# Responsiveness Summary – Trash TMDL for the Los Angeles River Watershed
# Comment Due Date: August 21, 2006

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| 1. Rutan and Tucker – representing Cities of Arcadia, Baldwin Park, Bellflower, Cerritos, Commerce, Diamond Bar, Downey, Irwindale, Lawndale, Monrovia, Montebello, Monterey Park, Pico Rivera, Rosemead, San Gabriel, Santa Fe Springs, Sierra Madre, Signal Hill, South Pasadena, Vernon, West Covina and Whittier and the ad hoc group of Cities known as the Coalition for Practical Regulation |
| 2. Downey Brand Attorneys LLP - representing the City of Los Angeles |
| 3. Los Angeles Unified School District (LAUSD) |
| 4. City of San Gabriel |
| 5. City of Commerce |
| 6. Southern California Association of Governments (SCAG) |
| 7. Friends of the Los Angeles River (FOLAR) |
| 8. Heal the Bay (HTB) & Santa Monica BayKeeper (SMBK) |
| 9. California Department of Transportation (CalTrans) |
| 10. Long Beach Unified School District (LBUSD) |
| 11. Polystyrene Packaging Council (PPC) |
| 12. City of Signal Hill |
| 13. City of Signal Hill Police Department |
| 14. County of Los Angeles Sheriff's Department |
| 15. County Sanitation Districts of Los Angeles County |
| 16. City of Downey |
| 17. City of Arcadia |
| 18. Richards, Watson, & Gershon - representing Cities of Hidden Hills, Monrovia, San Fernando, San Marino, South El Monte |
| 19. City of Downey, Police Department |
| ***20. City of South Pasadena (Received after comment deadline)*** |
| ***21. City of Temple City (Received after comment deadline)*** |

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| 1.1 | Rutan & Tucker | 8/21/06 | The Total Maximum Daily Load for trash for the Los Angeles River ("TMDL") is being proposed after the initial TMDL (originally adopted by the Regional Board in January of 2001, revised in September 2001 and finally approved by the State Board in February of 2002) was voided because of the Regional Board's failure to comply with the California Environmental Quality Act ("CEQA"). The Court of Appeal invalidated the prior trash TMDL because of the Board's failure to include "an analysis of the reasonably foreseeable impacts of construction and maintenance of pollution control devices or mitigation measures," and because, "as a matter of policy, in CEQA cases a public agency must explain the reasons for its actions to afford the public and other agencies a meaningful opportunity to participate in the environmental review process, and to hold it accountable for its actions." (*City of Arcadia, et al. v. State Water Resources Control Board, et al.* (2006) 135 Cal.App.4th 1392, 1425-26 (see Exh. "1" hereto).) | Comment noted. |
| 1.2 | | | As such, the Court of Appeal determined that the Board's CEQA analysis was "inadequate" and proceeded to remand the TMDL back down to the Boards "for the preparation of an EIR [Environmental Impact Report] or tiered EIR, or functional equivalent," finding that the trial court "correctly invalidated the trash TMDL on CEQA grounds." (*Id.* at 1426.) (Also see Exh. "2" hereto, which is a copy of the trial court's preemptory writ of mandate, judgment and Statement of Decision, wherein in the Writ of Mandate, the trial court "DIRECTED AND COMMANDED" that the Board suspend all activities relating to the TMDL:<br>"[T]hat could result in any change or alteration to the physical environment until you have considered the Los Angeles River | Comment noted. |

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| | | | Trash TMDL and brought it into compliance with the requirements of the California Environmental Quality Act ("CEQA") through the preparation of environmental review document that is the functional equivalent to an environmental impact report, in accordance with law." (Exh. "2," Writ of Mandate, p. 2-3.) | |
| 1.3 | | | After four years of litigation, concluding with the Court invalidating the TMDL specifically because of the Board's failure to prepare the functional equivalent of an EIR, the Regional Board appears unwilling to comply with the Writ of Mandate issued by the trial court and to comply with the Court of Appeals' decision, i.e., the Board is now seeking to adopt a TMDL without first preparing the functional equivalent of an EIR. Instead, the Board has chosen to proceed with the same deficient level of environmental analysis it conducted with the initial TMDL, limiting its analysis to a checklist and the trash TMDL Staff Report, rather than preparing an EIR or its functional equivalent, in spite of the fact the Court of Appeal expressly found that "an EIR is required since the trash TMDL itself presents substantial evidence of a fair argument that significant environmental impacts may occur." (*Id.* at 424.) | Staff disagrees. The Court of Appeal determined that the analysis undertaken with respect to construction and maintenance of pollution control devices or mitigation measures was inadequate under the dictates of CEQA. The Cities' reference to "an EIR or its functional equivalent" amount to a form-over-substance argument about the title, rather than the content, of the environmental documents. While the Court of Appeal, and previously the Regional Board, used the term "functional equivalent" as a nickname and shorthand reference to the requirements of Public Resources Code section 21080.5, in fact, the term "functional equivalent" is a term not derived from CEQA, but from its federal counterpart the National Environmental Policy Act (NEPA). In fact, the statute authorizing CEQA's "certified regulatory programs", Public Resources Code § 21080.5, has no federal analogue, and the federal concept of "functional equivalence" |

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| | | | | under federal authority does not dictate the scope of an agency's obligations under section 21080.5. (See *Guide to the California Environmental Quality Act* (10th Ed., 1999) Remy, Thomas, Moose, Manley, p. 146.) In response to the lawsuit that resulted in voiding and invalidating the first Trash TMDL, Regional Board staff has determined to be more precise with respect to the Regional Board's CEQA obligations, including by using the appropriate terminology. The term "substitute environmental documents" is derived from title 14, section 15252 of the California Code of Regulations, which is found in Article 17, relating to certified state regulatory programs. The Regional Board's CEQA obligations with respect to the Substitute Documents that must be submitted are set forth in 23 Cal Code Regs. § 3775 et seq. The analysis with respect to construction and maintenance of pollution control devices or mitigation measures is clearly more detailed and substantive than in the previous CEQA documents for the previous TMDL, and plainly complies with Public Resources Code sections 21080.5 and 21159. |
| 1.4 | | | Case law, moreover, is clear that: "to facilitate CEQA's informational role, the EIR must contain facts and analysis, not | Comment noted. |

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| | | | just the agency's bare conclusions or opinions. An EIR must include detail sufficient to enable those who do not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." (*Preservation Action Council v. City of San Jose* (August 7, 2006) 2006 DJ DAR 10233, 10237 ("*Preservation Action Council*"), citing *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 404-405 ("*Laurel Heights*").) | |
| 1.5 | | | In addition to proceeding with the same deficient level of environmental analysis, the Board has compounded its deficient CEQA analysis by proposing an accelerated compliance period over the compliance period provided for in the prior 2001 TMDL, i.e., the Board has required a 30% reduction in trash after just one year, rather than a 10% reduction after three years, as provided for in the initial TMDL. Yet, the environmental impacts from this accelerated compliance have not been analyzed. | Aside from the title of the documents, the commenter has not explained how the analysis is deficient. This TMDL is a new project. The baseline for the environmental analysis of this project is not the previous invalidated project, but current conditions. The commenter has not explained what impacts associated with the proposed compliance period have not been analyzed. |
| 1.6 | | | As discussed herein, and in comments submitted by other interested stakeholders, this TMDL is again flawed because the Board has not prepared the functional equivalent of an EIR, as required by the express terms of the Writ of Mandate and the Court of Appeal decision. | See response to comment 1.3. |
| 1.7 | | | The Board's CEQA analysis also fails to include a consideration of foreseeable alternatives. For example, it fails to include, rather than the deemed compliant full capture alternative, a deemed compliant catch basin alternative, i.e., allowing the municipalities to comply with the "zero" TMDL by installing catch basins inserts or debris dams and/or excluders throughout the watershed, combined with weekly street sweeping. (See Exh. "3," Report by Richard Watson and Associates entitled | The substitute documents do include an analysis of reasonably foreseeable alternative means of compliance. The substitute documents do analyze the use of catch basins as a means of compliance. The Commenter has failed to explain how not specifying circumstances under which use of catch |

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| | | | "Analysis of the Implementation Component of Draft Trash Total Maximum Daily Loads for the Los Angeles River Watershed," (hereinafter "Implementation Report")) The deemed compliant catch basin alternative would attain "*most of the basic objectives of the project*" but would avoid or substantially lessen many of the significant environmental affects of the project. (*Id.*; also see *Preservation Action Council*, *supra,* 2006 DJ DAR 10233, 10238.) As such, the Board is obligated to consider feasible alternatives to the lone means of complying with the TMDL as recently written, i.e., the deemed compliant full capture alternative. | basins could be deemed to comply with the final waste load allocations renders the CEQA analysis with respect to the project and its means of compliance inadequate under section 21159. The Commenter's argument is not a CEQA argument, but rather a disagreement with the Regional Board's regulatory discretion.<br><br>Regional Board staff disagree with the finding in Exhibit 3 that the TMDL did not consider catch basins and street sweeping as reasonably foreseeable compliance measures. The analysis presented in Exhibit 3 is authored by a representative of Coalition for Practical Regulation. |
| 1.8 | | | Second, in addition to failing to prepare the functional equivalent of an EIR, the Board's actions in reissuing the TMDL are contrary to law, as the Board has failed to revise the TMDL or its environmental analysis to account for the significant amount of data developed over the past five years on the costs, environmental impacts, effectiveness of the various BMPs, including on the limited application of full capture devices versus other feasible alternatives. | The commenter has not shown how adopting a TMDL that is substantially similar to the previous now invalidated TMDL is contrary to law. The commenter has failed to set forth what relevant data was not considered. To the extent the commenter has relevant data that is not in the administrative record, the commenter should have submitted it during the CEQA scoping meeting, or at some point, to the Regional Board for consideration. |
| 1.9 | | | This failure of the Board to update the analysis in the TMDL, in spite of the wealth of data generated since the initial TMDL was | See response to comment 1.8. The Commenter's allegation that the CEQA |

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| | | | adopted by the Board in 2001, combined with the refusal of the Board to conduct a meaningful analysis of the environmental impacts of the TMDL and its break-neck nine (9) day period to generate its revised CEQA documentation after the scoping session, and the accelerated compliance schedule incorporated into the new TMDL, all show the Regional Board is pre-committed to approving this project. Such pre-committed action to a project is an abuse of discretion and contrary to law. (See *Redevelopment Agency of the City of Huntington Park v. Norm Slauson* (1985) 173 Cal.App.3d 1121 [holding that a pre-commitment to a project voids purported legislative discretion].) | documents were prepared in nine days is not accurate. The judgment invalidating the Trash TMDL was issued on December 26, 2003, two and a half years has passed since that time and as reflected in the substitute documents, staff's analysis has become dramatically more robust, precise, and responsive to the statutory and regulatory dictates. Even if the substitute documents had been generated in nine days, that fact would not be relevant to their legal adequacy. There is no statutory time limit for developing environmental documents—only for circulating them. In fact, during the scoping meeting, commenters presented little new data, information, or considerations that substantially affected the CEQA analysis. In fact, most of the information submitted duplicated comments were raised five years ago before the first Trash TMDL was adopted. Nothing in the record indicates a precommittment by the Regional Board to approve the project. Staff's recommendation is merely staff's recommendation, and not an indication of what the Regional Board may or may not do. Notably, however, the Court of Appeal affirmed the Trash |

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| | | | | TMDL against all of the challenges, except as related to CEQA. Therefore, unless the new CEQA analysis presents the Board with a reason to undertake a different approach to the TMDL, the Regional Board is not obligated to "rewrite" the TMDL. Of course, it would be well within the Regional Board's discretion to do so if it so chooses. This is a new project, being considered anew by the Regional Board. |
| 1.10 | | | Third, the TMDL is defective as the Board has not complied with the State law requirement of only adopting orders, regulations and, in this case, a numeric water quality objective, which "***could reasonably be achieved***" (Water Code § 13241(c)), and which are consistent with State policy to regulate water quality "to attain the highest water quality ***which is reasonable***, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible." (Water Code § 13000.) | The Court of Appeal rejected claims that the previous Trash TMDL violated section 13241 or 13000. (*Arcadia* 135 Cal.App.4th 1392, 1415-18.) A TMDL is not a water quality objective. (See Memorandum from Staff Counsel Michael Levy to Ken Harris, dated July 12, 2002, "*The Distinction Between a TMDL's Numeric Targets and Water Quality Standards.*") |
| 1.11 | | | Fourth, the Regional Board's "economic" analysis is flawed and understated (e.g., it has not been updated in the last five years to address the actual experience of Caltrans and various municipalities in installing full capture devices and other methods of compliance with the voided TMDL). Accordingly, the "economic" analysis required by Water Code sections 13241(d) and 13000, has not been performed. Neither has the economic analysis required under CEQA, and specifically, Public Resources Code section 21159, been conducted. | The economic analysis presented in the staff report is not flawed or outdated. The economic analysis is based on the area of the Los Angeles River watershed, an estimate of the number of catch basin inserts, vortex separators and end of pipe nets required to implement the TMDL and unit costs for the number of catch basins in the Los Angeles River watershed, and the unit |

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| | | | | costs for the device. This is a standard cost estimating protocol used widely in the engineering and construction industries, and the unit. The assumptions used to estimate watershed area and the capacity and costs for catch basin inserts, vortex separators, and trash nets are reasonable and the cost estimate is valid. See Response to Comment 1.10. |
| 1.12 | | | For example, the proposed deemed compliant full capture alternative is the only means of achieving compliance with the strict "zero" TMDL. Yet, evidence developed since the initial TMDL was adopted shows that the installation of full capture devices throughout the entire watershed to comply with the TMDL is not economically feasible, and thus, unless the TMDL is modified to allow other methods of compliance, for example, for full compliance through the installation of catch basin inserts or debris dams, and/or excludes, the TMDL is not "feasible" in accordance with the requirements of CEQA. (See 14 C.C.R. 15364 ["feasible means capable of being accomplished in a successful manner within a reasonable period of time, taking into account ***economic***, environmental, legal, social and technological factors."] Emphasis added.) | As noted by the Court of Appeal, VSS systems are not the only systems that the Regional Board has or may deem to meet the requirements of full capture. The TMDL has been modified to clarify that the Regional Board will consider subsequent proposals, if and when they are presented, to determine whether they qualify for certification as a "full capture" system.<br><br>The staff report specifies key land use sites such as urban, high-density residential and low-density residential sites. Essentially all of the areas served by the LA River trash TMDL are served by a municipal storm drain system. This system consists of capture catch basins, culverts, underground pipes and above ground channels that collect urban runoff and stormwater and convey that stormwater and runoff to |

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| | | | | the Los Angeles River through more than 300 outfalls.<br><br>The methods described and analyzed above can be placed within the stormdrain system at different places to achieve the appropriate method of compliance. To specify the exact location at a program-level analysis is completely speculative at this time. Project level analyses in which the exact level is specified is the only meaningful venue for location analyses.<br><br>However, the range of sites available to the project level designers due to the inherent flexibility and range of the foreseeable methods are such that impacts can be mitigated by installing devices in areas in which resources will not be impacted. Plainly, the implied assertion that devices must be installed into each and every storm water inlet is incorrect. |
| 1.13 | | | In a recent report dated March, 2006 entitled "Market- Strategies for Reducing Trash Loading to Los Angeles Area Watersheds – an Initial Assessment, prepared by the Coalition for Environmental Protection, Restoration and Development and funded in part by the United States Environmental Protection Agency (Grant ID No. XP-97979001-0) and other organizations (attached hereto as Exhibit "4" – hereafter "Strategies Study for Reducing Trash"), the authors of the study concluded that the | The report dated March 2006 is based on an assumption of vortex separation systems as the key means of compliance with the full capture device definition. The Regional Board has also certified gross mass separation devices and catch basin inserts and trash nets. These costs range from ½ to 1/10 of the VSS |

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| | | | "full capture device installation may be several times more expensive than assumed in the [2001] TMDLs." (Exh. "4," p. I-3.) In the Strategies Study for Reducing Trash report, the authors concluded that the installation of full capture devices approved by the Board throughout the watershed would actually cost "$5 billion dollars in capital costs" and estimated that the cost for full capture range from approximately "five to 22 times" higher than estimated in the [LA River and Ballona Creek trash] TMDLs." (Exh. "4," p. II-25.) | systems. Trash removal devices implemented by municipalities in compliance with the previous trash TMDL have proven to be more cost effective. For example, the City of Glendale, installed continuous broom brushes along the upper edge of storm drain inlets to prevent trash from entering it. The estimated cost is approximately $800 per catch basin. |
| 1.14 | | | The deemed compliant full capture alternative is, moreover, not a "feasible" alternative as evidence exists to show that it is not practically or economically feasible. For example, in a report entitled "Municipal Best Management Practices for Controlling Trash and Debris in Storm Water and Urban Runoff" largely funded by the State water Resources Control Board (Exh. "5" – hereafter "Municipal BMPs Trash Report"), the full capture devices are evaluated and described as having "limited application" and further that they should "only be considered case-by-case for smaller size storm drains and high trash generation areas due to their high cost and some operational considerations." (Exh. "5," p. 19.) | Staff agree that implementing agencies should select the most effective combination of full capture devices to address site specific conditions and note that the Regional Board has included a full capture certification procedure that municipalities can pursue in compliance with the TMDL. Staff notes that three full capture certifications have been issued by the Regional Board. |
| 1.15 | | | The Municipal BMPs Trash Report further refers to a City of Los Angeles pilot study reflected in a February 28, 2005 presentation entitled "Trash TMDL Implementation Plan" by the City of Los Angeles (Exh. "6" – hereafter referred to as "City Trash TMDL Implementation Plan.") In the City "Trash TMDL Implementation Plan" the City of Los Angeles estimated that the full capture cost for the City of Los Angeles alone (which comprises approximately one-half of the LA River watershed), | Comment noted. |

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| | | | would be $836,373,774 for the first 10 years. (Exh. "6.") The operation and maintenance cost estimated by the City of Los Angeles and the Trash TMDL Implementation Plan for the first 10 years for full capture devices was $23.7 million, which presumably is based on the assumption that at any given time one-half of the required units for the City of Los Angeles would have been installed, bringing the annual total at approximately $48 million for one-half of the watershed. Thus, extrapolating out the City of Los Angeles' estimated operation and maintenance cost the entire watershed would result in approximately $96 million in costs on an annual basis once all full capture devices are installed. | |
| 1.16 | | | The Regional Board's calculations for operation and maintenance costs ranged from $7.4 million annually to $148 million annually and the O&M costs estimated in the Strategies Study for Reducing Trash report are estimated at $1 billion per year which appears to be a typographical error and it is likely $100 million per year. | As stated in the response to comment 1.13, the Strategies Study for Reducing Trash report assumes vortex separation systems will be the key means of compliance. The economic analysis presented in the staff report is based on reasonable assumptions and the estimates of operation and maintenance costs are valid. |
| 1.17 | | | In reviewing all the specific economic data prepared in connection with the Los Angeles River trash TMDL deemed compliant full capture alternative, the capital cost ranged from $1.7 billion to $5 billion with annual maintenance costs of approximately $100 million per year. None of these costs include expenditures for land acquisition costs. | Comment noted. However, Regional Board staff finds that most implementation costs are focused on the storm sewer system. Expenditures for land acquisition is a minor cost of implementation for cost estimating purposes. Furthermore, trash removal devices implemented by municipalities in compliance with the previous trash TMDL have proven to be more cost |

