13263 and 13241. City of Burbank v. State Water Resources Control Board, et al, 35 Cal. 4th 613 (Cal. 2005). The Tentative Order Fact Sheets (Pages F-69 and F-70) do not present any information indicating that Water Code sections 13263 and 13241 were seriously considered with respect to the incorporation of PBELs into the Tentative Order.	Refer to response to Burbank Comments 2,3, 6, 7, 8 , A-6, A-21, and A-23 above.	None necessary .
Burbank A25	Implementation of PBELs also negates the existence of scientifically derived and properly approved SSOs and WERs.	For the waters and discharge at issue, regulatory relief mechanisms were implemented that were specifically authorized in the State Water Board's Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP), such as an SSO for ammonia and a WER for copper. The SIP recognized that a pollutant objective might be inappropriate for a particular water body, and that based on site-specific conditions, a WQO that differs from the applicable criterion or objective may be developed. (SIP at 31, Section 5.2.) SSOs are required to be adopted to provide reasonable protection of the beneficial uses, must consider the factors under Water Code section 13241, must be in compliance with federal law and regulations, and must be based on sound scientific rationale. (Id. at 33.) In addition, the SIP allows the Regional Boards to adjust WQOs for metals with discharger-specific WERs, or may use a WER to develop a site-specific metal objective. (SIP at 5,	Refer to response to Burbank Comments 2,3, 6, 7, 8 , A-6, A-21, and A-23 above.	None necessary.

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		Section 1.2.) By ignoring these approved mechanisms, the Regional Board is making the effluent limits for these constituents more stringent than necessary to reasonably protect beneficial uses.		
Comments received from Heal the Bay on February 6, 2017				
Heal the Bay 1	Require Recycling Progress Reports	In order to help all three WRPs' recycling efforts in a similar way to what was done in the Monitoring and Reporting Program in the latest permit for Hyperion Treatment Plant (effective April 1, 2017; Sec. X.C.4), we request that the Tentative WDRs include a requirement for all three WRPs to submit a "recycled water progress report" along with each NPDES Annual Summary Report to the Regional Board. As the Regional Board mentions in its response to Hyperion Treatment Plant's comments (response to Los Angeles Waterkeeper's first comment, p. 57 of "Response to Comments," January 20, 2017), it will serve the purpose to "encourage water recycling and to communicate progress on the Permittee's recycling program."	To encourage water recycling and to communicate progress on the Permittee's recycling program, a requirement to submit a recycled water progress report with each NPDES Annual Report was added to section X.D.2 of the MRP of the Tentative Order	Revisions were made to the permit.
Heal the Bay 2	Require City to Notify Heal the Bay of Spills	Considering reporting, within Hyperion's recent WDR permit that becomes effective on April 1, 2017, the plant's supervisors were asked to report to Heal the Bay (in addition to local public and environmental health officers) if and when any unauthorized discharge of sewage occurs in an amount greater than 1000 gallons (Section VI.C.6.c.i. of all three permits). We request that a similar requirement be included in the Tentative WDRs so that Heal the Bay can continue to be an effective partner in public notification about these issues.	The Regional Water Board staff agree that the City should be transparent and direct with reporting sewage spills. Section VI.C.6.a.ii. of the Tentative Order was modified to include Heal the Bay in the list of notifications after a sewage spill.	Revisions were made to the permit.
Comments received from Los Angeles Water Keeper on February 6, 2017				
LA Water-keeper 1	Base Flow in River	The three POTWs function, along with the Hyperion POTW operated by the City of Los Angeles, as part of an "integrated network" (Burbank Tentative, page 76 of 148) in which solids from the POTWs in the Los Angeles river watershed are	The Regional Water Board staff agree that the discharge from the three POTWs provide the vast majority of the dry season flows in the river.	None necessary.