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| | | | | effective. For example, the City of Glendale, installed continuous broom brushes along the upper edge of storm drain inlets to prevent trash from entering it. The estimated cost is approximately $800 per catch basin. This demonstrates that the costs in the staff report may be overestimated. |
| 1.18 | | | Other studies looking at the basin in general and the cumulative costs of complying with water quality standards consistently show the cumulative cost for requiring municipalities to strictly comply with water quality standards in the tens of billions if not hundreds of billions of dollars. For example, a study prepared by the University of Southern California, entitled "An Economic Impact Evaluation of Proposed Storm Water Treatment for Los Angeles County," dated November 2002, concluded that the cost of strictly complying with all water quality standards within the Region could reach ***$283.9 billion*** over 20 years, (Exh. "7," hereinafter "USC Study" p. 1), and similar studies prepared by the California Department of Transportation (Caltrans) show that strict compliance with water quality standards, including numeric TMDLs, could cost in excess of ***$53 billion***. (See Exhs. "8," "9" and "10.") Also see exhibits "37", "38", "13", and "39". All of these studies show that the Board's economic analysis is in the revised TMDL, which is unchanged from the 2001 analysis, is deficient. | The USC report and other cited studies are not applicable to the economic considerations for the Los Angeles River trash TMDL because the trash TMDL does not require "strictly complying with <u>all</u> water quality standards". First, the trash TMDL requires only control of trash that is greater than 5 mm in size. Second, the trash TMDL certifies compliance if "full capture systems" are implemented. This designation has been granted to devices other than vortex separation systems. Thus, these reports are not an accurate representation of costs for compliance with the trash TMDL. Further, in estimating public resources that would be diverted through adoption of the TMDL, the USC report uses a proprietary model, which is not fully described in the report.<br><br>The economic analysis presented in the staff report is valid. The economic |

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| | | | | analysis is based on the area of the Los Angeles River watershed, an estimate of number of catch basin inserts, vortex separators and end of pipe nets required to implement the TMDL and unit costs for the number of catch basins in the Los Angeles River watershed, and the unit costs for the device. This is a standard cost estimating protocol used widely in the engineering and construction industries, and the unit. The assumptions used to estimate watershed area and the capacity and costs for catch basin inserts, vortex separators, and trash nets are reasonable and the cost estimate is valid. |
| 1.19 | | | Fifth, the Board failed to utilize a "translator" in establishing the TMDL, in accordance with EPA's "Guidance for Developing TMDLs in California, EPA Region 9, January 7, 2000 (see Exh. "12," hereafter "EPA Guidance Memo"); | Nothing in the 29 page non-binding Guidance requires the Regional Board to utilize a translator when establishing a TMDL for trash. |
| 1.20 | | | Sixth, the insistence of the Board in developing a TMDL for the LA River Estuary, which, in spite of the Board's representations in connection with the appeal of the prior Trash TMDL that it was simultaneously submitting a request to USEPA to list the Estuary, is still not listed on the State's 2002 303(d) list (the current 303(d) list). Nor is the Estuary even proposed for listing on the State's 2006 proposed 303(d) list. (See Exh. "11.") | The LA River Estuary was approved for listing by USEPA at the time it approved the LA River Trash TMDL, as noted by the Court of Appeal. Though listed as impaired, the Estuary does not appear on the 2002 303(d) list because at that time, the Water Boards did not list on the 303(d) list waters that were impaired, but for which TMDLs were already established. This approach was supported by the commenters during the |

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| | | | | 2002 303(d) list process. The Estuary was listed in a separate proceeding (during adoption of the Trash TMDL). Consistent with the subsequently-adopted 303(d) Listing Policy, the Estuary is proposed for designation on the 2005-2006 List. The Commenter is directed to page 106 of the Fact Sheet related to Region 4's proposed listings. (http://www.waterboards.ca.gov/tmdl/docs/303d_update/r4_v2.pdf) The commenter has not and cannot seriously contend that the Estuary is not impaired by trash. |
| 1.21 | | | Seventh, the revised trash TMDL is not suitable for calculation and the TMDL does not provide for a "daily" load for the municipalities to comply with. As such, the TMDL is contrary to the express requirements of the Clean Water Act. (See *Friends of the Earth, Inc. v. EPA, et al.* (DC Circuit 2006) 446 F. 3d 140.) | Comment noted, however, EPA determined that all pollutants are suitable for TMDL calculation. EPA affirmed that trash is included in "all pollutants" when it established its own trash TMDL, and when it approved California's. See *Cities of Arcadia v. Water Boards* (2006) 135 Cal.App.4th 1392, 1434. The decision in the *Friends* case is not yet final, and even if it stands, it only represents one Circuit. We our bound by 9th Circuit authorities. If and when EPA changes its regulations, the Water Boards will apply whatever regulations are existing at the time. |
| 1.22 | | | Eighth, the Board acted arbitrarily by failing to impose implementation measures on nonpoint sources, such as the | The Board has not acted yet. Staff has made proposals to the Regional Board |

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| | | | National Forest Service, as well as those State and federal facilities, universities, hospitals, school districts and other, to be issued phase II permits, thereby improperly increasing the burden on municipalities to comply. | that are under consideration. The Court of Appeal determined that the Regional Board need not impose implementation measures on nonpoint sources. (*Arcadia*, 135 Cal.App.4th at 1431.) |
| 1.23 | | | After nearly five years since the 2001 trash TMDL was adopted, apparently the Boards have taken no action to require any of the phase II entities to deal with their problem of trash in the Los Angeles River. | In the Arcadia case, commenters sued to set aside the TMDL, and obtained a court order barring the Regional Board from implementing the TMDL. Accordingly, no permits have been issued that implement it.<br><br>School districts are considered "non-traditional" Phase II MS4s under USEPA storm water regulations. The designation, permitting, and scheduling, of "non-traditional" MS4s is left to the discretion of the Regional Board based on its priorities. TMDL analyses show that storm drains operated by the City of Los Angeles and the County of Los Angeles, and Caltrans are the principle sources of trash to the Los Angeles River. Regional Board staff is aware of control measures educational institutions have implemented to reduce trash. This TMDL includes provisions for special studies to quantify the loads from small MS4s such as educational institutions, and includes a reconsideration of Waste Load Allocations at 50 % of the baseline |

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| | | | | WLA, at which time, WLAs for small MS4s could be developed based on the results fo these studies. The Regional Board is also contemplating designation of small MS4 facilities on a watershed basis based on TMDL priorities. In such a case, designated small MS4 facilities may be required to seek coverage under a small MS4 watershed general permit that could be developed for the Los Angeles River Watershed. |
| 1.24 | | | Ninth, the Board failed to fully and properly consider the impacts of the TMDL on "housing within the region". (See Water Code § 13241(e).) | See response to comment 1.10. |
| 1.25 | | | Tenth, the Board failed to perform a cost/benefit analysis in accordance with Water Code sections 13165, 13225 and 13267 for the various monitoring and studies required by the TMDL. | The Court of Appeal already determined that these sections do not apply until an order is actually issued pursuant to those sections. (*Arcadia*, 135 Cal.App.4th at 1413-15.) |
| 1.26 | | | Eleventh, the Board failed to base the TMDL on past, present or probable future uses of the Los Angeles River, rather than on "potential" uses. (Water Code § 13241(a).) | The TMDL is based upon beneficial uses that are identified in the Basin Plan. The Court of Appeal already determined that even if some of the designated uses were not appropriate, the Commenter has not made a showing that the TMDL would be any less stringent, and thus there is no prejudice. (*Arcadia*, 135 Cal.App.4th at 1432-33.) |
| 1.27 | | | Twelfth, the Board failed to determine how much trash is too much, i.e., the "Loading Capacity" of the Los Angeles River, as required by the federal regulations; and | Federal regulations do not require the Board to determine how much trash is too much. They require the Board to |

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| | | | | establish for the water body the total maximum daily load of the pollutant, considering seasonal variations and a margin of safety. The Court of Appeal already determined that the load of zero trash, as established in the previous trash TMDL, was not an abuse of the Regional Board's discretion, or arbitrary and capricious. (*Arcadia*, 135 Cal.App.4th at 1427-30.) The Court of Appeal specifically held that federal law does not require the Regional Board to conduct an assimilative (loading) capacity study before adopting the Trash TMDL. (Arcadia, 135 Cal.App.4th at 1411-12.)<br>Further, the Court held that the evidence amply supported the Regional Board's decision not to conduct an assimilative capacity study since most trash materials are undiluted by water, pose a danger to wildlife even in small amounts, and such a study would be difficult to conduct and of little value at the outset. (1412-13) |
| 1.28 | | | Thirteenth, the Board failed to fully consult with local agencies and to coordinate with other governmental agencies, such as the Southern California Association of Governments, as required by State and federal law. (See, e.g., Water Code §§ 13144 and 13240.) | During the last six years, the Regional Board has consulted with and carefully evaluated the recommendations of concerned federal, state, and local agencies. Nevertheless, the statutes do not require the Regional Board to |

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| | | | | abdicate its decision-making authority to those agencies. The Southern California Association of Governments was notified of the public hearings for this TMDL and submitted comments which are addressed in this matrix. The fact that the Regional Board may reach a different conclusion than some of them would otherwise prefer does not imply a failure to consider their concerns.<br><br>SCAG received the following notifications regarding this Trash TMDL:<br><br>July 25- Invitation to Colloquium<br>July 7- Notice of Public Hearing<br>July 7- Draft Resolution - Notice of Board Meeting<br>July 5- Availability of Agenda Item No. 8<br>June 16- Notice of CEQA Scoping Meeting<br>June 5- Availability of RTC & Tentative Resolution<br><br>Regional Board records showed that SCAG has been receiving electronic notifications of matters relating to the Trash TMDL since October 9, 2002. |

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| 1.29 | | | Accordingly, the Board has failed to comply with State and federal law in developing the revised trash TMDL, and has failed to comply with the Writ of Mandate and Court of Appeal decision wherein the courts required that the Board prepare an EIR or its functional equivalent. The Cities herein respectfully request that the Board not adopt the subject trash TMDL until it has complied with all applicable State and federal law, and the Writ of Mandate and Judgment, so as to avoid an additional four to five year delay in the TMDL implementation process. | Staff disagrees. See response to comments 1.1 through 1.28. |
| 1.30 | | | On June 8, 2006, the Regional Board adopted a resolution which set "aside the initial Los Angeles River Trash TMDL, and Resolution #01-013 which established it." (See Exh. "13," Regional Board Resolution No. 06-013, p. 3: also see Exh. "14", State Board Resolution setting aside 2001 Trash TMDL.) On June 28, 2006, the Regional Board held a "CEQA Scoping Meeting" which was noticed as a public session to "obtain input as to the scope and content of the environmental documents for a new Trash TMDL. (See Exh. "15," Notice of Scoping Meeting, p. 1 and Exh. "16," the Transcript of the Scoping Meeting.) Then, a mere nine (9) days after the Scoping Meeting, on July 7, the Regional Board released its new environmental checklist and Trash TMDL, seeking public comments on the revised Trash TMDL by August 21, 2006, and scheduling a public hearing on the adoption of the Revised Trash TMDL for September 14, 2006. | See response to comment 1.9. |
| 1.31 | | | Thus, in spite of four years of litigation, a Court Order requiring an EIR or its functional equivalent, and a published Court of Appeal decision confirming the need for an EIR, the Regional Board has proposed adopting an identical but accelerated TMDL | The TMDL itself was upheld but for inadequate CEQA analysis, which was the basis for invalidating it. The commenter has set forth no authority for |

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| | | | to that invalidated by the Courts, and proposes to do so without preparing an EIR, relying solely on its checklist, and without updating and providing any meaningful analysis of the feasibility of the various BMPs, particularly the full capture BMPs (in light of the new evidence developed over the past five years on the BMPs), or any meaningful analysis of these environmental impacts. | the claim that the Regional Board is required to modify key provisions of the TMDL, unless the compliant CEQA analysis causes the Regional Board to consider the project from a different environmental perspective. Staff believes that the new analysis, made in the context of the comments submitted throughout the process during the last several years, lends additional support for the approach in the proposed TMDL, and that no comments have raised significant environmental impacts that are not outweighed by the need to abate the trash problem in the Los Angeles River and Estuary. See response to comments 1.3, 1.5, 1.8, 1.9. |
| 1.32 | | | Moreover, despite the fact that five years have elapsed since the TMDL was originally developed, the Board has failed to conduct any new analysis of the desirability or feasibility of the TMDL, or to cite to or consider any of the significant amount of data gathered since the adoption of the original TMDL. | Comment noted. Staff have recalculated the baseline based on data provided by LACDPW and the staff report has been revised accordingly. The proposed CEQA analysis is based on new information provided by municipalities, Caltrans, and vendors on trash removal devices used to comply with the previous trash TMDL. |
| 1.33 | | | For example, a 2006 study largely funded by the State Water Resources Control Board entitled "Municipal Best Management Practices for Controlling Trash and Debris in Storm Water Urban Runoff," (hereafter "Municipal Trash BMPs Report") analyzed the performance of full capture devices and concluded that such devices have only limited application. Results of the City of Los | The 2006 study and the City of Los Angeles study focus on a single types of devices. The TMDL includes provisions for the EO to certify different types of devices as full capture. These types of devices can work in an integrated |

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| | | | Angeles pilot study indicate that full capture hydrodynamic separators, such as the CDS and Fresh Creek Technology systems, have ***limited application*** and should only be considered case by case for smaller size storm drains in high trash generation areas due to their high cost and some operational considerations. (Exh. "5," p. 19 [emph. added].) | fashion to achieve effective compliance with the TMDL consequently where one device may only have limited application, other devices may be highly effective. |
| 1.34 | | | Yet as municipalities are deemed to be in compliance with the TMDL only if they install such "full-capture" systems (and otherwise have no way of complying with the TMDL's impossible "zero" standard), the TMDL essentially mandates the use of these full capture systems throughout the watershed (see TMDL Staff Report, p. 29). Yet, real world experience with such full capture devices since the adoption of the original TMDL show them to have only "limited application." | The TMDL does not, and cannot, mandate the use of any capture system or any particular means of compliance. (See Wat. C. § 13360.) The Regional Board has already certified a variety of systems as meeting the "full capture" definition, and the Regional Board will continue to evaluate others as they are presented. The amendment has been modified to clarify this point. Municipalities are not required to comply with the Trash TMDL, but rather, permits that implement the TMDL's provisions. The Court of Appeal already determined that zero, as defined in the Trash TMDL, is not impossible. (*Arcadia*, 135 Cal.App.4$^{th}$ at 1427-28.) |
| 1.35 | | | In the Strategies for Reducing Trash Loading Report dated March 2006, the capital costs for installing these full capture devices throughout the watershed are estimated to be $5 billion over a ten year period, and the implementation costs to comply with the trash TMDLs for the LA River and Ballona Creek are estimated to range from approximately five to 22 times higher | The economic analysis presented in the staff report is valid. The economic analysis is based on the area of the Los Angeles River watershed, an estimate of number of catch basin inserts, vortex separators and end of pipe nets required |

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| | | | than the estimates provided by the Regional Board. Similarly, Exhibit "6," the City of Los Angeles' Trash TMDL Implementation Plan shows that the cost of full capture devices for the City of Los Angeles alone will be approximately $836 million, which extrapolated out would mean that the cost for full capture throughout the watershed just for the first 10 years would be in excess of $1.7 billion. Similarly, the County of Los Angeles has information which shows that the process of cleaning out full capture devices can take four plus hours and generate noise levels of 92.6 decibel levels. (See Exh. "17," a report of CDS Unit Cleanout at Mildred Avenue, Culver City.) | to implement the TMDL and unit costs for the number of catch basins in the Los Angeles River watershed, and the unit costs for the device. This is a standard cost estimating protocol used widely in the engineering and construction industries, and the unit. The assumptions used to estimate watershed area and the capacity and costs for catch basin inserts, vortex separators, and trash nets are reasonable and the cost estimate is valid.<br><br>The report dated March 2006 is based on an assumption of vortex separation systems as the key means of compliance with the full capture device definition. The Regional Board has also certified gross mass separation devices and catch basin inserts and trash nets. These costs range from ½ to 1/10 of the VSS systems. Trash removal devices implemented by municipalities in compliance with the previous trash TMDL have proven to be more cost effective. For example, the City of Glendale, installed continuous broom brushes along the upper edge of storm drain inlets to prevent trash from entering it. The estimated cost is approximately $800 per catch basin. |

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| 1.36 | | | The noise impacts from the cleaning of these full capture CDS units is further evidence that such devices have only limited application, as reported in the Municipal Trash BMPs Report. Other evidence of noise problems from maintenance of full capture devices was discussed at the very hearing before the Regional Board where the Regional Board resolved to set aside the initial TMDL because of the Courts' determinations that it had failed to fully analyze the potential adverse impacts from the trash TMDL and failed to prepare an EIR or its functional equivalent. (See Exh. "18", which is a copy of the transcript from the June 8, 2006 hearing before the Regional Board, and the discussion on pages 17-18 of such transcript concerning a CDS unit installed in Culver City.) The Cities have moreover requested evidence from the County through a Public Records Act Request on the status of the CDS unit in Culver City, as the Cities have been informed that the CDS unit was abandoned and closed by the County because of ongoing noise complaints from adjacent neighbors. | The TMDL includes provisions for the EO to certify different types of devices as full capture. These types of devices can work in an integrated fashion to achieve effective compliance with the TMDL. Consequently where one device may only have limited application due to any constraints such as noise or maintenance concerns, other devices may be highly effective. The substitute documents analyze potential impacts from noise and identify measures to mitigate any reasonably foreseeable impacts. |
| 1.37 | | | The Board has also failed to take into consideration new information regarding developing an effective TMDL, e.g., a document produced by the EPA, in July 2002, entitled *The Twenty Needs Report: How Research Can Improve the TMDL Program*. (Exh. "19.") | Other than disagreeing with the decision to proceed with a TMDL that would require abatement of the trash problem, the commenter has failed to suggest how the TMDL is not effective, or what new information was not considered. EPA guidance does not impose legally binding requirements, and merely citing to such a document does not disclose any alleged flaw in the TMDL or the analysis it is based upon. |
| 1.38 | | | All such information, and other information has not even been referenced, let alone analyzed, in the revised trash TMDL, and in | Staff have recalculated the baseline based on data provided by LACDPW |

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| | | | fact the TMDL Staff Report includes **no studies, reports or analysis dated subsequent to 2001**. | and the staff report has been revised accordingly. Staff has revised the CEQA analysis based on information provided by municipalities, Caltrans, and vendors on trash removal devices used to comply with the previous trash TMDL. |
| 1.39 | | | The revised trash TMDL has been rushed through to adoption, and has not been developed in light of data accumulated over the past five years which show that the TMDL's full capture alternative is infeasible, and thus, that without another feasible alternative, the TMDL project itself is infeasible. Accordingly, the Board has failed to conduct any kind of meaningful analysis of the TMDL, and has ignored available information which suggests that the approaches required by the Trash TMDL are ineffective and inappropriate. The Board's rush to readopt essentially the same TMDL that it adopted five years ago, this time with an accelerated compliance schedule, without considering any of the new information developed over the last five years, and without conducting a meaningful environmental review of the TMDL, shows that the Board is committed to the re-adoption of the Trash TMDL, in the same form as the prior, invalidated TMDL, irrespective of its environmental impacts, or the feasibility of the only proposed means of complying with the TMDL, i.e., full capture. | See response to comments 1.9 and 1.32. |
| 1.40 | | | In rushing to readopt the TMDL, the Board is neglecting its duty to properly consider the TMDL. (*See Redevelopment Agency of Huntington Park v. Norm's Slauson* (1985) 173 Cal. App. 3d 1121, 1127 [invalidating resolution adopted by agency where it was clear that the agency had decided to adopt the resolution before conducting the required hearing on it].) | See response to comment 1.9. |

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| 1.41 | | | Further evidence of the Board's desire to adopt the same invalidated TMDL, and refusal to conduct any kind of meaningful analysis of the true impacts of the TMDL or its feasibility, is the attempt by the Board to accelerate the compliance schedule and to require 30% compliance after only one year from the date of adoption, as opposed to the five years to achieve 30% compliance from the date of adoption of the initial trash TMDL adopted in September of 2001. In short, the Board seems to be not only pushing ahead with the adoption of the exact same TMDL, but doing so with the intent of meeting nearly the same schedule that was originally developed in September of 2001, ignoring the fact that that prior TMDL has been voided. As the Board appears to have committed itself to adopting the trash TMDL in essentially the same form as it was adopted nearly five years ago, the hearing scheduled for September 14, 2006 is really nothing more than a "sham" at which the Board will "rubber stamp[] a predetermined result." (*See id.*) As such, the Board's adoption of the TMDL is improper and the TMDL will be invalid. (*Id.*) | See response to comments 1.5 and 1.9. The revised schedule is based on baseline studies conducted by the Los Angeles County Department of Public Works.<br><br>Staff is not proposing to adopt the same invalidated TMDL. Among other issues, the CEQA analysis has been updated to reflect reasonably foreseeable impacts from compliance with the TMDL. |
| 1.42 | | | Citing to the opinion in *City of Arcadia v. State Water Resources Control Board* (2006) 135 Cal.App.4th 1392 ("*City of Arcadia*"), the Regional Board's staff expressly recognizes that, in connection with this project, the Board must perform and consider "an EIR level of analysis through an EIR or its functional equivalent." (TMDL, p. 2.) Although staff purports to have prepared such a functionally equivalent document ("FED"), consisting of an environmental checklist and the TMDL staff report, the FED again falls short of the mark for the following reasons: | See response to comment 1.3. |
| 1.43 | | | It is Virtually Impossible to Prepare A Document that Would | The Commenter's allegation that the |

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| | | | Qualify as the Functional Equivalent of an EIR in Only Nine (9) Days. An EIR is, by law, required to be a **detailed** statement describing and analyzing, through an interdisciplinary approach, the significant environmental effects of a project and discussing ways of mitigating or avoiding those effects. (Pub. Res. Code § 21061; 14 Cal. Code Regs § 15362.) An EIR must provide enough detailed information so that the agency responsible for approving the project may weigh competing policies and objectives, and the public may be assured that the agency has analyzed the ecological implications of its action. Due to its comprehensive nature, a draft EIR typically takes six months to a year to prepare after the required scoping meeting is held with other agencies and the public to determine the proper scope of the EIR (Guidelines §§ 15082, 15083) and prior to its release for public comment. Here, a scoping meeting was held on June 28, 2006. Incredibly, the draft FED was released to the public just **nine days later**. This clearly indicates that the Board had pre-committed to the project prior to any environmental evaluation and that no serious consideration was given either to the comments received at the scoping session regarding the proper scope of the document or to the Court-mandated obligation to prepare an EIR-level document. That nine days was clearly an insufficient time to prepare the functional equivalent of an EIR is reflected by the fact that the FED fails to provide even the rudimentary information that would be required for an average member of the public to understand what measures the Board is proposing be undertaken and what the impacts of those measures might be. | CEQA documents were prepared in nine days is not accurate. The judgment invalidating the Trash TMDL was issued on December 26, 2003, two and a half years has passed since that time and as reflected in the substitute documents, staff's analysis has become dramatically more robust, precise, and responsive to the statutory and regulatory dictates. Even if the substitute documents had been generated in nine days, that fact would not be relevant to their legal adequacy. There is no statutory time limit for developing environmental documents—only for circulating them. In fact, during the scoping meeting, commenters presented little new data, information, or considerations that substantially affected the CEQA analysis. In fact, most of the information submitted duplicated comments were raised five years ago before the first Trash TMDL was adopted. Nothing in the record indicates a precommittment by the Regional Board to approve the project. Staff's recommendation is merely staff's recommendation, and not an indication of what the Regional Board may or may not do. Notably, however, the Court of Appeal affirmed the Trash |

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| | | | | TMDL against all of the challenges, except as related to CEQA. Therefore, unless the new CEQA analysis presents the Board with a reason to undertake a different approach to the TMDL, the Regional Board is not obligated to "rewrite" the TMDL. Of course, it would be well within the Regional Board's discretion to do so if it so chooses. This is a new project, being considered anew by the Regional Board. See response to comments 1.3 and 1.9. |
| 1.44 | | | For example, the FED fails: (i) to provide any description or schematics of the various trash mitigation devices (vortex separation systems, continuous deflective separation units, catch basin inserts) necessary to implement the TMDL; (ii) to describe how these devices are constructed or installed; (iii) to provide any details regarding the frequency, magnitude, or duration of the required implementation measures; and (iv) to provide any meaningful analysis of the potential adverse impacts of such measures Thus, it is impossible to compare the impacts of the various measures or to understand their severity. Indeed, because it consists largely of a cursory environmental checklist form, similar to that set forth in Appendix G to the CEQA Guidelines which is used merely to determine whether an EIR should be prepared, the FED more closely resembles the functional equivalent of an initial study or negative declaration, not an EIR. | Descriptions and schematics of various trash mitigation devices are more appropriately considered in the Tier 2 analysis. Further, the TMDL does not mandate specific devices, so inclusion of any such device is speculative. However, Regional Board staff analyzed the reasonably foreseeable impacts of various trash mitigation devices and selected the largest device for impact analysis under the assumption that impacts from smaller devices will not be as severe. The environmental checklist in not "cursory" and sets forth analyses that are comparable in scope and breadth as analyses in EIRs and other substitute environmental documents. |

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| 1.45 | | | The FED Does Not Comply with Public Resources Code Section 21159 or CEQA Guidelines Section 15187 CEQA requires that the Regional Board, when adopting performance standards such as a TMDL, perform an environmental analysis of the reasonably foreseeable methods of compliance with the TMDL. (Pub. Res. Code § 21159; CEQA Guidelines § 15187), an analysis of reasonably foreseeable environmental impacts of the methods of compliance with the TMDL (§ 15187(c)(1)), an analysis of reasonably foreseeable mitigation measures relating to those impacts (§ 15187(c)(2)), an analysis of reasonably foreseeable alternative means of compliance with the TMDL which would avoid or eliminate the identified impacts (§ 15187(c)(3)), and an analysis of a reasonable range of specific sites that will be subject to the TMDL (§ 15187(d)).<br><br>Because several agencies within the Los Angeles River watershed began implementing the 2001 Trash TMDL prior to its invalidation, a reasonable range of specific sites was readily available for the Board to analyze. Thus, the Board's failure to do so is particularly problematic and further evidences the pre-commitment to the initial invalidated TMDL.<br><br>Similarly, under its "certified regulatory program," the Board must analyze alternatives to the project and identify mitigation **measures** to minimize any potential significant adverse impacts of the project. (23 Cal. Code Regs. § 3777(a).) | Staff disagrees. The substitute environmental documents provide a detailed analysis of the foreseeable environmental impacts of the methods of compliance, including both structural and nonstructural BMPs. All reasonably foreseeable environmental impacts from installation and operation of trash capture devices were analyzed. The commenter did not provide any other reasonably foreseeable impacts from the installation of these devices that are not discussed in the substitute environmental documents.<br><br>The substitute environmental documents' analysis of mitigation measures for reasonably foreseeable impacts is complete and comparable to other existing Tier 1 CEQA analyses for water quality improvement projects such as the City of Los Angeles Integrated Wastewater Management Program at a programmatic level. The substitute environmental documents identify methods, devices, options, and regulatory programs that can be used by implementing agencies to mitigate any environmental impacts. The adequacy and success of the Tier 1 analysis is proven by the fact that the implementing agencies have not needed |

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| | | | | to conduct further project-level environmental analyses and have installed full-capture devices in compliance with the TMDL under notices of exemption or without any further environmental documentation.<br><br>The substitute environmental documents provide a detailed analysis of alternative means of compliance, including structural BMPs such as trash nets, catch basin inserts, and vortex separators and non structural BMPs such as increased street sweeping and enforcement of litter laws. The substitute environmental documents also discuss how these alternatives can be implemented to avoid or eliminate identified impacts.<br><br>The substitute environmental documents also analyze a reasonable range of specific sites that are subject to the TMDL. The substitute environmental documents describe the Los Angeles River watershed and specifically analyze and identify the urban portion of the watershed as those sites subject to the TMDL. The substitute environmental documents also describe the stormdrain system that is common to the urban portion of the |

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| | | | | watershed and the owners and operators of the system. The substitute environmental documents also describe several foreseeable methods of compliance that can be integrated into the existing urban stormdrain system in alternative manners to mitigate reasonably foreseeable environmental impacts. The adequacy of the substitute environmental documents analysis is further documented on the attachment to the Staff Report which provides examples of specific sites subject to the TMDL by reporting on locations of various trash interception devices that have been installed throughout the urban portion of the Los Angeles River watershed. The commenter fails to disclose which alternatives, impacts, mitigation methods and locations were not analyzed. |
| 1.46 | | | *At Best, The FED is the Functional Equivalent of a Negative Declaration, Which Fails to Adequately Analyze and Mitigate Impacts* | See response to comment 1.3. |
| 1.47 | | | It is undisputed that the Board's obligation under the City of Arcadia holding is to prepare an EIR or the functional equivalent of an EIR concerning the Trash TMDL. (TMDL, p. 2.) The Board, however, has merely prepared an initial study checklist | The Court of Appeal determined that the analysis undertaken with respect to construction and maintenance of pollution control devices or mitigation measures was inadequate under the |

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| | | | and concluded that although "the proposed Basin Plan amendment could have a significant adverse effect on the environment, ... there are feasible alternatives and/or feasible mitigation measures that would substantially lessen any significant adverse impact." (Checklist, p. 40.) Thus, as was the case with the invalidated 2001 TMDL, the Board, in effect, has concluded that all that is required for the project is the functional equivalent of a "mitigated negative declaration." Such action hardly complies with the mandate of the Court.<br><br>Despite the FED's explicit finding that feasible alternatives and/or mitigation measures exist that would lessen the impacts of the project, the FED fails to discuss any alternatives or to impose any mitigation measures on the project. (Pub. Res. Code §§ 21002, 21081 and Guidelines §§ 15091-15093 [prohibiting the approval of any project with potentially significant impacts absent specific findings].) | dictates of CEQA. The Cities' reference to "an EIR or its functional equivalent" amount to a form-over-substance argument about the title, rather than the content, of the environmental documents. While the Court of Appeal, and previously the Regional Board, used the term "functional equivalent" as a nickname and shorthand reference to the requirements of Public Resources Code section 21080.5, in fact, the term "functional equivalent" is a term not derived from CEQA, but from its federal counterpart the National Environmental Policy Act (NEPA). In fact, the statute authorizing CEQA's "certified regulatory programs", Public Resources Code § 21080.5, has no federal analogue, and the federal concept of "functional equivalence" under federal authority does not dictate the scope of an agency's obligations under section 21080.5. (See *Guide to the California Environmental Quality Act* (10th Ed., 1999) Remy, Thomas, Moose, Manley, p. 146.) In response to the lawsuit that resulted in voiding and invalidating the first Trash TMDL, Regional Board staff has determined to be more precise with respect to the Regional Board's CEQA obligations, |

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| | | | | including by using the appropriate terminology. The term "substitute environmental documents" is derived from title 14, section 15252 of the California Code of Regulations, which is found in Article 17, relating to certified state regulatory programs. The Regional Board's CEQA obligations with respect to the Substitute Documents that must be submitted are set forth in 23 Cal Code Regs. § 3775 et seq. The analysis with respect to construction and maintenance of pollution control devices or mitigation measures is clearly more detailed and substantive than in the previous CEQA documents for the previous TMDL, and plainly complies with Public Resources Code sections 21080.5 and 21159.<br><br>The commenter has failed to disclose for what impacts the staff failed to consider alternatives and mitigation measures. The alternatives analysis and suggested mitigation measures pervade the substitute documents. Section 13360 prevents the Water Boards from imposing mitigation measures on the project, as the Water Boards cannot specify the manner of compliance with the regulation. |

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| 1.48 | | | The FED lacks the basic information typically required in an EIR for the benefit of the decision makers, other agencies, and the public, including a summary of comments received during the scoping session, a "Project Description," the project's "Environmental Setting," "Alternatives" to the proposed project, and the project's "Significant Unavoidable Adverse Impacts."<br><br>The FED tries to evade the Court's mandate and to excuse its failure to provide the above information by contending that it is "tiering" its analysis, leaving it to the local agencies to evaluate and mitigate any significant project impacts. Yet, this exact contention has already been rejected by the Arcadia Court in connection with the 2001 trash TMDL (135 Cal.App.4th at 1425-26). Moreover, such an approach clearly violates CEQA. (Id.) Use of the tiering process does not authorize the lead agency: (i) to avoid the preparation of an EIR in the first instance; or (ii) to defer analysis of reasonably foreseeable significant impacts to a later stage of review in order to avoid addressing them in a first-tier EIR. (Guidelines § 15152(b).) | The substitute environmental documents contain all information required by law. The commenter fails to articulate precisely what information has not been considered. The comments appear to be directed to a project-level analysis that the Regional Board cannot evaluate (Pub. Res. C. § 21159(d)) because they cannot specify the manner of compliance. (Wat. C. § 13360.) The *Arcadia* court agreed that a tiered analysis was appropriate. (*Arcadia*, 135 Cal.App.4th at 1425.) |
| 1.49 | | | The FED is internally inconsistent, and thus is confusing to the reader. On the one hand, it concludes that "**feasible** alternatives and/or **feasible** mitigation measures . . . would substantially lessen any significant adverse impacts." (Checklist, p. 40.) On the other hand, it concedes that those mitigation measures and alternatives may well be **infeasible.** (Checklist, p. 2 ["To the extent the alternatives, mitigation measures, or both, are not deemed feasible. . . ."].) The FED even adopts a statement of overriding considerations, finding that to the extent the mitigation measures and alternatives are indeed **infeasible**, the resulting unavoidable environmental impacts would be outweighed by the necessity of implementing the TMDL. This perfunctory statement of overriding considerations is also | The substitute environmental documents are not inconsistent. Page 2 of the checklist clearly recognizes that the agencies responsible for implementing the requirements of the TMDL may determine that proposed mitigation measures are infeasible. The Regional Board cannot compel the local agencies to determine that mitigation is feasible or to implement mitigation measures. The statement of overriding considerations recognizes that 1) the local agencies conceivably might not |

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| | | | defective. First, it is premature. It predetermines that any unavoidable adverse impacts are automatically outweighed by project benefits, even though the FED fails to disclose or evaluate the extent and scope of those impacts. Thus, the finding is uninformed and meaningless. How can the Board determine that impacts are outweighed when the magnitude of the impacts is unknown? Second, the statement improperly preempts the decisions of local agencies, which as the lead agencies on the implementation decisions, are the appropriate bodies to determine whether the impacts of a particular implementation method are overridden by project benefits.<br><br>Thus, the Board has failed to prepare an EIR or its functional equivalent, violating both CEQA and the mandate of the Court in *City of Arcadia*. (See, also, *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1337, 1338 ["the difficulty of assessing future impacts of a [general level plan] does not excuse preparation of an EIR]; *County Sanitation District No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1567 [county required to prepare an EIR rather than a negative declaration with regard to implementation of water quality standards through a discharge permit system and effluent limitations].) | implement the TMDL in the most environmentally sensitive manner possible, which is reasonably foreseeable especially given that the Regional Board cannot specify the manner of compliance, and 2) irrespective of whether the local agencies actually determine to implement the TMDL in the most environmentally sensitive manner possible, the implementation may nevertheless result in environmental impacts that are immitigable.<br><br>The statement of overriding considerations is not binding upon the local agencies, and indeed when they comply with CEQA pursuant to PRC § 21159.2, they will be required to determine the feasibility of the project level alternatives and mitigation, and if necessary, consider their own statement of overriding considerations. As to the program level evaluation, the existence of the impacts discussed in the substitute documents do not, in staff's opinion, justify forgoing adoption of the trash abatement program.<br><br>Staff agrees that the local agencies are the lead agencies for implementation, and that they will be required to |