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		transported to Hyperion for further treatment. All three POTWs are located in the watershed of the Los Angeles River, and discharge to the river or its tributaries. The cumulative impact of the three POTWs on the river is huge—the discharge provides the vast majority of the dry season flows in the river. The treated discharge supports a number of beneficial uses, including habitat for four rare and threatened aquatic species, and an increasingly important recreational resource for Angelinos and visitors, including a growing interest in kayaking.[3] Some level of base flow is necessary to maintaining these uses of the river, although the native aquatic species are adapted to seasonal periods of extremely low flow.		
LA Water-keeper 2	D.C. Tillman Groundwater Project	The City of Los Angeles analyzed the relationship between base flows and beneficial uses in the Environmental Impact Report prepared for its Tillman Groundwater Replenishment project, and determined that a 27 MDG base flow in the river could support the beneficial uses. The City therefore committed to maintaining a 27 million gallon per day base flow in the Los Angeles River and several nearby ponds as a mitigation commitment, but the Tentative WDR for Tillman does not make mention of this commitment to base flows, nor include the commitment as a condition of the WDR.	Comment does not apply to Burbank WRP.	None necessary.
LA Water-keeper 3	Recycled Water Feasibility Study	The WDR for Los Angeles-Glendale includes an express finding that the region has a need for recycled water, especially during droughts. (Glendale Tentative, page 76 of 150.) Yet all of the WDRs defer analysis of this important issue, including conditions that the plant operators investigate the feasibility of recycling treated wastewater. If found feasible, POTW operators would be required to initiate or update the process provided for in Section 1211 of the Water Code for additional analysis and application for water rights from the State Water Resources Control Board	In 2015, the Burbank WRP discharged approximately 5.36 mgd to the Los Angeles River. The facility also reused approximately 29`% of the total quantity produced (2.2 mgd) for California Code of Regulations Title 22 approved uses for recycling. In 2016, the Burbank Waste Reclamation Requirements (WRR) was renewed and added recycled water uses and expanded the use area. The City has submitted a California Water Code section 1211 petition application to	None necessary.

[3] Water Quality Control Plan, Los Angeles Region, Basin plan for the Coastal Watersheds of Los Angeles and Ventura Counties, California Regional Water Quality Control Board, Los Angeles Region (4), Table 2-1 Beneficial Uses of Inland Surface Waters, 2-12 (adopted June 13, 1994, as amended).

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		(SWRCB). These analyses would be submitted when the permits are next up for renewal.[4] (Glendale Tentative, page 91 of 150; Burbank Tentative, page 89 of 148; Tillman Tentative, page 96 of 163.) Waiting at least five years, and potentially longer, is unacceptable given the need for recycled water and the potential wastefulness of a lengthy delay.	the State Water Resources Control Board for the planned reduction of wastewater flow to the LA River and that permit application is still pending. Also, please see response to comment #5 below.	
LA Water-keeper 4	CEQA Exemption	The tentative WDRs all mention the Water Code exemption from Chapter 3 of the California Environmental Quality Act (CEQA). (See Water Code Section 13889 and Glendale Tentative page 86 of 150; Burbank Tentative page 84 of 148; and Tillman Tentative page 92 of 163.) Despite the facial limitation of the exemption to Chapter 3, the Tentative WDRs are all treat CEQA as wholly inapplicable. No analysis or findings are included for those parts of CEQA that apply to the project. Of particular importance is Section 21002 of the Public Resources Code, located in Chapter 1 of CEQA, which bans agencies from approving projects when feasible alternatives exist with fewer environmental impacts. Approval of the Tentative WDRs would be premature unless analysis is undertaken to allow the Regional Board to make such a finding—especially since the WDRs do not include analysis of what base flow is necessary to support beneficial uses of the river, or what potential exists for increasing recycled water. Such an analysis would necessarily include cumulative impacts of the entire "integrated system" (including Hyperion) and balancing of impacts and benefits envisioned by Section 1211 of the Water Code.	The Regional Board does not agree that further analysis under CEQA is required for the adoption of this NPDES permit. This issue has been litigated and courts have concluded that the Regional Board is not required to prepare environmental documents or engage in any other form of environmental review under CEQA. See e.g., County of Los Angeles v. California State Water Resources Control Board, 143 Cal.App.4th 985, 1003-1007. In addition, the State Water Board has issued CEQA regulations that state: "Neither the state board nor the regional boards shall be required to comply with the provisions of Chapter 3 (commencing with Section 21100) of Division 13 of the Public Resources Code prior to the adoption of any waste discharge requirement, except requirements for new sources as defined in the Federal Water Pollution Control Act or acts amendatory thereof or supplementary thereto." Further: "Environmental documents are not required for adoption of waste discharge requirements under Chapter 5.5, Division 7 of the Water Code, except requirements for new sources as defined in the Federal Water Pollution Control Act. This exemption is in accordance with Water Code Section 13389 which does not apply	None necessary.