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| | | | | undertake their own environmental analysis pursuant to section §21159.2. |
| 1.50 | | | The whole purpose of "tiering" the environmental allowances, i.e., in this case, having to prepare a "tier" EIR or its functional equivalent, is to address the broader environmental impacts so that subsequent site-specific CEQA reviews may incorporate by reference the tiered EIRs general discussion and thus concentrate solely on the issues specific to the subsequent project. (*City of Arcadia, supra*, 135 Cal .App.4th 1392, 1423.) | Staff agree, and the first tier environmental documents will enable the local agencies to do just that. Nevertheless, the Regional Board cannot be compelled to speculate upon project level impacts or perform a project level analysis. |
| 1.51 | | | Thus, the failure to conduct a "tiered" EIR or its functional equivalent, as required by both the trial court and the Court of Appeal in the *City of Arcadia* case, will result in the individual cities, for each project, having to conduct such an analysis again and again, when such analysis should have been conducted only once, by the Regional Board at the time of the adoption of the TMDL. | The commenter fails to identify specifically what analysis the cities would have to repeatedly perform that should have been analyzed by the Regional Board. |
| 1.52 | | | Because the FED is not the functional equivalent of an EIR, it fails to comply with CEQA's requirements here. | See response to comment 1.3. |
| 1.53 | | | The FED May Not Defer the Analysis of Impacts Simply Because More Than One Compliance Method Is Available. Complying with CEQA necessarily involves some degree of forecasting. (Guidelines § 15144.) The Board has ignored this mandate. Neither the checklist nor the Trash TMDL includes an analysis of the reasonably foreseeable impacts of construction and maintenance of pollution control devices or mitigation measures. The FED recognizes that the project will have significant impacts, but improperly defers evaluation of those impacts until some undetermined time in the future, primarily | The Regional Board cannot anticipate at what intersections or locations the any given city will choose to rely upon a mechanical means of compliance, requiring construction, or litter enforcement, or source control. The Regional Board cannot dictate what methods of compliance any locality will employ, or whether it will develop new methods. The substitute documents analyze impacts associated with |

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| | | | because of purported uncertainty over how municipalities will react to the TMDL. | construction and maintenance of reasonably foreseeable pollution control devices and mitigation measures, but they cannot determine which cities will use which devices or where. |
| 1.54 | | | (See also, the discussion throughout the Checklist defining the analysis of acknowledged impacts and simply deeming the impacts to be insignificant under the presumption that the BMPs ultimately selected to implement the project will be properly designed and sited by the local agencies.) | It would not be reasonable to presume that the cities would employ BMPs that are not designed to achieve their intended purposes, or that they would site such BMPs in sensitive areas. The contrary inference is reasonably foreseeable. |
| 1.55 | | | This approach, however, was specifically rejected when the Court invalidated the 2001 Trash TMDL, holding that the existence of alternative methods of compliance with a new rule or regulation does not render the environmental impacts of the project too uncertain or speculative to evaluate. (*City of Arcadia, supra,* 135 Cal.App.4th at 1426.) The Court concluded that "the checklist in trash TMDL are insufficient as either the functional equivalent of a negative declaration or a tiered EIR. Moreover, the EIR is required since the trash TMDL itself presents substantial evidence of a fair argument that significant environmental impacts may occur." The Court found that the checklist and Trash TMDL improperly ignored: (i) "the temporary impacts of the construction of these pollution controls, which logically may result in soils disruptions and displacements, an increase in noise levels and changes in traffic circulation;" and (ii) "the effects of increased street sweeping on air quality, and possible impacts caused by maintenance of [the] compliance methods." (*Id.* at 1425, emphasis added.) Here, the revised FED again ignores the same impacts. | The substitute environmental documents include an analysis of soils disruption, noise levels, traffic circulation, air quality considerations, and impacts associated with maintenance, as required by the Court of Appeal, to the extent feasible, given that the Regional Board cannot specify the manner of compliance. The commenter has failed to articulate how the analysis is inadequate. |

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| 1.56 | | | In addition, simply because the project may have beneficial impacts does not absolve the Board from the responsibility of preparing an EIR or its functional equivalent to analyze the potentially significant environmental effects of the project. This is because the project's negative effects might well be reduced through the adoption of feasible alternatives or mitigation measures analyzed in a real EIR or its functional equivalent. (*County Sanitation District No. 2, supra,* 127 Cal.App.4th at 1558, 1577.) By inappropriately deferring the evaluation of impacts, *i.e.*, by not preparing a real EIR or its functional equivalent, the FED failed to review: (i) feasible alternatives to the TMDL or to the reasonably foreseeable methods of compliance with the TMDL; (ii) the project's cumulative impacts; and (iii) mitigation measures that are available to the **Board** but not to the **municipalities**, thus depriving the environment of benefits that might result from appropriate Board review. (*Id.*) The FED also fails to adequately analyze or detail impacts, thus misleading the decision makers and the public by minimizing and misstating the actual potential impacts of the project. It also increases the burden of the individual cities, on the project level, to consider such impacts, requiring them to conduct the analysis on multiple occasions rather than once as a part of the tiered EIR. Further, although certain methods of compliance are identified, there is no attempt to quantify the impacts thereof or to explain why such impacts cannot be quantified. | The commenter has failed to articulate what analysis was improperly deferred, or how the analysis was otherwise inadequate. The commenter also fails to articulate what mitigation measures are available to the Board that are not available to the municipalities. The substitute environmental documents clearly articulate to all involved the scope of the reasonably foreseeable significant adverse environmental impacts associated with the TMDL. There is nothing misleading about the documents or the analysis, and the Regional Board and public clearly have a plain and detailed understanding of the impacts of this project. Furthermore, the commenters well know what impacts are attendant with these types of projects. Municipalities routinely address traffic, moderate construction in urban, rural, and suburban areas, maintenance to storm sewers, and street sweeping, among the other compliance means available, and they do these matters routinely without the level of analysis they are demanding of the Regional Board for this project that would require them to finally take measures to stop allowing their garbage |

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| | | | | to be washed to neighboring venues and waters of the state. In fact, the City of Signal Hill issued a notice of exemption, alleging that its Hamilton Bowl project was not subject to CEQA analysis, and proceeded with construction without any environmental review whatsoever. |
| 1.57 | | | Under the FED's Approach, the Project's Potential Impacts Will Never be Evaluated. Without disclosing what they are, the FED concludes that "foreseeable environmental impacts from methods of compliance are well known." (Checklist, pp. 4, 5; TMDL, p. 31.) The FED leaves the disclosure and mitigation of those "well known" impacts to the municipalities that will be implementing the TMDL at the project level stage. Further, remarkably, the FED also inadvertently concedes that the project's environmental impacts will likely not be evaluated or mitigated even at the project level stage. That is, the FED acknowledges that the previous Trash TMDL became effective in 2002, and that prior to its invalidation by the court in 2006, several municipalities "completed projects in which storm sewer catchment basins were retrofitted with inserts and vortex separation devices were installed within storm drain systems." (TMDL, p. 31.) However, as also pointed out in the TMDL, "Project level environmental analysis, by municipalities and responsible agencies for implementation of structural methods, were conducted under notices of exemption." If a project is categorically exempt from CEQA, no formal environmental evaluation is required. (City of Pasadena v. State (1993) 14 Cal.App.4th 810, 819.) | If the cities properly relied upon notices of exemption (NOE), then by definition their implementation had no significant adverse impacts that required analyzing, and the cities' comment that "those impacts will not be evaluated" is specious, as are their comments that the Regional Board should evaluate such impacts. Conversely, the fact, if true, that the municipalities may improperly rely upon NOEs to avoid their CEQA obligations, does not create a duty in the Regional Board to evaluate speculative project-level impacts that the cities were required to evaluate under CEQA. The fact that they prepared NOEs for the project-level work demonstrates the falsity of their comments objecting to the analysis in this proceeding. |

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| 1.58 | | | The FED also fails to adequately analyze the impacts of the potential compliance methods. Much of this failure results from another fundamental flaw in the FED – its failure to examine a reasonable range of specific sites that will be subject to the TMDL. (Guidelines § 15187(d).) The TMDL expressly acknowledges that several agencies within the Los Angeles River watershed began implementing the 2001 Trash TMDL prior to its invalidation by the Court. (TMDL, p. 31.) Thus, a reasonable range of specific sites was readily available for the Board to analyze, and reasonable assumptions regarding a range of locations of structural BMPs could have been made. Instead of relying on stale data that dated back to the 1990's (the same data relied upon in the 2001 Trash TMDL), the Board was required to have updated its analysis of the impacts of the revised trash TMDL. For example, there is no analysis or consideration of the State Board's 2006 Municipal Trash BMPs report, which clearly shows that the installation of full capture devices throughout the entire watershed, necessary for the permitee to be deemed in compliance with the zero trash TMDL, is not physically possible (Exh. "5," p. 19.) Similarly, a City of Los Angeles' presentation on a trash TMDL implementation plan (Exhibit "6"), dated February 2005 was not considered or referenced in any way in the revised trash TMDL.<br><br>In addition, the County of Los Angeles has installed and maintained certain full capture devices, specifically TDS units, at various locations in the County. The cleaning of one such TDS unit located at Mildred Avenue in Culver City showed noise levels at 92.6 decibels, and that the cleaning process took more than four hours. Again, there is no consideration of this report, or of the noise problems created by the installation and | See response to comments 1.45 and 1.12. The substitute environmental documents analyze the urbanized portion of the Los Angeles River watershed, describes the stormdrain system and the alternatives available to the implementing agencies to install these devices in different locations throughout the watershed. Implementing agencies have a wide range of alternative devices and available sites to mitigate foreseeable impacts by judicious selection of specific sites during the Tier 2 project-level analysis.<br><br>The adequacy of the substitute environmental documents' analysis is documented on the attachment to the Staff Report which provides examples of specific sites subject to the TMDL by reporting on locations of various trash interception devices that have been installed throughout the urban portion of the Los Angeles River watershed.<br><br>Regional Board staff also note that the commenter inappropriately characterizes the 2006 Municipal Trash BMPs Report as a "State Board" report. The report was written by Staff from the California Coastal Commission and the |

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| | | | maintenance of such full capture devices in the environmental review documents prepared by the Board. (See Exhibit "17.")<br><br>Nor has there been any evaluation of vector control problems, specifically West Nile Virus problems, in light of the additional experiences of Southern California with West Nile over the past five years. (*See e.g.*, Exhibit "20,")<br><br>Nor has there even been an analysis of the report by US EPA entitled "Twenty Needs Report: How Research Can Improve the TMDL Program," dated July, 2002, which report emphasizes the need to improve the process by which TMDLs are developed. (Exh. 19) | Rivers to Sea Project. The State Board merely provided a significant portion of the funding for the report. Further, the report contains a disclaimer that "Information about a particular practice, strategy, method, technology or system for controlling trash and debris, including non-proprietary and proprietary systems, is not to be construed as an actual or implied endorsement, warranty or recommendation for use by the California Coastal Commission, the Algalita Marine Research Foundation, the State Water Resources Control Board or the authors of this report. Users of this document are responsible for determining the appropriate site-specific methodology, systems, and commercial products and should seek the advice of a stormwater professional in selecting systems, products, or technologies for controlling trash or debris in stormwater or urban runoff."<br><br>The Regional Board has not ignored any information from the State Board on this TMDL.<br><br>The CEQA analysis considered information about the operation and maintenance of existing trash removal |

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| | | | | devices, including information about noise levels from CDS unit cleanings, These potential impacts and proposed mitigation measures are addressed in the substitute documents, The level of discussion of reasonably foreseeable mitigation measures is appropriate for a program-level tier 1 environmental review. The analysis of reasonably foreseeable mitigation measures was not general or conclusory, but consisted of specific actions that could be taken at the project level, such as reducing noise from the source, installing noise barriers, and reducing the time of exposure to noise (see checklist 6.b.)<br><br>Potential vector control problems are discussed under section 17.a of the CEQA checklist. |
| 1.59 | | | The failure to evaluate specific sites has led to an underestimation of impacts and the wholesale deferral of analyses of impacts, mitigation measures, and alternatives. The FED's deficiencies in this respect include the following:<br>(a) Earth. Under the category of "Earth," the checklist concludes, without the support of substantial evidence, that there will be: "No Impact" in three environmental issue areas; "Less Than Significant" impact in one area; and "Less Than Significant with Mitigation Incorporated" impact in three areas. As for the "No Impact" determinations, two of the three determinations (checklist 1a, c) rest on two flawed presumptions: i) that the | While the substitute environmental documents acknowledge potential impacts to soils (e.g., CEQA checklist 1.b) and provide a program level analysis of reasonably foreseeable impacts and mitigation measures (Pub. Res. Code § 21159), the large scale earth impacts cited by the commentor (e.g., CEQA checklist 1.a and 1.c) are not reasonably foreseeable. The substitute documents provide ample |

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| | | | foreseeable methods of compliance would not be of the size or scale to result in [the particular impact described];" and (ii) potential impacts could be avoided or mitigated [by the local entity taking certain action, such as proper siting, mapping, or design of the facilities]."<br><br>These determinations are mere conclusions, and no foundational evidence or citation to literature is provided to back up the claim that the projects would not be of the size or scale to result in either unstable earth conditions (checklist 1a) or a change in topography or ground surface relief features (checklist 1c). Indeed, these statements are counter intuitive, because construction activities are inherently disruptive of soil conditions and the FED fails to provide any specifics regarding the projects that would explain why that would not be the case here. Nor does the FED describe any of the soil types found in the various sub-areas of the watershed or analyze a reasonable range of specific sites regarding their suitability for structural BMPs. A list of unsuitable areas should have been generated for inclusion in the FED. Moreover, these conclusions presuppose that potential impacts can be avoided by the simple exercise of discretion, with local entities avoiding the siting of facilities in impactful areas. A local entity's discretion, however, may well be severely constrained by actual facts on the ground, and the only available option may well require the siting of the facility in an impactful area. Thus, there is no substantial evidence or reasoned analysis to support the determinations in the FED. | evidence that potential compliance strategies would not be of the size or scale to result in unstable earth conditions or changes in topography or ground surface relief features. For example, the staff report and checklist cite compliance strategies employed by municipalities in compliance with the previous Los Angeles River Trash TMDL and state that construction impacts from structural measures are similar to those of small scale public works projects that are sited in previously developed areas. These implementation strategies, including CDS units and other full capture devices require relatively shallow earthwork. The CEQA checklist provides as an example the installation of a vortex separator, CDS technologies' PSW100-100, which weighs approximately 70.6 tons with a foot print diameter of 18 ft. This footprint is not of a geologic scale and would not cause or accelerate the potential for fault ruptures, landslides, or other unstable earth conditions.<br><br>In cases where there may be potential impacts to Earth, proper siting is a reasonably foreseeable mitigation strategy. The compliance methods |

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| | | | | described in the substitute documents can be placed within the storm drain system at different places to achieve the appropriate method of compliance. To specify the exact location at a program-level analysis is completely speculative at this time. Project level analyses in which the exact level is specified is the only meaningful venue for location analyses. However, the range of sites available to the project level designers due to the inherent flexibility and range of the foreseeable methods are such that impacts can be mitigated by installing devices in areas where resources will not be impacted. The attached memo to the staff report notes examples of several specific sites where full capture methods have already been implemented. |
| 1.60 | | | Most significantly, however, the FED's conclusory language ignores the express holding of the Court in the *City of Arcadia* case, which language controls here. The Court stated: The checklist and the [2002] Trash TMDL . . . ignore the temporary impacts of the construction of these pollution controls, which logically may result in soils disruptions and displacements, an increase in noise levels and changes in traffic circulation. . . . The checklist and the [2002] Trash TMDL also ignore the effects of increased street sweeping on air quality, and possible impacts caused by maintenance of catch basin inserts, VSS units and other compliance methods. (135 | The term "logically may" is not a determination that a significant impact will occur. It is a determination that a fair argument exists such that an analysis must occur. The analysis, backed by substantial evidence, shows that potential impacts to Earth (CEQA checklist 1.b, 1.d, 1.e, 1.f, and 1.g) can be mitigated to less than significant levels and identifies broad mitigation measures to be implemented at the |

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| | | | Cal.App.4th at 1425, emphasis added.)<br><br>As for the remaining earth impact determinations (checklist 1b, 1d, 1e, 1f, 1g), the checklist simply concludes that impacts will not occur because they can be theoretically avoided through actions taken by the local entity at the project-level stage. Again, this is an inappropriate deferral of analysis, and such conclusory findings are not supported by any substantial evidence. | project-level (Pub. Res. Code, § 21151(a)(2)) that are appropriate to a program-level tier 1 environmental review. For purposes of comparison, this level of analysis is equal to the level of analysis provided by the City of Los Angeles in the proposed EIR for the Integrated Wastewater Management Program. |
| 1.61 | | | Moreover, the FED should include factual information on the unique geological features of the watershed, which can be readily obtained from pertinent state or federal resource agencies (CGS or USGS). As a purported "Program EIR," the FED is required to describe the existing conditions in the watershed and delineate these unique geological areas for future planning by the permittees, who will prepare subsequent project level CEQA documents, which will be tiered-off the FED. Such tiering is impossible with the FED as drafted. For example, because the FED lacks a "Setting" section for each topic area, it fails to set forth the geological information necessary for tiering at the project level. | The checklist and the staff report, with the responses to comments, and the resolution approving the amendment ("substitute environmental documents"), fulfill the requirements of Section 3777, Subdivision (a), and the Regional Board's substantive CEQA obligations, including those described in Public Resources Code section 21159. The substitute documents are required to analyze the reasonably foreseeable environmental impacts of the methods of compliance and the reasonably foreseeable mitigation measures to lessen the adverse environmental impacts, which have been done. The staff report provides a description of the watershed including geological setting, hydrological conditions, beneficial uses, and existing conditions. |
| 1.62 | | | Finally, the checklist ignores slope stability issues, such as there are numerous faults in the watershed area which could affect components of the BMPs which are part of the project; much of | The checklist does not ignore slope stability issues. Where reasonably foreseeable impacts exist, they were |

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| | | | the watershed area is in liquefaction zones and the associated impacts of that should be discussed; there are hillsides and elevated land masses in the watershed area, and the wet weather management measures that capture and percolate runoff could affect slope stability in those areas; the project has the potential to result in soil erosion during construction when soil is excavated and exposed; and there is a potential for construction-related soil settlement in and around the VSS units that should be disclosed.<br><br>Accordingly, the FED should evaluate the general potential for the project to affect slope stability, and should follow through on the mandate to do so at a reasonable range of specific sites that will be subject to the TMDL. | analyzed in the substitute documents and reasonably foreseeable mitigation measures were proposed. During the development of the TMDL, numerous stakeholder and public meetings were held in which the manner of compliance was discussed. At these meetings, the most likely measures discussed included structural methods such as catch basin inserts, structural vortex separation devices, end of pipe trash nets, as well as non-structural alternatives such as increased street sweeping, enforcement of existing litter laws, and development of municipal ordinances prohibiting food packaging with polystyrene materials.<br><br>Although the Los Angeles River watershed is underlain by many faults, these reasonable foreseeable compliance strategies are not of the size or scale to cause or accelerate the potential for fault rupture (see response to comment 1.59).<br><br>Unlike the recently adopted metals TMDLs, the potential compliance strategies for the proposed Los Angeles River Trash TMDL do not involve the infiltration of water, which could potentially increase the risk of |

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| | | | | liquefaction or affect slope stability in hillside areas if unmitigated.<br><br>Potential impacts to soil displacement or compaction during construction are analyzed and mitigation measures are proposed (see CEQA checklist 1.b and 1.e.) |
| 1.63 | | | Air Quality. The checklist also summarily determines that there will be no impacts, or only mitigable impacts, in the three subcategories under "Air Quality" (checklist 2a, b, c). In doing so, the checklist improperly defers evaluation of impacts which it concedes could occur, including the deterioration of ambient air quality, the creation of objectionable odors, and the disposal of hazardous substances trapped in the structural compliance measures. The impacts will be both short-term, due to increased emissions from construction and installation of the trash devices, and long term, due to increased emissions from maintenance and street sweeping vehicles. However, the FED fails to include any description of the existing air quality in the watershed (the existing level of criteria air pollutants), and thus there is no baseline condition against which to measure the project's air quality impacts. Specifically, the FED fails to provide the air emissions related to NOX, SOX, and ROG that could be expected to be generated from the project or how any estimates were calculated. No numbers are provided or compared to air district standards, and no clear impact conclusions are set forth. This lack of disclosure and quantification dooms the FED's air quality analysis. | The substitute environmental documents contain all information required by law. The Regional Board cannot dictate what methods of compliance any locality will employ. The *Arcadia* court agreed that a tiered analysis was appropriate. (*Arcadia*, 135 Cal.App.4$^{th}$ at 1425.)<br><br>Staff disagrees that emissions estimates are not provided or compared to air district standards. Section 2.a of the checklist analyzes air emissions from maintenance and construction activities by comparing them to similar projects analyzed under the City of Los Angeles EIR for the Integrated Wastewater Management Program. For example, the EIR estimated 21 pounds/day of CO, 2 pounds/day of VOC, 24 pounds/day of NOx, <1 pound/day of SOx, and <1 pound per day of PM10 resulting from |

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| | | | Similarly, although estimated trips per day are set forth with regard to maintenance vehicles (in improper conclusory fashion), not even such rudimentary information is provided with regard to the acknowledged increase in street sweeping traffic, which in turn could result in the generation of criteria pollutants and carbon monoxide hotspots. These potential impacts should be further evaluated, as should the potential for the construction and operation of the project to affect sensitive receptors and result in objectionable odors | the additional 26 daily biosolid haul truck trips for the proposed Hyperion expansion. This is below emissions thresholds of 550 pounds/day of CO, 55 pounds/day of VOC, 55 pounds/day of NOx, 150 pounds/day of SOx, and 150 pounds per day of PM10. Similar comparisons apply to construction projects and increased street sweeping traffic. Furthermore, the checklist identifies specific mitigation measures that could be employed at the project level for any potential impacts. |
| 1.64 | | | The checklist's analysis of "Water" requires more information for the reader. It is unclear how and to what extent the trash removal devices will result in changes to absorption rates or drainage patterns of the watershed.<br><br>Emblematic of the fact that the FED fails to provide adequate information regarding water impacts is the fact that the 2001 Trash TMDL checklist was checked "Yes" regarding possible discharge into surface waters/alteration of surface water quality (checklist 3e), yet the checklist for the 2006 Trash TMDL states categorically that there will be "No Impact." No explanation is given for this complete turnaround in conclusions.1 Moreover, available reports suggest the installation of full capture devices | The substitute documents are clear as to how trash removal devices may change drainage patterns. Section 3.b of the checklist states that capture devices may impede overland flow to storm drains, which may change the amount of flow within the river channel, but not the direction of flow. It also states that the channelized drainage pattern would remain essentially unchanged. This is supported by compliance measures for the previous Trash TMDL employed by other municipalities and cited in the |

1 Nor are explanations provided for the changes made in the 2006 Trash TMDL checklist with regard to project impacts on animal life (5a), public service (14d), and recreation (19a), all of which have been discounted since the preparation of the 2001 Trash TMDL checklist.

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| | | | can have unintended negative impacts on water quality. (See, e.g., Strategies for Reducing Report, Exh. 4, p. I-3, ["Full capture devices may also incidentally increase concentrations of other impairment-causing contaminants and require further expenditures to protect water quality."].)<br><br>Further, the FED concedes that the project will result in changes in drainage patterns, the rates and amount of surface water runoff, and the course of flow of flood waters, and could expose people and property to water related hazards from flooding. (Checklist 3a, b, c, i.) However, no mitigation measures are proposed to avoid these impacts. As with all of the checklist's sub-categories, the FED inappropriately defers any real environmental evaluation to an undisclosed future time. Further, construction of the BMPs could result in the erosion of excavated materials into the local drainage system or water bodies, the impacts of which are not evaluated. | staff report and checklist. These compliance projects included the retrofitting of existing storm sewer catchment basins with inserts and vortex separation devices, which did not alter the existing storm drain system.<br><br>The proposed TMDL is a new TMDL completely independent of the previous Trash TMDL adopted in 2001. However, it is worth noting that Section 3.e. of the checklist for the 2001 Trash TMDL was checked "yes" because any environmental impacts in this category would be **positive** impacts. The 2001 checklist clearly states, "Progressive trash reductions will improve water quality of the River significantly." Section 3.e. of the proposed checklist is checked "no impact" because there are no **negative** impacts. The proposed checklist states that reducing the amount of trash that enters the river will positively impact water quality and will not foreseeably result in negative impacts to temperature, dissolved oxygen, or turbidity.**"** The difference between the two checklists does not represent a "complete turnaround in conclusions" and in fact the findings in the two checklists -- that the proposed TMDL would result in improved water |

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| | | | | quality -- are substantively the same. The commentor has taken the findings of the two checklists out of context and distorted their meaning.<br><br>The cited report does not specify how full capture devices might increase concentrations of other impairment-causing contaminants or what these contaminants might be. On the contrary, it has been shown that gross solids removal devices can also remove other contaminants such as metals (see Caltrans BMP Retrofit Pilot Program Final Report CTSW - RT - 01 – 050).<br><br>Mitigation measures are proposed to mitigate impacts related to changes in flow, drainage patterns, course of flow of flood waters, and flooding hazards, such as proper design and maintenance of capture devices. For example, as stated in the checklist, catch basin inserts can be designed with a high-flow bypass so they can flow in the storm drain system without localized flooding.<br><br>The checklist discusses potential impacts of erosion on water quality under section 1.e. |

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| 1.65 | | | As for impacts on "Plant Life" and "Animal Life," the checklist concedes the potential reduction of the numbers of unique, rare, or endangered species of plants and animals (checklist 4a, b; 5 b, c), yet simply defers any further analysis of these impacts without discussing mitigation measures other than in general, conclusory terms. The FED should have conducted a search of the California Natural Diversity Database (CNDD) and presented information at a watershed level regarding where existing rare, threatened, or endangered plants and animals are found, so as to disclose the actual potential for impact at the project level stage.2 Although the FED concedes that sensitive species may be impacted even in highly urbanized areas, it fails to identify those areas. An evaluation of the impacts of the project on rare, threatened, or endangered plant and animal species in the Los Angeles River Estuary should also be prepared.<br><br>Remarkably, the FED defers any wildlife surveys until 2 weeks before construction of implementation devices. (Checklist 5b.) However, survey requirements are specific to potential species, and the frequency and breadth of surveys vary dramatically. If special status species are observed at the beginning of construction, the project in question could suffer substantial delays because of coordination requirements with the U.S. Fish & Wildlife Service and the California Department of Fish & Game. And because the FED fails to discuss a reasonable range of specific sites that would be subject to the TMDL, there is no opportunity for the decision makers or the public to understand whether, or how, such site and design modifications would accomplish the desired mitigation. Simply put, the FED fails to adequately identify and analyze potential impacts to various | The level of discussion of reasonably foreseeable mitigation measures is appropriate for a program-level tier 1 environmental review. The analysis of reasonably foreseeable mitigation measures was not general or conclusory, but consisted of specific actions that could be taken at the project level, such as preserving plant species pre-construction or re-establishing and maintaining them post construction (see checklist 4.a) and conducting focused protocol animal surveys for special-status animal species (see detailed discussion under checklist 5.b.)<br><br>Section 13360 prevents the Water Boards from imposing mitigation measures on the project, as the Water Boards cannot specify the manner of compliance with the regulation. To specify the exact location of trash removal devices or to identify potential sensitive species at those locations as part of a program-level analysis would be completely speculative at this time. Project level analyses in which the exact level is specified is the only meaningful venue for location analyses. |

2 A CNDD search reveals that there are over 2300 occurrences of rare, threatened, or endangered plant species alone in the watershed.

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| | | | species in the watershed, and to mitigate such impacts where necessary. | |
| 1.66 | | | Further, the FED fails to provide any information on fisheries habitat or species in the River or its tributaries, and it is unclear whether fisheries will be impacted by the construction projects. The FED fails to recognize that unlined portions of the Los Angeles River which are populated with riparian habitat could be impacted by the project. The potential impacts to biological resources from scouring and from potential changes in downstream flow should be further evaluated. There also could be protected wetlands in some of the watercourses that convey urban runoff that would be diverted or treated and beneficially reused. The potential impacts of this diversion and treatment to biological resources should be further evaluated, as should the impacts to migratory shorebird habitat along the reaches of the Los Angeles River which are dependent on flow within the River. | The staff report identifies all beneficial uses of the Los Angeles River including commercial and sport fishing in the Estuary. It is not reasonably foreseeable that the construction of potential projects would result in a significant impact to fisheries (see checklist 5.a).<br><br>The commentor has provided no evidence as to how the implementation of trash removal devices would contribute to scouring of the unlined portions of the river. Diversion and treatment are not reasonably foreseeable compliance strategies for the removal of trash and there would thus be no associated potential impacts due to reduced flow. As stated in section 3.d of the checklist, "Because partial and full capture devices do not divert water for other uses and the amount of water in storm drains is not changed, surface water in the Los Angeles River or the Estuary is not likely to change due to the removal of trash." |
| 1.67 | | | The FED needs to provide more specificity with regard to potential noise impacts and mitigation measures that are potentially available. Information regarding noise ordinances | The CEQA analysis considered information about the operation and maintenance of existing trash removal |

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| | | | and general plan noise policies of the various cities in the watershed should have been provided. Estimates of noise levels from the various construction, maintenance, and street sweeping activities should have been disclosed to give the public and the decision makers a sense of noise effects. The conclusory statements regarding possible mitigation measures are deficient, especially in light of documented evidence that certain trash CDS systems have been shut down due to noise complaints of nearby residents. Such information was readily available to the Board. For example, as reflected in Exhibit 17, in January 2004, Los Angeles County and Culver City participated in a joint CDS unit clean-out in the City. Noise levels on nearby residential properties ranged from the ambient level of 52.2 dB up to **92.6 dB** during the running of the clean-out equipment, with the clean-out taking over **4 hours** to complete. These impacts far exceed the acceptable noise levels of all known noise ordinances, and clearly create adverse environmental impacts that have to be addressed and mitigated by the Board. | devices, including information about noise levels from CDS unit cleanings. These potential impacts and proposed mitigation measures are addressed in the substitute environmental documents. The level of discussion of reasonably foreseeable mitigation measures is appropriate for a program-level tier 1 environmental review. The analysis of reasonably foreseeable mitigation measures was not general or conclusory, but consisted of specific actions that could be taken at the project level, such as reducing noise from the source, installing noise barriers, and reducing the time of exposure to noise (see checklist 6.b.)<br><br>Section 13360 prevents the Water Boards from imposing mitigation measures on the project, as the Water Boards cannot specify the manner of compliance with the regulation. To specify the exact location of trash removal devices or to identify noise ordinances and general plan noise policies of the various cities that might implement these devices as part of a program-level analysis would be completely speculative at this time. Project level analyses is the only |

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| | | | | meaningful venue for location analyses. |
| 1.68 | | | The FED also concedes that the project could result in substantial alteration of the present or planned "Land Use" of various areas (checklist 8a), yet it fails to evaluate those impacts or propose any mitigation. The potential for the project to conflict with zoning, general plans, local coastal programs, and other applicable land use plans should be evaluated further. The discussion portion also states in vague, conclusory fashion and without any supporting evidence that "[p]otential conflicts between implementation efforts and other land uses can be resolved by standard planning efforts under which specific projects are reviewed by local planning agencies." (Checklist 8a.) What this mitigation would involve remains a mystery – are local agencies expected to re-designate areas under their general plans and to re-zone those areas to obviate basic land use inconsistencies? Obviously, such a "solution" would not be acceptable or even possible in many situations, and thus the conflict would not be "resolved."<br><br>Further, the FED discounts any adverse impacts because of "the relatively modest size of the structural methods." The only hint in the FED, however, as to the size of the structural methods contemplated by the project is the off-hand reference to a vortex separator installed by the City of Los Angeles that was **over 70 tons** with a footprint diameter of **18 feet**. (Checklist, p. 5.) This statement completely contradicts the conclusion that there will be no adverse impacts due the "modest" size of the implementation devices. The FED's entire approach to land use conflicts thus inappropriately discounts any actual land use impacts that could occur. | Staff disagrees that a footprint of 18 feet is of the size that could adversely impact land use and planning. Several jurisdictions, such as the Cities of Los Angeles and Glendale and Caltrans have already installed structural BMPs to comply with the previous trash TMDL within the existing storm drain infrastructure. However, to the extent that there could be potential land use impacts, they are best addressed at the project level. To specify the exact location of trash removal devices or to identify local land use plans of the various cities that might implement these devices as part of a program-level analysis would be completely speculative at this time. The commentor has provided no evidence as to why standard planning efforts such as re-designating or rezoning would be unacceptable or impossible mitigation measures at the local level. |

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| 1.69 | | | Although the checklist finds that there are no "Risk of Upset" (checklist 10a) and/or "Human Health" (checklist 17a, b) impacts due to exposure to hazardous substances caused by the project, construction of the BMPs could reasonably foreseeably encounter contaminated soils and groundwater from adjacent industrial properties, historic landfills, superfund sites, etc., which could pose a safety risk to the public and workers. The project also may generate hazardous emissions, as the trash devices will, by design, trap substances which could become hazardous to the public if not handled in a timely manner and disposed of appropriately. More evaluation and mitigation of these impacts must be conducted. | It is reasonably foreseeable that during construction of BMPs, workers could encounter contaminated soils and groundwater. The checklist discusses reasonably foreseeable mitigation measures for these potential impacts in its discussion of potential human health hazards related to unprotected sites, use of heavy construction equipment, and accidents (see CEQA checklist 17.a and 17.b.) In addition, the health and safety plan prepared for any project should address potential effects from cross contamination and worker exposure to contaminated soils and water and should include a plan for temporary storage, transportation and disposal of contaminated soils and water.<br><br>The commentor has not provided any evidence as to which hazardous substances could be trapped by trash removal devices. However, the checklist does discuss potential impacts from, and mitigation measures for, the improper disposal of household hazardous wastes, for example, which could be trapped in trash removal devices (see CEQA checklist 2.b.) |
| 1.70 | | | The checklist finds that there will be no impacts to "Population" (checklist 11a), but there may be impacts to "Housing" (checklist | The Regional Board cannot anticipate at what locations any given city will |

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| | | | 12a). Clearly, because the majority of land where structural BMPs could be constructed is already developed, the BMPs will have to be built, at least to some degree, on parcels currently occupied by residential, commercial, and/or industrial structures. (Checklist, pp. 19, 20, 26 [acknowledging that compliance would occur in currently urbanized areas].) Given the apparent size of the devices (over 70 tons with a footprint diameter of 18 feet), this could result in significant impacts on housing, particularly on affordable housing, as well as on parking and traffic, which are not analyzed. (See discussion on housing, below.) Moreover, the FED fails to discuss the size of the land areas, including the size of retention areas, necessary for the structural BMPs. The potential impacts on existing and future development, including the potential loss of existing and future housing, open space, and other uses must be further evaluated and mitigated. Again, because the FED fails to evaluate a reasonable range of specific sites that will be involved as part of the project, its analysis of population and housing impacts falls short. | choose to install structural treatment devices. However, based on a review of trash removal devices installed in compliance with the previous trash TMDL (e.g., in the Cities of Culver City, Long Beach, Los Angeles and the County of Los Angeles), these devices can be installed in existing storm drain systems, which would not require additional land or the need to displace housing. To the extent that structural controls, if employed, conceivably could require the displacement of available housing, it is not reasonably foreseeable that the responsible agencies would employ those controls. |
| 1.71 | | | The checklist concedes that there will be "Transportation/Circulation" impacts from the project, but summarily dismisses these as unworthy of further evaluation because they are short-term and limited. (Checklist 13a-f.) However, the construction of BMP facilities could adversely affect local traffic conditions over the long term in the vicinity of construction staging areas, street construction, and access shafts. More importantly, the FED fails to provide any information regarding baseline traffic conditions, making it impossible to gauge project traffic impacts and fails to discuss the impacts on traffic created in performing four hours plus clean-outs of full capture devices installed along public streets. (See Exhibit "17.") More information regarding the extent and | The checklist does not summarily dismiss potential impacts on transportation/circulation, but rather provides a detailed description of reasonably foreseeable impacts and mitigation measures appropriate for a program-level tier 1 environmental review (see CEQA checklist 13a-f). Reasonably foreseeable mitigation measures analyzed include traffic control, signage, barricades, staging areas, timing of construction activity, and conformance with a congestion |

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| | | | duration of the impacts should be disclosed and analyzed. | management plan. |
| 1.72 | | | The checklist concludes that there will be impacts in "Public Service" because of increased costs due to the need for increased maintenance of public facilities and the need for increased monitoring to track TMDL compliance. (Checklist 14e, f.) These impacts are dismissed, however, as: (i) not being "environmental" impacts; (ii) being outweighed by the improvement in water quality that will result from the project; or (iii) because it is "not unfair" to impose these costs on the entities where the litter is generated. However, the inquiry under CEQA concerns "impacts," not "fairness;" in any event, more than increased costs are involved. Even were BMP construction, monitoring, and maintenance and repair deemed to involve only increased costs, their implementation could, because of budget limitations, potentially divert government services from other areas currently being served, with concomitant changes in the physical environment due to those diversions. (See Exhibit "21," letter from City of Downey Police Chief.) Further, because of the amount of land needed to construct the BMPs, park land and recreational facilities could be adversely affected. None of these impacts are evaluated. | The diversion of resources is an economic impact, which does not contribute to and is not caused by physical impacts on the environment.<br><br>Potential impacts to recreational facilities are discussed in section 19.a. |
| 1.73 | | | Utilities and Service Systems. The checklist concedes that the project will result in alterations to storm water drainage, and that storm water drainage systems may need to be retrofitted with structural BMPs or reconfigured to divert and/or capture and treat a portion of storm water. (Checklist 16e.) None of the impacts associated with these activities are evaluated, and mitigation measures and alternatives in connection therewith are nonexistent. Instead, the checklist merely concludes that the substantial alterations to the drainage system will have a positive | Potential flooding impacts are discussed under section 3.c and throughout the checklist. Potential impacts to traffic and vector control problems are discussed under section 13.a to 13.f and 17.a, respectively.<br><br>To the extent that trash removal devices would require the rerouting of utility |