[4] The Section 1211 analysis is outside the scope of the Section 13889 partial CEQA exemption and thus subject to full CEQA review, as recognized by the Regional Board itself. (See http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/wastewaterchange/) Since the Section 1211 process is also outside the scope of the Water Boards' certified regulatory agency status, the documents resulting from the Section 1211 process would take the form of an EIR or Mitigated Negative Declaration.

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			to the policy provisions of Chapter 1 of CEQA." See California Code of Regulations, title 23, section 3733. In addition, the commenter refers to Water Code section 1211 to support its comment that CEQA applies to adoption of the NPDES permit. Section 1211 requires the owner of a wastewater treatment plant to obtain approval from the State Water Resources Control Board prior to making any change in the point of discharge, place of use, or purpose of use of treated wastewater. The Regional Board does not have jurisdiction over such "change petitions".	
LA Water-keeper 5	Waste and Unreasonable Use	Further, the tentative WDRs do not make findings or include analysis of Article X, Section 2 of the California Constitution, which prohibits waste and unreasonable use of water. Instead, as described above, the WDRs put off any Waste and Unreasonable Use analysis for at least five years. The discharge of millions of gallons of treated wastewater, beyond that essential for maintaining beneficial uses, particularly when the point of discharge is located over a groundwater aquifer, is unreasonable and a waste of that water. Permitting that continued waste via the WDRs is contrary to law. Further, compliance with the mandate of the California Constitution and the Water Code in evaluating the reasonableness of the discharges permitted under the WDRs would provide the balanced, region-wide and integrated review of water supply, wastewater discharges, and recycling that is particularly appropriate here. LAW recently commented on the issue of waste and unreasonable use at length when the Hyperion WDR was up for renewal, and is attaching those comments as a possible guide to what type of analysis would be appropriate for the POTWs in the Los Angeles River watershed. (Obviously, some important differences exist between direct ocean discharge of treated wastewater and discharge to a river system supporting beneficial uses.) LAW is also working with the City of Los	The Regional Water Board agrees that the California Constitution sections cited set forth the intent that the State prevent the waste and unreasonable use of water and that the State Water Resources Control Board (State Water Board) has broad authority to control and condition water use. The Regional Water Board also agrees that increasing the use of recycled water is important. The State and Regional Water Boards share independent yet overlapping duties in the regulation of recycled water. The Regional Water Board is authorized to issue NPDES permits and waste discharge requirements and prescribe water reclamation requirements for individual water recycling projects and to issue master water recycling permits. See, e.g., California Water Code §§ 13263, 13377, 13523, and 13523.1. The State Water Board is directly responsible for carrying out the constitutional and statutory mandates to prevent the unreasonable use and waste of all water in California, and for administering public trust resources on behalf of the people of the State. See, e.g., California Water Code §§ 275, 1831– 1836.	

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		Angeles to address its concerns specific to Hyperion.	The commenter asserts that issuing the NPDES permit without a waste and unreasonable use analysis is contrary to law. The Regional Board disagrees. As further discussed below, the State Water Board has authority to enforce the laws to prevent waste and unreasonable use of water. The Regional Water Board has no mandatory legal duty or obligation to make waste and unreasonable use findings as a condition of issuing NPDES permits. The California Constitution and California Water Code enunciate the State's core water policy that water users may not unreasonably use or waste water. (See, e.g., Cal. Const., art. X, § 2; Wat. Code, § 100.) The Legislature through Water Code section 275 authorized the State Water Board to take actions to enforce those core principles. Water Code section 275 provides, in full: "The department [of water resources] and the board [State Water Board] shall take all appropriate proceedings or actions before executive, legislative, or judicial agencies to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water in this state." The State Water Board may take, and has taken, "appropriate actions," including: • Initiating enforcement action against water right holders who the State Board has determined are unreasonably using water. (Imperial Irrigation District v. State Water Resources Control Bd. (1986) 186 Cal.App.3d 1160.)	