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| | | | environmental impact. Certainly, installing trash capture devices in overstressed storm drain systems could result in physical impacts due to flooding concerns, traffic concerns, vector control problems, etc. In addition, installing full capture devices within public street, where possible, may require re-routing utility lines at significant effort and cost. None of these impacts have been analyzed.<br>Another example of utility/service system impacts that have not been analyzed is the construction of structural BMPs across the County which will result in the net export of soil, which is typically utilized as landfill cover or as fill by other projects. Potential impacts to land fill capacity from these numerous construction projects across the County must be further evaluated. As the locations of existing storm water facilities are known, impacts could and should be reasonably projected. | lines, the associated cost is an economic impact, which does not contribute to and is not caused by physical impacts on the environment.<br><br>The impacts on landfill capacity by the export of soil from the construction of trash removal devices are not reasonably foreseeable. For example, as a maximum estimate of potential construction projects, the staff report assumes that approximately 3700 large capacity vortex separation systems could be installed to collect all the trash generated in the urban portion of watershed. This number of additional construction projects, spread out over the TMDL implementation schedule, would not significantly increase the net export of soil over the existing number of construction projects in the watershed. |
| 1.74 | | | With regard to potential "Aesthetics" impacts, the FED once again is internally inconsistent. On the one hand, the FED concludes that the "[s]tructural BMPs are **often** subsurface devices and would not create an aesthetically offensive site after installation." (Checklist, p. 37, emphasis added.) On the other hand, it states that **screening and landscaping will be needed to mitigate aesthetic effects**. (*Id.*) It is difficult to understand this analysis because no details are given as to the specifics of the structural BMPs -- which structural BMPs are subsurface and | The substitute documents clearly define the types of structural trash removal devices that could be used to comply with the TMDL including catch basin inserts, structural vortex separation devices, and end of pipe trash nets. The potential impacts to aesthetics would vary based on the size/height of the device, which varies depending on the |

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| | | | need no screening, and which ones are surface level devices that need screening? Thus, the FED fails to offer meaningful disclosure, evaluation, analysis or mitigation. | invert of the storm sewer. The Regional Board cannot anticipate at what locations any given city will choose to install structural treatment devices because section 13360 prevents the Water Boards from imposing mitigation measures on the project. |
| 1.75 | | | The checklist concedes that there will be "Recreation" impacts from the project, yet fails to evaluate those impacts. Because of the high costs involved in complying with the TMDL (including the costs of acquiring private, developed sites), municipalities may well have to utilize park land or recreational and open space areas for the construction of structural BMPs. This would obviously adversely impact recreation facilities and opportunities, as well as access to those areas. Instead of evaluating and mitigating those impacts, the FED simply defers any analysis, concluding without evidence, evaluation, or performance criteria, that impacts can be mitigated "through construction BMPs and planning by the responsible agency." (Checklist 19a.) How this will occur remains a mystery. | Based on a review of trash removal devices installed in compliance with the previous trash TMDL (e.g., in the Cities of Culver City, Long Beach, Los Angeles and the County of Los Angeles), these devices can be installed in existing storm drain systems, which would not require additional land or the need to use park land or recreational and open space areas for the construction of structural BMPs.<br><br>It is reasonably foreseeable that installation of structural BMPs may temporarily impact the use of existing recreational sites, which is discussed in the checklist. Specific mitigation measures identified include the incremental installation of structural BMPs in parks, bike lanes, and other recreational sites to avoid the impairment of the entire site, redesigning structural BMPs or choosing a less disruptive implementation strategy. |

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| 1.76 | | | As for "Archeological/Historical" impacts, the checklist concedes that these may result from the project, but that any analysis must wait until a project-level EIR is prepared. (Checklist 20a.) Not so. Because there are many historical and cultural sites in the Los Angeles region that could be impacted by a future implementation project, the Board should conduct a records search of the South Central Information Center of the California Historical Resources Information System, and present an analysis of the range of impacts that could occur on the resources within the watershed. | Section 13360 prevents the Water Boards from imposing mitigation measures on the project, as the Water Boards cannot specify the manner of compliance with the regulation. To specify the exact location of trash removal devices or to identify potential historical and cultural sites at those locations as part of a program-level analysis would be completely speculative at this time. Project level analyses in which the exact level is specified is the only meaningful venue for location analyses. |
| 1.77 | | | The FED, here and in other places in its analysis, asserts in conclusory fashion, that when a structural BMP is determined to have significant impacts, the local agency will be able to simply forgo that BMP and choose a less disruptive implementation strategy, such as stepped-up enforcement of its anti-litter laws or increased street sweeping. Substantial evidence does not support this proposition, however, because a permitee will be deemed to be in compliance with the Trash TMDL only if the permitee installs Full Capture Systems (*i.e.*, vortex units) throughout its watershed. (TMDL, pp. 27 n.46, 27.) Thus, permittees do not have the option of complying with the zero trash requirement by enforcing anti-litter laws or increasing street sweeping because such a course of action would subject the permittees to significant fines. | Commentors are incorrect. The permittees do have the option of complying with the TMDL by enforcing anti-litter laws or increasing street sweeping and these do constitute reasonably foreseeable mitigation measures and alternative means of compliance. The TMDL does not, and cannot, mandate the use of any capture system or any particular means of compliance. (See Wat. C. § 13360.) The Regional Board has already certified a variety of systems as meeting the "full capture" definition, and the Regional Board will continue to evaluate others as they are presented. |

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| | | | | The amendment has been modified to clarify this point. Further, municipalities are not required to comply with the Trash TMDL, but rather, permits that implement the TMDL's provisions. |
| 1.78 | | | Finally, the checklist summarily determines that there are no "Mandatory Findings of Significance" because any potentially significant impacts "are expected to be limited, short-term or may be mitigated through design and scheduling." (Checklist 21.) This conclusion is not supported by any data or evidence in the FED, as discussed above. Indeed, the conclusion is expressly contradicted by the FED's determination that this TMDL "may result in temporary **or permanent** localized significant adverse impacts to the environment" (checklist p. 39), and that to the extent these impacts **cannot** be mitigated, they are outweighed by the project's benefits (*id.*). This contradiction, caused largely by the FED's failure to adequately disclose, evaluate, and mitigate the foreseeable impacts of the project, must be corrected prior to further consideration of the project by the Board. | Comment noted. The CEQA checklist has been revised by striking the word "permanent" on page 39. The foreseeable methods to comply with this project to adopt a trash TMDL for the Los Angeles River has no potential significant impacts that cannot be mitigated to a level of less than significant impact. The reasonably foreseeable methods of compliance include installation of structural BMPs such as trash capture devices in storm drains and storm drain catch basins, and non structural BMPs such as increased street sweeping enforcement of litter laws. These activities have no potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate |

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| | | | | important examples of the major periods of California history or prehistory.<br><br>Potential effects from installation of trash collection devices are expected to be short term in nature and can be mitigated through planning, design and scheduling. These potential short term impacts do not cause a disadvantage of long term environmental goals of restoring the beneficial uses of the Los Angeles River that are currently impaired by the trash.<br><br>The installation of structural BMPs does not have impacts that are individually limited, but cumulatively considerable. Installation of multiple trash collection devices, properly planned, designed, and scheduled, will serve to reduce greater amounts of trash from the Los Angeles River.<br><br>Installation and maintenance of structural and non-structural BMPs will not cause substantial adverse effects on human beings, either directly or indirectly. Implementing agencies should specify compliance with OSHA and other occupational safety regulations and guidelines in |

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| | | | | conducting BMP installation and maintenance activities. Other potential impacts such as flooding can be mitigated through siting and design of the structural BMPs.<br><br>Regional Board staff note that several jurisdictions have installed structural BMPs to comply with the trash TMDL including, for example, the Cities of Culver City, , Long Beach, Los Angeles and the County of Los Angeles. These jurisdictions did not find any potential adverse environmental impacts from compliance with the TMDL and determined that these projects were exempt from CEQA requirements. |
| 1.79 | | | The FED's analysis is also defective because it fails to set forth the required evaluation of alternatives. At least two fundamental defects exist. First, the FED confuses (i) reasonably foreseeable methods of compliance with (ii) alternatives to those reasonably foreseeable methods of compliance. Although these two concepts are separate and distinct, the FED inappropriately blends them together, apparently assuming that discussing reasonably foreseeable methods of compliance somehow constitutes an analysis of alternatives to those methods of compliance, as well. It does not. Guidelines section 15187, subdivision (a) states that the Board must "perform an environmental analysis of the reasonably foreseeable methods by which compliance with [its] rule or regulation will be achieved." | The substitute environmental documents do include a discussion of reasonable alternatives to those aspects of the project that could result in a significant adverse impact and mitigation to lessen those impacts. The Regional Board may combine the analysis of reasonably foreseeable environmental impacts with the analysis of reasonably foreseeable alternative means of compliance.<br><br>CEQA does not mandate an alternatives analysis except with respect to those |

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| | | | A different subdivision, section 15187 (c)(3), states that the FED must also include an "analysis of reasonably foreseeable alternative means of compliance with the rule or regulation, which would avoid or eliminate the identified impacts." The fact that more than one method of compliance was proposed for compliance with the TMDL (*i.e.*, was reasonably foreseeable) did not convert the discussion of those compliance methods into an analysis of alternatives to those compliance methods that would avoid the identified impacts of the compliance methods. Thus, the alternatives discussion is inadequate. Second, under the regulatory program certified for the Board pursuant to Public Resources Code section 21080.5, the FED must evaluate alternatives to the proposed activity being considered by the Board, here the Trash TMDL. (Pub. Res. Code § 21080.5(d)(3).) Nowhere in the FED are reasonable alternatives to the Trash TMDL evaluated (nor, as stated above, is there the required analysis of the alternative measures of compliance with the Trash TMDL). | parts of the project that could result in significant adverse environmental impacts. The commenter has not suggested what impacts might occur as a result of numeric vs. non-numeric limts. The Regional Board has no discretion to establish a TMDL that will not meet water quality objectives. The discretion, for which appropriate alternatives are considered, is contained within the program of implementation. Various structural and nonstructural compliance measures are discussed in the substitute documents, including full capture devices, partial capture devices, and increased litter enforcement. |
| 1.80 | | | As with the alternatives analysis, the FED has utterly failed to evaluate or impose any mitigation measures to lessen any of the significant impacts of the project, and has improperly deferred mitigation analysis to an undetermined future time with no performance criteria established by which to judge the efficacy of the mitigation. Thus, the FED is deficient. | Performance criteria for various mitigation measures are more appropriately considered in the Tier 2 analysis. Further, the TMDL does not mandate specific devices, so inclusion of any criteria for mitigation measures for potential impacts by such devices is speculative. The substitute documents and the discussion of mitigation measures sets forth analyses that are comparable in scope and breadth as analyses in EIRs and other FEDs and |

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| | | | | plainly complies with Public Resources Code sections 21080.5 and 21159. |
| 1.81 | | | The FED Segments the Project in Violation of CEQA. First, the lack of specificity in the mitigation measures discussed in the FED amounts to an illegal segmentation of the project because, by deferring review of the problems associated with the acknowledged environmental impacts that will result from the project until the project level stage, the FED illegally truncates the project and treats these various impacts as separate, independent projects. (See Inyo County v. City of Los Angeles (1977) 71 Cal.App.3d 185, 192-193) | CEQA's requirement that project level impacts be analyzed under PRC 21159.2 by the agencies complying with the regulations, does not amount to "segmenting" a project. The mitigation measures and their impacts, alternatives, and mitigation are specified with as much specificity as reasonably possible. |
| 1.82 | | | Under the Consent Decree, the project is the establishment of a series of TMDLs for the Los Angeles River and other impaired waters in the Basin. However, instead of evaluating the whole series of TMDLs together, or even the TMDLs for the Los Angeles River alone, the Board has separated each TMDL into an individual project, thus focusing on the constituent parts of the real project, minimizing the real project's environmental impacts, and avoiding full environmental disclosure. Indeed, it is readily apparent that the implementation of the various TMDLs for the Los Angeles River watershed may impact one another and their effectiveness. The Board should evaluate the environmental impacts of developing all the TMDLs at the same time<br><br>It is inconceivable that a multi-billion dollar, region-wide drainage construction project would not have considerable cumulative impacts. Here, however, the FED evaluates the project in a vacuum, and does not even consider what other projects exist (e.g., the other TMDLs for the Los Angeles River) | Each regulation is its own project. The commentors have failed to set forth what significant cumulative environmental impacts would exist that have not been analyzed. The statement that "it is readily apparent" does not constitute substantial evidence supporting a fair argument. |

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| | | | that may make the incremental impacts of the project cumulatively considerable. (See Pub. Res. Code § 21083(b); Guidelines § 15065(c).) Nor are the growth-inducing impacts of the project considered as required. These fatal flaws render the FED defective under CEQA. | |
| 1.83 | | | The Board Has Not Complied with CEQA's Consultation Requirements. Under the Regional Board's certified program (23 Cal. Code Regs. § 3778), the Board is required to "consult with persons having special expertise with regard to the environmental effects involved in the proposed activity." It does not appear that the Regional Board has followed this requirement or transmitted a copy of the FED to such persons. For example, there is no indication that the Board has consulted with the South Coast Air Quality Management District on potential impacts from vehicle emissions related to increased street sweeping or the cleaning and maintenance of the BMPs. There also is no indication that the Board has consulted with other individuals or agencies with expertise regarding the other environmental effects of the TMDL. The Board should seek input from such agencies and other individuals in order to conduct the necessary analyses to ensure the Board complies with CEQA's requirement of informed decision-making. | The substitute documents, including the CEQA checklist, the staff report, and Basin Plan amendment, include a detailed project description and an analysis of all reasonably foreseeable impacts from compliance with the TMDL and mitigation measures for those impacts. Numerous public agencies, including the department of fish and game, resources agency, and State clearinghouse were notified of the availability of these documents and of the CEQA scoping meeting held on June 28, 2006. |
| 1.84 | | | As stated, although the FED concludes that project impacts are avoided through mitigation measures or alternatives, it nevertheless attempts to state that the project has "overriding considerations" that outweigh the project's significant impacts. Thus, the checklist inappropriately **predetermines** that the undisclosed, unknown, but unmitigable adverse impacts are | See response to comment No. 1.49 |

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| | | | outweighed by the necessity of implementing this particular Trash TMDL. This determination is unsupported and uninformed by substantial evidence, and thus the analytic route of the Board is not disclosed, because the extent of the impacts has not even been evaluated by the Board. Further, the FED is internally inconsistent. On the one hand, it concludes that the project impacts are all avoided through mitigation measures or alternative, and on the other hand concludes that significant adverse impacts remain, which cannot be mitigated i.e., the definition of a statement of overriding consideration. (See, Public Resources Code § 21081.) The Board's conclusion cannot be supported by this record or any other record. | |
| 1.85 | | | The fundamental flaw with the FED is that it fails to provide any kind of meaningful analysis of the potentially significant adverse impacts generated by the project, calls for the installation of full capture devices throughout the watershed. This lack of any meaningful analysis of the potential impacts from this project has already led to the initial 2001 trash TMDL being invalidated. The proposed 2006 trash TMDL suffers from the same flaws, as it fails to consider the wealth of data that has been generated over the last five years since the 2001 trash TMDL was initially adopted. Similarly, the lack of any meaningful analysis of the potentially significant adverse impacts from the trash TMDL project further shows the deficiencies of the statement of overriding considerations, as such a statement cannot be properly made unless the potentially significant adverse impacts have been fully identified and analyzed and a conclusion has been reached that they are significant and cannot be mitigated. Further, such a conclusion cannot be reached until the significant impacts have been analyzed in comparison to the benefits that will result from the project. No such analysis has been | The substitute environmental documents provide an adequate and complete Tier 1 program level analysis of the potentially significant adverse impacts generated by the project. The completeness and adequacy of the substitute environmental documents are further established by the number of trash interception devices that have been installed by implementing agencies without Tier 2 project analysis or under a Notice of Exemption. |

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| | | | conducted with the FED. | |
| 1.86 | | | The Board has repeatedly failed, either in the Basin Plan development process, any past Triennial Review process, the Municipal NPDES permitting process, and/or the TMDL process, to comply with its statutory obligations under Water Code sections 13000, 13240 and 13241, namely, to give full and complete consideration to the following when requiring storm water as urban runoff discharges to strictly comply with water quality standards: (a) the past, present or ***probable future*** beneficial uses of the waters in issue; (b) the environment characteristics of the hydrographic unit under consideration, including the quality of water available thereto; (c) the water quality conditions that could ***reasonably be achieved*** through the coordinated control of all factors which affect water quality in the area; (d) ***economic considerations***; (e) the need for developing ***housing within the region***; (f) the need to develop and use recycled water (see Water Code § 13241), and the various policy considerations set forth in Water Code section 13000. Pursuant to the above provisions of the Porter-Cologne Act, in any formulation or amendment of a water quality control plan where water quality standards or objectives are being adopted or modified (as here with the adoption of numeric objectives), the policies set forth in section 13000 must be complied with, and the factors set forth in section 13241 must be fully considered. (*See United States of America v. State Water Resources Control Board, et al.* (1986) 182 Cal.App.3d 82 ("*U.S. v. State Board*").<br><br>In *City of Burbank v. State Water Resources Control Board* (2005) 35 Cal.4th 613 ("*Burbank*"), the California Supreme Court addressed the issue of whether this Board and the State | The Court of Appeal rejected claims that the previous Trash TMDL violated section 13241 or 13000. (*Arcadia* 135 Cal.App.4th 1392, 1415-18.) A TMDL is not a water quality objective. (See Memorandum from Staff Counsel Michael Levy to Ken Harris, dated July 12, 2002, "*The Distinction Between a TMDL's Numeric Targets and Water Quality Standards.*")<br><br>*Burbank* was a permit action construing Water Code section 13263, which requires analysis of 13241. A TMDL under 13242 is not a standards action to adopt objectives, subject to 13241. This TMDL does not conduct a triennial review or adopt a municipal permit. |

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| | | | Board were required to comply with Water Code section 13241, which, through section 13263, requires the Boards to consider "economics" when issuing an NPDES permit. (*Id.* at 626.) The *Burbank* Court found that where the State and Regional Boards adopt provisions that "exceed the requirements of the Federal Clean Water Act," State law, specifically section 13241, must be complied with. (*Id.* at 627.) The Court held that unless the specific requirement is mandated by federal law, section 13241 must be complied with even where a permit is being adopted pursuant to federal law. Consequently, as the Regional Board is required to comply with State Law, including, specifically, Water Code section 13241, whenever it adopts requirements more stringent than those required under federal law, and as federal law does not require that municipalities strictly comply with TMDLs, the Board is required to comply with section 13241 and the other provisions of the Porter-Cologne Act, prior to adopting the revised Trash TMDL.<br><br>Moreover, the State Board's Office of Chief Counsel has likewise confirmed the requirement that the Board consider state law requirements in adopting TMDLs. ("Attwater Memo," a copy of which is included with Exh. "22," along with a memo from the Chief Counsel's office, from Sheila Vassey ("Vassey Memo")), the Board's Chief Counsel recognized that, in adopting water quality objectives, Boards "are required to exercise their judgment to 'ensure the ***reasonable*** protection of beneficial uses and the prevention of nuisance. | |
| 1.87 | | | The Proposed Trash TMDL Is Not Reasonably Achievable and Is Thus Contrary to Water Code Sections 13241(c) and 13000. Federal law does not require that municipalities strictly comply with TMDLs. In a US EPA November 22, 2002 Policy | These issues were already decided adversely to the Commenters in *Arcadia v. SWRCB* , 135 Cal.App.4th 1392. |