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			• Adopting regulations to prohibit categories of unreasonable uses of water. (Light v. State Water Resources Control Bd. (2014) 226 Cal.App.4th 1463, 1482-1483.) • Denying applications to divert surface waters. (Central Delta Water Agency v. State Water Resources Control Bd. (2004) 124 Cal.App.4th 245.) In addition, Water Code section 275 does not create a mandatory duty of a regional board to prevent the waste or unreasonable use of water. In 2009, the State Water Board adopted Resolution 2009-0011, Adoption of a Policy for Water Quality Control for Recycled Water (Recycled Water Policy) (Revised January 22, 2013, effective April 25, 2013.) (Recycled Water Policy or Policy). The Recycled Water Policy sets forth the duties with respect to recycled water of the State Water Board, the Regional Water Boards, the California Department of Public Health (now, the Division of Drinking Water (DDW) within the State Water Board for those duties related to drinking water), the California Department of Water Resources, and the California Public Utilities Commission. As summarized in the Policy, the State Water Board's duties for recycled water projects include general oversight, review of regional water board permitting practices, and leading efforts to meet the recycled water use goals set forth in the Policy. The Regional Water Boards' duties for recycled water include protection of surface and groundwater resources and the issuance of permits that implement DDW recommendations,	

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			and the Recycled Water Policy, and other Basin Plan requirements. The Policy also directs the Regional Water Boards to use their authority to encourage the use of recycled water. The Recycled Water Policy also declares that pursuant to Water Code section 13550 et seq., "it is a waste and unreasonable use of water for water agencies not to use recycled water when recycled water of adequate quality is available and is not being put to beneficial use, subject to the established conditions established in section 13550 et seq." Further, the Policy states that the State Water Board shall exercise its authority pursuant to Water Code section 275 to the fullest extent policy to enforce the use of recycled water. Section 13550 authorizes the State Water Board to determine whether the use of potable water for nonpotable use is a waste and unreasonable use based on specific criteria. Contrary to the comment, the Legislature has not defined Los Angeles-Glendale WRP's discharge as a waste and unreasonable use of water. The State Water Board, not the Regional Water Board, would need to make such a determination after consideration of the criteria in section 13550. Section 13550 sets forth the authority of the State Water Board, not the Regional Water Boards, and sets forth requirements that apply to water agencies. The proposed Order is consistent with the applicable law and the Recycled Water Policy. The proposed Order addresses the proper treatment of wastewater, and is consistent with the Recycled Water Policy because it sets forth requirements, including effluent limitations and prohibitions to protect surface and groundwater	

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			resources, and encourages the use of recycled water that in turn results in a reduction in wasted water. While the Regional Water Board may encourage recycling, it may not order the discharger to recycle a certain quantity of water in an NPDES permit. The Order encourages recycling by including a requirement that the permittee conduct a feasibility study concerning recycling and make a report to the Regional Board.	
LA Water-keeper 6	Public Participation	The discussion of public participation is quite confusing, repeatedly referring to future events in the past tense. (See, for example, Glendale Tentative page 143 of 150.) It is also unclear whether the Regional Board will consider the record to be "open" on March 2, should members of the public have additional concerns and wish to raise such issues at the hearing.	The tentative draft section IX, Public Participation indicates that; *Interested persons were invited to attend. At the public hearing, the Regional Water Board heard testimony pertinent to the discharge, WDRs, and permit. For accuracy of the record, important testimony was requested in writing.* The tentative language is in the past tense because once the permit is adopted, it will be accurate. The public notice for this matter stated that written comments or testimony would be accepted until 5:00 pm on February 6, 2017. The Regional Board will not accept additional written comments or evidence as set forth in California Code of Regulations title 23, section 648.4. Interested persons may make oral comments at the hearing, subject to time limits imposed by the Board Chair, but additional written comments will generally not be accepted.	None necessary.