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| | | | Memorandum, entitled "Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based On Those WLAs," (Exh. "23" – hereafter "EPA TMDL Policy Memo), EPA confirmed that municipalities are not required to strictly comply with TMDLs, as they are not required to strictly comply with numeric limits.<br>In State Board Order No. WQ2001-15, the State Board confirmed its that municipalities are not required to strictly comply with water quality standards but instead found that compliance is to be achieved over time, through an iterative approach requiring improved BMPs. As pointed out by the Browner court, there is nothing inconsistent between this approach and the determination that the clean water act does not mandate strict compliance with water quality standards. Instead, the iterative approach is consistent with U.S. EPA's general approach to storm water regulation, which relies on BMPs instead of numeric effluent limitations. (See State Board Order No. 2001-15. Exhibit "24", p. 7.) | |
| 1.88 | | | In addition, the State Board recently convened a panel of recognized experts to address whether or not it is feasible to develop numeric limits for storm water permits, including municipal storm water permits. In September of 2005, this Panel heard presentations and testimony from various regional board representatives, including the Los Angeles Regional Board, along with testimony from the regulated and the environmental communities. The Panel issued a report in June 2006 which concluded that "it is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban discharges." (Storm Water Panel Recommendations for the California State Water Resources Control Board, The | The State Water Board has not adopted any regulation related to the report, nor has it adopted the conclusions of the report. The issues raised in this comment were already decided adversely to the Commenters in *Arcadia v. SWRCB* , 135 Cal.App.4th 1392. |

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| | | | Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated With Municipal, Industrial, and Construction Activities, June 19, 2006, Exh. "25", p. 8.)<br><br>Here, the TMDL imposes a strict numeric limit of "zero," which can only be complied with through the deemed compliant full capture alternative (see Staff Report, p. 29). Yet, the full capture devices are of limited application, and compliance with the zero TMDL is not reasonable achievable or even possible.<br><br>Without the inclusion of a deemed compliant catch basin alternative, or some other similar feasible alternative to the full capture project TMDL, the Board will have acted contrary to the requirements of Water Code section 13241 and section 13000, as well as federal law, as it will have imposed an impossible "zero" standard on municipalities, and will have regulated water quality "unreasonably," without "considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible." (See Water Code § 13000, and § 13241.) | |
| 1.89 | | | The Board has Failed to Consider "Economics," as Required by State Law. In City of Arcadia v. State Water Resources Control Board, supra, 135 Cal.App.4th 1392, one of the issues raised was whether this Board and the State Board were required to comply with Water Code section 13241, and specifically, to consider "economics" when adopting the now invalidated Trash TMDL. The trial court in fact invalidated the 2001 TMDL on the grounds that the Water Boards had failed to consider "economics" in | See response to comment 1.10. As noted, the Court of Appeal determined the Water Board's analysis was adequate. The alleged new information was considered. Staff have recalculated the baseline based on data provided by LACDPW and the staff report has been revised accordingly. Staff has revised the CEQA analysis based on |

3 PRC section 21159(c) provides as follows: "The environmental analysis shall take into account a reasonable range of environmental, **economic** and technical factors, population and geographic areas, and specific sites."

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| | | | accordance with the requirements of section 13241. On appeal, the Court of Appeal reversed this aspect of the decision, but did not determine whether or not the Water Code section 13241 factors applied, finding that with respect to economics, "given the lack of any definition for 'economic considerations' as used in Water Code section 13241, and on deference to the Water Boards' expertise, we conclude the Trash TMDL discussion of compliance costs is adequate and does not fulfill the arbitrary or capricious standard." (Id. at 1417-18.)<br><br>However, since the adoption of the initial Trash TMDL in September of 2001, significant new evidence has come to light which shows that the figures included in the Board's economic analysis in the 2001 Trash TMDL (which analysis has not been updated in the revised Trash TMDL) are low, and that the actual cost to comply with the Trash TMDL through the only stated means of achieving zero, i.e., the full capture devices, are far greater than indicated. The revised Trash TMDL fails to account for any of these updated and actual cost estimates. In its Strategies for Reducing Trash Report, the Board's estimate of complying with the full capture devices and the other costs for various implementation measures is analyzed, and the Report concludes that the actual implementation costs, of "installing 'full capture' basin devices may be substantially higher than original estimated in the trash TMDLs (see Section II-E)." (Exh. "4," p. II-1.)<br><br>In addition, at the time the Regional Board adopted the initial Trash TMDL in September of 2001, it did not have the benefit of the calculations set forth in the USC Study (Exh. "7"), showing | information provided by municipalities, Caltrans, and vendors on trash removal devices used to comply with the previous trash TMDL. Trash removal devices implemented by municipalities in compliance with the previous trash TMDL have proven to be more cost effective. For example, the City of Glendale, installed continuous broom brushes along the upper edge of storm drain inlets to prevent trash from entering it. The estimated cost is approximately $800 per catch basin. |

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| | | | that the cost to fully comply with all water quality standards over the next twenty-five years, including trash, could exceed $283.7 billion. Nor did the Regional Board consider the various Caltrans Reports (see Exhs. "8," "9" and "10"), showing that the cost for municipalities to comply with the water quality standards in the Basin Plan would approach $54 billion. These additional costs, as described in the USC Study and the various Caltrans Studies, must be considered by the Board. The Trash TMDL is one of many TMDLs to be adopted by the Board, and from an economic perspective, the $5 billion or more needed for the next ten years to comply with the Trash TMDL for the LA River, may not be available in light of the extensive costs to comply with other TMDLs adopted by the Board, e.g., the nearly $15 billion that may be necessary to comply with the Metals TMDL for the Los Angeles River. (See Exh. "27," p. 5, Addendum to August 2004 Analysis of the TMDL for Metals on the Los Angeles River and Tributaries, May 2005; and Exh. "28," the Socio-Economic Factors and Environmental Justice Impacts of the Metals TMDL for the Los Angeles River.)<br><br>Pursuant to the express requirements of Water Code section 13241, factors to be considered when the Board adopts or amends water quality objectives "shall include, but not necessarily be limited to, all of the following":<br>(d) Economic considerations.<br><br>Similarly, Water Code section 13000 provides in part as follows:<br>The Legislature further finds and declares that activities and factors which may affect the quality of the waters of the state shall be regulated to attain the highest water quality which is reasonable, considering all demands | |

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| | | | being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible. (Emphasis added.)<br><br>Further, as discussed in EPA's "Guidance for Developing TMDLs in California, dated January 7, 2000 ("EPA California TMDL Guidance") (Exh. "12"), EPA, although recognizing its regulations do not require "any particular form of economic analysis," stated that "the Office of Chief Counsel, State Water Resources Control Board, issued the following memorandum addressing economic analysis requirements under State law." This memo is the Chief Counsel Memo discussed above, which, in part, concludes that:<br>Porter-Cologne requires that the Regional Water Boards take "economic considerations", among other factors, into account when they establish water quality objectives.<br><br>* * *<br><br>Attached to this memorandum is a 1994 memorandum containing guidance on the consideration of economics in the adoption of water quality objectives. The key points of this guidance are:<br><br>• The Boards have an affirmative duty to consider economics when adopting water quality objectives.<br><br>• At a minimum, the Boards must analyze: | |

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| | | | (1) whether a proposed objective is currently being attained; (2) if not, what methods are available to achieve compliance with the objective; and (3) the cost of those methods.<br><br>If the economic consequences of adoption of a proposed objective are potentially significant, the Board must state on the record why adoption of the objective is necessary to ensure the reasonable protection of beneficial uses or the prevention of nuisance. (Exh. "22," Atwater Memo, p. 5.)<br><br>The State Board's Chief Counsel TMDL Memo further provides that the Regional Water Boards must comply with CEQA when they amend their basin plans. (Id. at 4.) CEQA requires the Water Boards to conduct an environmental analysis of the reasonably foreseeable methods of compliance with performance standards or treatment requirements. In doing so, "[t]hey must consider economic factors in this analysis." (Exh. "22", Vassey Memo, p. 5)<br>The Chief Counsel concluded as follows:<br><br>Thus, the Regional Water Board must identify the reasonably foreseeable methods of compliance with the wasteload and load allocations and consider economic factors for those methods. This economic analysis is similar to the analysis for water quality objectives discussed above. (Id. at 6, emphasis added.)<br>Accordingly, pursuant to Water Code sections 13241 and 13000, and PRC section 21159,3 as underscored by the | |

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| | | | administrative interpretation provided in the Chief Counsel's TMDL Memo, the Board is required to consider "economics" in adopting the TMDL.<br>Here, the Board acknowledges that costs of complying with the TMDL will be high. The Staff Report, for example, recognizes that the cost of installing the low capacity vortex separation systems could be as high as $1.758 billion for the first ten years alone, with ongoing maintenance costs of $148 million annually thereafter. (Staff Report, p. 40.) The Court of Appeal in City of Arcadia, et al. determined that the Board's cost analysis, up to that time, was sufficient to comply with whatever economic analysis was required by Section 13241, with the Court citing to evidence in the prior TMDL that the cost of compliance through the full capture VSS devices would total as much as $945 million in capital costs and $813 million in operation and maintenance costs over 10 years. (Id. at 1417.)<br>However, there is significant additional evidence developed since the initial Trash TMDL was adopted in September 2001, as discussed above, showing that the Board's cost figures are in fact low, and that the actual costs to comply with the Trash TMDL through full capture measures (assuming full capture throughout the watershed is even reasonably achievable) "range from approximately 5 to 22 times higher than estimated in the TMDLs." (Exh. "4," p. II-25.)<br>The revised TMDL fails to consider any of this new evidence, and fails to consider the additional evidence of the "limited use" of full capture devices, as discussed in the Municipal Trash BMPs Report. The TMDL further fails to account for the cost analyses set forth in the USC study, and in the various Caltrans Studies, which looks at the cumulative cost of strictly complying with water quality standards, such as the numeric zero standard being set by the Board with the proposed | |

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| | | | revised Trash TMDL. | |
| 1.90 | | | In addition, the Board's cost analysis fails to consider the land acquisition costs needed for the installation of full capture facilities throughout the watershed. It is clear that such facilities cannot all be installed beneath the streets on property already owned by the municipalities, particularly if large capacity vortex separation systems are used. That is, it may well be necessary to install facilities in places other than the City streets due to utility easements, drainage patterns, streets which are not large enough to accommodate the facilities, etc. And, the Staff Report itself recognizes the difficulties in installing full capture devices in "urban settings" (Staff Report, p. 28.) Given the high cost of acquiring land within Los Angeles county, acquiring additional land upon which to install the facilities will likely involve significant costs, yet there is no evidence that that such costs have been considered by the Regional Board. (See Exh. "29," Impacts on Housing of the Metals TMDL for the Los Angeles River, p. 2, showing land acquisition costs of $2.085 billion for the acquisition of the necessary property to install the treatment facilities to comply with the Metals TMDL.)<br><br>Attached hereto and marked collectively as Exhibit "40," are three real estate market reports. The first such report is from the Los Angeles Times showing the median home price for Los Angeles County at $395 per square foot (May 18, 2006). The second report is the Colliers International Report for office space in the Los Angeles Basin for the first quarter of 2006, showing office space at $250 or more per square foot. The third report is a Colliers International Market Report for central Los Angeles for industrial space for the first quarter of 2006, showing an | The requirement is not to perform a "cost analysis", but to consider a "reasonable range of environmental, economic, and technical factors…" (PRC §21159(c).) The board has complied with this mandate. If the commenters had presented evidence of the cost of acquiring land and factors related to their assumptions of why and how much land would be required, the Board would have considered it in the "economic factors". Notably, cost of a project is not an environmental impact.<br><br>The commenter mischaracterizes the staff report. The staff report does not recognize "difficulties" in installing full capture devices in urban settings, but states that enforcement of litter laws in urban settings could also be a method of compliance. The commenter further fails to recognize that the Executive Officer has certified trash nets and catch basin inserts as full capture devices and that the municipalities are not required to use only "large capacity vortex separation systems." Further, the variety of different full capture devices that have been certified as full capture devices allows the cities to select |

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| | | | average cost of $97.00 per square foot for industrial space. | different locations for installation and thereby reduce their land acquisition costs, if any such costs are necessary at all.<br><br>The data attached at Exhibit 29 is not useful because it is not foreseeable that the same manner of compliance would be reasonable to comply with a metals TMDL as with a trash TMDL. The data attached at Exhibit 40 is not useful because it is not foreseeable that any land that would allegedly need to be acquired would be either residential, commercial or industrial land. Further, Exhibit 40 fails to provide any estimate of the amount of land required outside of municipal land required to comply with the TMDL. Therefore, land acquisition costs to comply with the TMDL are speculative. It is noted that the full capture devices that have been installed to comply with the TMDL have not incurred any land acquisition costs. Notably, cost of a project is not an environmental impact. |
| 1.91 | | | Similarly, many of the other costs assumed in the TMDL documents appear to be unrealistic and without any factual basis. For instance, the Staff Report estimates that reducing litter through increased enforcement of litter laws will cost the | The commenter misreads the Staff Report. First, the Staff Report does not state that the revenues from litter fines "completely" offset the costs of |

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| | | | municipalities less than $1,000,000 over a ten year period, implying that the only real cost will be a $250,000 database system, because "[r]evenues from fines assessed [will] offset increased law enforcement cost. (Staff Report, p. 40.) Yet the Board fails to assert any authority for its assumption that revenues from fines will completely offset increased enforcement costs, and law enforcement officials commenting on the draft TMDL strongly disagree with the Board's assumptions. (See, e.g., Exh. "21," July 26, 2006 Comment Letter from Roy Campos, Chief of Police for the City of Downey, pp. 1-2 [stating estimated enforcement cost "has no basis in fact" and noting the annual salary, including benefits, of a single entry-level police officer averages over $100,000].) The $1,000,000 the Board estimates for increased enforcement over a ten year period would pay for ***only one*** new police officer to enforce litter laws, and thus could hardly be expected to have a significant impact over the 584 square mile watershed." (*Id*. at 2.)<br>Funding the Trash TMDL will, moreover, be difficult. A survey conducted by the Charlton Research Company, in October of 2002, throughout Los Angeles County on the public's willingness to pay new storm water fees and taxes shows the difficulty municipalities have in funding stormwater projects. (Exh. "30.") The survey was funded by the Los Angeles County Public Works Department, and the Los Angeles County Sanitation Districts, and involved a telephone survey of 600 likely voters in the Los Angeles Area. The "willingness to pay" section of the survey illustrates how difficult it would be for local governments to reach the two-thirds (67%) voter approval requirement under Proposition 218 for new storm water taxes and fees, with the survey results showing, among other findings, that:<br>(i) only 44% of those surveyed supported | increased law enforcement. Second, the commenter fails to note that the Staff Report Table 14 (page 40) includes capital, maintenance and capital, and servicing costs. The capital and maintenance and capital costs are provide "over 10 year" and "after 10 years" respectively. The servicing costs are presented on an "annual basis."<br><br>Thus, based on the information provided in the comment of annual costs of a single police officer at $100,000 per year, the TMDL cost estimate assumes a reasonably foreseeable number of law enforcement officials of 10 per year over 10 years of the program, not the single officer stated by the commenter.<br><br>Regarding the survey conducted by the Charlton Research Company, a "new storm water system", is not a reasonably foreseeable method of compliance given that full capture devices have been certified by the Regional Board that only entail minor modifications to the existing system. It also appears that the survey focuses on willingness to pay increased taxes when other funding mechanisms appear to be viable. Regional Board staff note that over the |

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| | | | increased taxes (24% strongly supported it and 20% only somewhat supported it);<br>(ii) a majority of those surveyed did not favor new taxes, and when asked whether they favored various revenue sources, residents opposed all options tested, including a utility tax increase (68% opposed this), a property tax increase (65% opposed this), and a sales tax increase (62% opposed this). 59% opposed fines and 57% opposed fees on consumer goods;<br>(iii) only 50% of those surveyed stated they would be willing to pay at least $1 per month in new taxes (25% would not even support a $1 per month increase in taxes, and 24% did not know);<br>(iv) 65% would support an additional 50¢ on a package of cigarettes; and<br>(v) 60% of those surveyed felt that Los Angeles County should spend tax money on law enforcement and health care, while only 32% felt that the tax money should be spent on storm water cleanup. | past several years, voters in the City of Los Angeles and the State of California have approved bonding for clean water and sewer upgrade projects. |
| 1.92 | | | Therefore, whatever "economic" consideration by the Board occurred before the adoption of the original TMDL is not sufficient to satisfy the requirement of 13241(d) for **this new TMDL**. Nonetheless, the Regional Board has refused to consider "economics" in adopting the TMDL, insisting:<br>The TMDL does not establish water quality objectives, but is merely a plan for achieving existing water quality objectives. Therefore **cost considerations required in Section 13241 are not required for this TMDL.**<br><br>(Staff Report, p. 35 [emph. added].) Accordingly, the cost | The Court of Appeal rejected claims that the previous Trash TMDL violated section 13241 or 13000. (*Arcadia* 135 Cal.App.4th 1392, 1415-18.) A TMDL is not a water quality objective. (See Memorandum from Staff Counsel Michael Levy to Ken Harris, dated July 12, 2002, "*The Distinction Between a TMDL's Numeric Targets and Water Quality Standards.*") |

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| | | | analysis set forth in the Staff Report is wholly deficient, and the requirement to consider "economics" pursuant to Water Code sections 13000, 13240 and 13241 has not been complied with. | |
| 1.93 | | | Justice Janice Rogers Brown in her concurring opinion in *Burbank v. SWRCB*, made a number of significant comments regarding the importance of considering "economics," in particular, and the section 13241 factors, in general, under the Porter-Cologne Act, and the problems that have resulted from the Los Angeles Regional Board's failure to date to consider "economic considerations" in developing water quality standards. Justice Brown also commented on the "unseemly bureaucratic bait-and-switch" approach that the Regional Board has engaged in to date when it comes to considering economics, as well as on what Justice Brown called the Board's game of "gotcha" with the cities in that case, writing in her concurring opinion as follows:<br>Applying this federal-state statutory scheme, it appears that throughout this entire process, the Cities of Burbank and Los Angeles (Cities) <u>were unable</u> to have economic factors considered because the Los Angeles Regional Water Quality Control Board (Board) – the body responsible to enforce the statutory framework –failed to comply with its statutory mandate.<br><br>For example, as the trial court found, the Board did not consider costs of compliance when it initially established its basin plan, and hence the water quality standards. The Board thus failed to abide by the statutory requirements set forth in Water Code section 13241 in establishing its basin plan. Moreover, the Cities claim that the initial narrative standards were so vague as to make a serious economic analysis impracticable. Because the | Staff will not respond to this ad hominem except to note that the concurring opinion in the *Burbank* case was not joined by the other justices, and that this TMDL has nothing to do with the process that was used to adopt the permit in the Burbank case. |