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LA Water-keeper 7	Appreciate Opportunity to Comment	LAW thanks you for the opportunity to comment on the important Tentative WDRs. The permit decisions made now will have important ramifications for the Los Angeles River and for realizing the potential of the Central Groundwater Basin to provide water for the region.	Thank you for commenting on this tentative NPDES permit.	
Comments received from Southern California Alliance of Publicly Owned Treatment Works (SCAP) on February 6, 2017				
SCAP 1a	Oppose Chronic Toxicity Limitations	SCAP opposes the adoption of any permit that contains chronic toxicity requirements which they believe are unlawful and violate federal and state law. The WRP permits proposed for adoption on March 2nd continue to contain effluent limitations, monitoring requirements, and compliance determinations for chronic toxicity that violate both federal regulatory requirements and binding State Water Board precedent applicable to the Regional Board.	Refer to response to Burbank Comments 10, 11, and 12 above. The Burbank WRP has final effluent limitations for chronic toxicity because it has reasonable potential to cause or contribute to chronic toxicity in the receiving waters. Section II.D. of the Fact Sheet explains that the facility has exceeded the 1 TUc trigger contained in Order 2012 and conducted a Toxicity Investigation Evaluation (TIE), but was unable to determine the cause of toxicity. Thus, the permit implements 40 CFR 122.44(d)(1)(v). Section 4 of the SIP contains toxicity control provisions, including the following on page 30: "A chronic toxicity effluent limitation is required in permits for all discharges that will cause, have reasonable potential to cause, or contribute to chronic toxicity in receiving waters." The chronic toxicity limitations are not unlawful and are authorized by the SIP and NPDES regulations.	None necessary.

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SCAP 1b	Monitoring based on 40 CFR 136	The Burbank WRP tentative permit, as proposed, fails to include monitoring based on 40 C.F.R. Part 136 methods. Under federal regulations, 40 C.F.R. §122.41(j)(4) and §122.44(i), monitoring must be conducted using these promulgated methods unless another method is required under Subchapters N or O. In the case of pollutants where there are no approved methods under 40 C.F.R. Part 136 or Subchapters N or O, monitoring must be conducted according to a test procedure specified in the permit for such pollutants. Monitoring methods for compliance determinations for chronic toxicity are included in 40 C.F.R., Part 136, but instead, the tentative permit contains unlawful and unapproved toxicity requirements, not contained in the federal regulations including:	Refer to response to Burbank Comment 10 above.	None necessary.
SCAP 1c	Concern about recycled water appeal	SCAP considers the use of the TST null hypothesis as unlawful because the recycled water produced by the WRP is presumed toxic, and must be disproved. They are concerned that this presumption may make recycled water reuse less attractive in a time when water reuse is vital.	Refer to response to Burbank Comment 11 above. The demand for recycled water is high, especially during the drought and as a result of water conservation efforts. There is less recycled water available for distribution in some watersheds. For example, in the San Gabriel River watershed, one producer of recycled water has rejected a groundwater recharge project because it does not have extra water for additional projects. This increase in demand has occurred subsequent to the Regional Water Board's use of TST in permits.	None necessary.
SCAP 1d	PMSD and Concentration response curves	SCAP considers use of the Test of Significant Toxicity (TST) statistical procedure as unapproved and unlawful, because it only compares 100% recycled water to a control, without the use and analysis of a multi-concentration response curves and the Percent Minimum Significant Difference (PMSD).	Refer to response to Burbank Comment 10 above. USEPA's Method Guidance addressing concentration-response evaluations, states that an "evaluation of the concentration-response relationship generated for each sample is an important part of the data review process that should not be overlooked." This guidance was developed in 2002, well before development of	None necessary.

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			the TST statistical approach. The guidance assumes that either NOEC-LOEC hypothesis testing or a point estimation analysis will be used to evaluate multi-concentration WET test data. In that circumstance, evaluation of the concentration-response relationship is important to determine whether the assumptions underlying these statistical approaches are reflected in the data. As previously discussed, these same assumptions are not relied upon by the TST statistical approach. A WET test is validated by reviewing the test acceptability criteria and quality assurance/quality control (QA/QC) measures, such as: • Performing and evaluating reference toxicant tests. • Evaluating various test condition components, such as water quality measurements (temperature, pH, DO, light intensity, etc.) to ensure that they are within the typically accepted range. • Examining effluent sampling and handling. • Plotting control charts to track the lab's control performance and reference toxicant performance over time.	
SCAP 1e	Chronic toxicity Limitations	Use of Pass/Fail effluent limits also not prescribed by the promulgated methods, and directly contrary to precedential State Water Board orders *directed at this Regional Board* to not use numeric effluent limits, and to instead use triggers for additional monitoring to confirm the existence of toxicity, and to address the underlying cause of toxicity. *See* SWRCB Order Nos. 2003-0012 and 2003-0013. This mandate remains in place until the State Board adopts a new policy on how to craft permit requirements for chronic toxicity.	Refer to Response to Burbank Comment 12 above.	None necessary.

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SCAP 1f	Alternate Test Procedure (ATP)	These proposed permit requirements all represent unpermitted and unauthorized modifications to the approved regulatory test methods for determining chronic toxicity contained in the 2002 Methods formally adopted by USEPA in 40 C.F.R. Part 136. When this Regional Board initially imposed the TST-related requirements, SCAP sued USEPA over their approval of an at that time approved Alternate Test Procedure (ATP) in California allowing these modifications. As a result of that limitation, USEPA withdrew the ATP, making use of the TST-related requirements unlawful. These requirements also violated the Los Angeles Region's Basin Plan, which requires effluent limits for the constituents causing toxicity, not limits for chronic toxicity. For these reasons, the currently proposed chronic toxicity requirements should be removed from the WRPs' permits.	The Order is consistent with the letter dated February 11, 2015, from USEPA to the State Water Resources Control Board withdrawing approval of the alternate test procedure using a two-concentration test design. As written, the Order requires the test methods described in *Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms* (October 2002) (EPA-821-R-02-013), including a multi-concentration test design, when required. Use of the TST was not deemed unlawful when USEPA withdrew its ATP. What was discontinued was the sole use of a two-concentration test design for NPDES effluents evaluated for chronic toxicity using some 2002 WET methods.	None necessary.
SCAP 2a	Pending SCAP petition& lawsuits	SCAP has appealed other NPDES permits from this region and has filed another suit against USEPA for using and approving of the use of TST-related requirements. The Regional Board should abstain from using these requirements until all of these appeals and challenges have been resolved. Otherwise, Regional Board staff resources will be wasted if the permits all need to be revised later.	The Burbank Order is consistent with other NPDES permits adopted for POTWs by this Regional Water Board. Section VI.C.1.k contains a reopener provision which would allow for the permit to be reopened and modified to revise any and all of the chronic toxicity testing provisions and effluent limitations, to the extent necessary, to be consistent with any Toxicity Plan that is subsequently adopted by the State Water Board promptly after USEPA approval of such Plan.	None necessary.
SCAP 2b	PBELs	Unlawful Performance Based Effluent Limitations. Requiring some dischargers to meet performance based effluent limits (PBELs) well below the scientifically derived and protective water quality standards, and placing these dischargers at enforcement risk because they routinely perform *better than* standards, creates perverse incentives not to have better effluent quality, and also raises equal protection issues since dischargers in the Los Angeles region are penalized much more severely than a discharger with the exact same effluent	Refer to Response to Burbank Comments 2, 3, 5, 6, and 8 above. Similarly, the permits may be reopened following resolution of any pending petition or lawsuit, as appropriate.	None necessary

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		quality elsewhere in the State (or in the other 49 states for that matter). This discrepancy must be recognized and corrected by making the proposed PBELs into performance goals, and calculating water quality based effluent limits for ammonia and copper (if reasonable potential exists) based on the TMDL wasteload allocations and the site specific objectives (SSOs) adopted by this Regional Board as being protective along with a margin of safety. SCAP also incorporates by reference the comments of Burbank on this issue, and respectfully requests that the permits not be adopted as proposed.		
Comments received from United States Environmental Protection Agency (USEPA) on February 6, 2017				
USEPA 1	Agree with RPA & Limitations for Ammonia & Copper1	<u>Water Quality-based Effluent Limits</u> We agree with the reasonable potential determinations and proposed effluent limits for non-TMDL conventional, non-conventional and toxic pollutants. As with the previous permits and the U.S. EPA-approved copper and ammonia-nitrogen TMDL provisions for these POTWs, we support the proposed water quality-based effluent limits (WQBELs) for copper and ammonia-nitrogen. The fact sheets document how, during this permit term, the proposed WQBELs for copper and ammonia-nitrogen will plainly and clearly maintain and improve water quality in these reaches of the Los Angeles River watershed by protecting water quality standards (aquatic life objectives and anti-degradation) both during wet weather periods and when in-stream flows are dominated by effluent discharges from these POTWs. In conjunction, we believe that the anti-backsliding and anti-degradation analyses routinely conducted by permit writers during NPDES permit reissuance gives the Regional Water Board flexibility to consider additional information that may lead to less stringent WQBELs for these TMDL pollutants in subsequent permits.	The Regional Water Board staff thank USEPA for supporting this permit.	None necessary.