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| | | | Board does not allow the Cities to raise their economic factors in the permit approval stage, they are effectively precluded from doing so. As a result, the Board appears to be playing a game of "gotcha" by allowing the Cities to raise economic considerations when it is not practical, but precluding them when they have the ability to do so. (*Id.* at 632, J. Brown, concurring.)<br><br>Justice Brown also concluded that the last time the narrative water quality objectives for "toxicity" contained in the Basin Plan were reviewed and modified was in 1994, a fact not denied by the Regional Board, and went on to state:<br>Accordingly, the Board has failed its duty to allow public discussion – including economic considerations – at the required intervals when making its determination of proper water quality standards.<br><br>What is unclear is why this process should be viewed as a contest. State and local agencies are presumably on the same side. The costs will be paid by taxpayers and the Board should have as much interest as any other agency in fiscally responsible environmental solutions.<br><br>. . .<br><br>In light of the Board's initial failure to consider costs of compliance and its repeated failure to conduct required triennial reviews, the result here is an unseemly bureaucratic bait-and-switch that we should not endorse. (*Id.* at 632-33, J. Brown concurring.)<br><br>Justice Brown concluded her comments by stating that the Regional Board's actions in that case: "*makes me wanna holler* | |

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| | | | *and throw up both my hands*." (*Id.* at 634.) | |
| 1.94 | | | The Board's continued refusal to consider the Water Code section 13241 factors and section 13000 policies, in connection with the Trash TMDL, similarly makes the Cities "wanna holler and throw up [their] hands," as the Board has consistently refused to give genuine consideration to the real economic impacts the subject TMDL will have on the public and the municipalities. The Regional Board's steadfast refusal to properly and fully consider the true "economic" impacts of its decision is particularly troubling given the clear evidence that the issue of "economics" has never been considered in the establishment of the existing water quality standards, and particularly, in connection with the application of such water quality standards to urban runoff and storm water. (*See Burbank v. SWRCB, supra,* 35 Cal.4th 613, 623 [noting that the trial court "found no evidence that the Los Angeles Regional Board had considered economic factors" when it adopted the Basin Plan]; see also Declaration of Susan Paulson, dated September 16, 2003, and the attached report entitled "A Review of the Los Angeles Basin Plan Administrative Record," dated February 2003, both of which are collectively attached hereto as Exh. "31," concluding that at the time the Basin Plan was first adopted for the Los Angeles Region, it did ***not*** contemplate applying the stated water quality objectives to non-point sources or to storm water and urban and rural runoff.) The economic impacts of the revised Trash TMDL have not been fully evaluated. | See response to comment 1.10. |
| 1.95 | | | *The Board Has Improperly Failed to Consider the Impacts of the* | See response to comment 1.10. |

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| | | | *Trash TMDL on Housing Within the Region*<br>As discussed above, under section 13241, in adopting TMDLs which are numeric water quality objectives, the Regional Board is required to consider, among other factors, "***the need for developing housing within the region***." (See Water Code § 13241(e).) Yet a review of the TMDL Staff Report and the Basin Plan Amendment shows that no such analysis has been performed. The record is devoid of any consideration of the impacts this TMDL will have on housing, particularly on low and moderate income housing.<br>In connection with the Cities' comments on the Metals TMDL for the Los Angeles River, the Cities previously submitted to the Board a report entitled, "Impacts on Housing of the Metals TMDL for the Los Angeles River." (Exh. "29.") As detailed in that report, implementation of the Metals TMDL will require the demolition of approximately 4,967 residential dwellings in order for the permittees to acquire the land necessary to install the infiltration trenches and sand filters prescribed in the Metals TMDL. (Exh. "29"; Housing Impacts Report, p. 2.)<br>A significant number of houses will similarly likely need to be demolished to comply with the Trash TMDL for the Los Angeles River Watershed. Such loss of housing could have a devastating impact on a region which is already suffering a severe housing affordability crisis. (See Housing Impacts Report, p. 4.) While the Trash TMDL, by itself, may not have as severe an impact on the availability and affordability of housing as the Metals TMDL, it will certainly aggravate the impact | The commenter fails to note that an analysis on impacts to housing is provided in the substitute environmental documents, specifically on Page 28 of the CEQA checklist. As detailed in the substitute environmental documents, because the reasonably foreseeable methods of compliance with the TMDL include nonstructural BMPs and installation of trash collection devices in the urban stormwater systems, it is not reasonably foreseeable that the installation of trash collection devices in stormdrains located in public right-of-way will impact housing.<br><br>It is also noted that the reference cited in the comment pertains to a metals TMDL and is not relevant to the Trash TMDL under consideration. It is also noted that the cited report does not discuss the methods of compliance and does not provide a logical analysis of how any of the unspecified methods of compliance for the Trash TMDL will impact housing.<br><br>Further, the commenter fails to provide a single example where installation of a |

4 Even where parkland can be used for the installation of full-capture devices, there is an indirect impact on housing, as less parkland will be available for its primary purpose, i.e., to be used as parks. Given that many areas of Los Angeles already suffer from a dearth of public parks, and the importance of such parks to neighborhoods and even home values, the potential loss of parks created by this TMDL is, by itself, an impact on housing which must be considered by the Regional Board.

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| | | | caused by the Metals TMDL, making the situation even worse.<br>As explained above, the only way that the Cities can comply with the Trash TMDL, as written, is to install expensive "full-capture" devices throughout the watershed. The TMDL documents do not specify where all of the facilities required to comply with the TMDL are to be installed, and seem to assume that they can all be installed beneath City streets, albeit, at the same time recognizing that they may well be appropriate in "urban settings." (Staff Report, p. 28.) But while some of these devices may be able to be installed beneath City streets, it is clear that not all of them can be. For example, many small streets simply do not have enough space to accommodate the large full-capture devices. Likewise, utility easements may make it impossible to install such devices beneath many streets. In other cases, installation of such devices may be impossible or impracticable because of drainage patterns, traffic issues related to the installation and maintenance of the devices, and/or noise concerns. (See, e.g., Municipal Trash BMP Report, Exh. "5," p. 19; Report of CDS Unit Cleanout, Exh. "17.")<br>Obviously, where a full-capture device cannot be installed under a street, it must be installed somewhere else. Sometimes it may be possible to install it on other public property, such as in a park,4 but other times, where such property is unavailable, complying with the TMDL will require the permittees to acquire additional land upon which to install the facilities, and will thus effect the amount of land available for housing. The TMDL compounds the problem created by the Metals TMDL, because now the Cities must find a place to install full-capture trash devices, in addition to the infiltration trenches and sand filters prescribed in the Metals TMDL, meaning the City will have to acquire even more property than required by the Metals TMDL. | trash capture device in compliance with TMDL has resulted in an impact to housing. |

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| | | | Moreover, finding such property becomes more complex, because the places where it makes the most sense to install infiltration trenches and sand filters (because of drainage patterns) are naturally the same places where it is most practical to install the VSS devices. (See Staff Report, p. 28, ["This approach [full capture systems] may be best suited for open space areas where low levels of trash may accumulate over large vegetated drainage areas."].)<br>The TMDL documents fail to address the impacts the TMDL can be expected to have on the housing needs for the Los Angeles River Watershed. They do not even disclose the loss of housing that will be caused by the implementation of the TMDL, let alone analyze what the effect of that loss will be to the region. Nor do the TMDL documents address the housing affordability crisis which the watershed is currently experiencing. Accordingly, in light of the utter failure of the Regional Board to consider impacts on housing in developing the Trash TMDL, as well as the obvious negative impacts the TMDL will have on housing within the region, adopting the TMDL in its current form, without further consideration of the impact of the TMDL on "the need for developing housing within the region," would violate Water Code section 13241(e), as well as section 13000, and the need to consider "the total values involved, beneficial and detrimental, economic and social, tangible and intangible." | |
| 1.96 | | | **THE BOARD HAS FAILED TO UTILIZE A "TRANSLATOR" IN ESTABLISHING THE TMDL.**<br><br>The purpose of a TMDL is to translate existing narrative water quality objectives into "numeric targets." As set forth in the regulations to the Clean Water Act, it is necessary for the | See response to comment 1.19. The fact that this TMDL is not a permitting action has already been adjudicated against them in the *Arcadia* decision. 135 Cal.App.4th 1392. In any event, trash is not a "toxic" pollutant. |

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| | | | Regional Board to develop a "translator" to allow for the conversion of a narrative water quality standard into a pollutant specific numeric effluent limitation, particularly when setting a limitation for a toxic pollutant. (See 40 C.F.R. § 122.44(d)(1)(vi).) Here, the purported narrative water quality objectives described in the staff report are to be achieved with the Trash TMDL are as follows:<br>• Waters shall not contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses.<br>• Waters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial uses. (Staff Report, p. 15.)<br>Of course, nothing in these stated objectives says anything about trash. In the development of a Trash TMDL based on these water quality objectives alone is improper, as such narrative objectives say nothing about the existence of trash in the waterways. Further, there is no "translator" which explains how these narrative objectives for floating materials and solid, suspended or settleable materials are translated into a numeric TMDL for trash. As such, without a translator, the TMDL was improperly developed. | |
| 1.97 | | | In EPA's California TMDL Guidance, EPA clearly recognized the importance of having a translator to translate narrative water quality objectives into numeric limits: | Comment noted. The quantitative interpretation that has been proposed is zero as defined in the TMDL. |

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| | | | In situations where applicable water quality standards are expressed in narrative terms or where 303(d) listings were prompted primarily by beneficial use or antidegradation concerns, **it is necessary to develop a quantitative interpretation of narrative standards**. Since a TMDL is an inherently quantitative analysis, it is necessary to determine appropriate quantitative indicators of the water quality problem of concern in order to calculate a TMDL. (AR 4335.)<br><br>Citing 40 C.F.R. § 130.7(c)(1), EPA concluded: "Numeric water quality target(s) for TMDL must be identified, and an adequate basis for target(s) as interpretation of water quality standards must be specifically documented in the submittal." (Id.) | |
| 1.98 | | | The water quality objectives relied on by the Board in developing this TMDL are "floating materials" and "solid, suspended, or settleable materials." (Staff Report, p. 15.) However, the Board has failed to explain how or why the pollutant "trash" is to be included in the terms "floating materials" and "solid, suspended, or settleable materials." (See id.) The TMDL also fails to explain why these "objectives" are to include "trash," and further fails to include a defined "translator" necessary to allow for the conversion of a narrative water quality standard into a pollutant specific numeric effluent limitation. (See 40 C.F.R. § 122.44(d)(1)(vi) [requiring translator for toxic pollutants].) Without an explanation on how the objective was "translated" into zero trash, the Water Boards failed to perform the necessary analysis required for the development of a TMDL. | See response to comment 1.19 and 1.96. The commenters fail to show how this interpretation is arbitrary or capricious. This comment was adjudicated adverse to the commenters in *Arcadia v. SWRCB,* 135 Cal.App.4th 1392. |

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| 1.99 | | | In the *City of Arcadia* case, which invalidated the 2001 trash TMDL, the trial court in fact relied upon the lack of a "translator" as one of several bases for invalidating the TMDL, finding that:<br>Without an explanation of how the "objective" was translated into the "numeric target" petitioners conclude the TMDL must be overturned. (40 C.F.R. section 122.44(d)(1)(vi) [requiring a "translator" for toxic pollutants].)<br><br>The Court finds petitioners are correct. (Exh. "2," Statement of Decision, p. 14.)<br><br>The Court of Appeal although overturning the trial court's decision on several grounds, and upholding the trial court's decision on CEQA grounds, failed to address the lower court's decision finding the trash TMDL was invalid because the Respondents failed to include a translator. Here as well, the Board has again failed to include a "translator" for translating the "narrative" objective into the numeric objective, and the revised Trash TMDL remains defective. | This comment was adjudicated adverse to the commenters in *Arcadia v. SWRCB,* 135 Cal.App.4th 1392. The Court of Appeal stated: "We reverse the judgment to the extent it is based on other [non-CEQA] grounds." 135 Cal.App.4th at 1402. |
| 1.100 | | | **THE BOARD IMPROPERLY SEEKS TO APPLY THE TMDL TO A WATER BODY THAT IS NOT LISTED ON THE 303(d) LIST, AND IS NOT PROPOSED TO BE LISTED ON THE STATE'S 303(d).**<br><br>It is clear from the plain language of the Act and applicable case law that, with the exception of "informational" TMDLs (a category which the proposed Metals TMDL is not a part of), a TMDL is only to be established for those waters which have first | The commenter fails to note that this proposed action is a TMDL for trash in the Los Angeles River, not a TMDL for metals. See response to comment 20.<br><br>The Regional Board has the authority to adopt TMDLs for pollutant-water body combinations not on the 303(d) list. In the recent decision on *City of Arcadia et al., Los Angeles Regional Water Quality* |

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| | | | been identified on the State's 303(d) list. Section 303(d)(1) of the Act provides a three-step process for the development of TMDLs. First, each state is to "identify those waters" within its borders for which the industrial effluent limitations are not stringent enough to implement any water quality standards applicable to such waters. (33 U.S.C. § 1313(d)(1)(A).) Second, the state is to "establish a priority ranking for such waters," taking into account the severity of the pollution and the uses to be made of such waters. (*Id.*) Third, the state is to "establish for the waters in paragraph (1)(A) of this subsection, and in accordance with the priority ranking, the total maximum daily load, for those pollutants which the administrator identifies" as suitable for calculation. (33 U.S.C. § 1313(d)(1)(C).)<br>In *San Francisco Bay Keeper v. Whitman* (9th Cir. 2002) 297 F.3d 877, the Ninth Circuit discussed this procedure and found that:<br>When the NPDES system fails to adequately clean up certain rivers, streams or smaller segments, the Act requires use of a water-quality based approach. States are required to identify **such waters**, which are to be designated as "water quality limited segments" ("WQLS"). The states must then rank these waters in order of priority, **and based on that ranking**, calculate levels of permissible pollution called "total maximum daily loads" or "TMDLs." (*Id.* at 880; emphasis added.)<br><br>In addition, Section 303(d)(3) of the Act allows the state to develop "informational" TMDLs for waters that have not been listed, but such "informational" TMDLs are not to be submitted to EPA for approval and are for "informational" purposes only. Section 303(d)(3) thus confirms that non-informational TMDLs may only lawfully be developed for listed water bodies and pollutants. (33 U.S.C. § 1313(d)(3).) As noted in the Fact Sheet | *Control Board et al*, the Court of Appeals upheld the Regional Board's authority to establish TMDLs for the Los Angeles River Estuary before it was formally listed on the 303(d) list. (135 Cal. App.4th at 1418-1420.) |

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| | | | for the San Gabriel River Metals TMDL: "The Clean Water Act (CWA) requires states to establish TMDLs for waters ***on the 303(d) list*** of impaired waterbodies." (Fact Sheet, p. 1; see also Staff Report, p. 1 [emph. added].)<br>Here, there is no question that the Trash TMDL is not intended to be a mere "informational TMDL," as the Staff Report and proposed Resolution approving the Basin Plan Amendment indicate that it is to be submitted to EPA for its review and approval. (See Resolution, p. 5.) Yet, the Board seeks to apply the TMDL to the Los Angeles River Estuary, even though the Estuary is not on California's 303(d) list. When the Cities challenged the previous version of the TMDL on the ground that the Estuary was not listed as an impaired water body, the Board asserted that it was submitting a request to EPA to list the Estuary, simultaneously with its adoption of the TMDL, and the appellate court approved that procedure. In *City of Arcadia, supra,* the Court allowed the Boards to adopt a TMDL for the unlisted Estuary because of its conclusion that the Water Boards could "simultaneously submit to the EPA the identification of an impaired water body and a TMDL for it." (*City of Arcadia, supra,* 135 Cal.App.4th 1392, 1419.)<br>Yet, despite the Board's representation in the *City of* Arcadia case, that it was submitting a request to EPA to list the Estuary, the Estuary is still not listed on the State's 303(d) list, either in the 2002 list, which was adopted after the Regional Board adopted the initial trash TMDL in September of 2001, or in the 2006 proposed 303(d) list prepared by the State Board. (See Exh. "13.") Therefore, it now appears clear that the Boards never added the Estuary to the State's 303(d) list, despite its representations to the Court.<br>Moreover, if the Regional Board truly desires to simultaneously list an additional water body and adopt a TMDL for it, the Board | |

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| | | | is required to give notice of its intention to do so. Government Code § 11125 provides that every state body shall provide public notice of its meetings. The notice of the meeting shall include a specific agenda containing a brief description of the items of business to be transacted. (Government Code § 11125(a) and (b).) 23 Cal. Code Regs. § 647.2 provides that "the notice for all meetings of the Regional Boards shall specify the date, time and location of the meeting and include an agenda listing all items to be considered. The agenda shall include a description of each item, including any proposed action to be taken." Here, however, the Regional Board's notice regarding the hearing on the Trash TMDL references only the proposed TMDL, and makes no mention of the simultaneous listing of the Estuary. As such, the proposed Trash TMDL is contrary to law. | |
| 1.101 | | | **THE TRASH TMDL IS NOT SUITABLE FOR CALCULATION AND DOES NOT PROVIDE FOR A DAILY LOAD WHICH THE MUNICIPALITIES CAN COMPLY WITH.**<br><br>A TMDL can be established only when the pollutant at issue is "suitable for such calculation[,]" and [s]uch load allocations shall be established at a level ***necessary*** to implement the applicable water quality standards . . . ." (33 U.S.C. § 1313(d)(1)(C), emphasis added.) Based on a 1978 EPA regulation, a TMDL is "***suitable for calculation***" only under "***proper technical conditions.***" (43 Fed. Reg. 60665; Exh. "32," emphasis added.) "Proper technical conditions" require "the availability of the analytical methods, modeling techniques and data base necessary to develop a technically defensible TMDL." (*Id.*)<br>The critical importance of adequate scientific data, and the | See response to comment 1.21. |

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| | | | negative impact on the development of TMDLs without such data, is underscored by the extensive problems identified in EPA's proposed TMDL program. In its August 9, 2001 ruling, EPA delayed implementation of a July 13, 2000 TMDL rule because of concerns expressed by the regulated community that "***there is not enough data to support TMDLs, that some pollutants are not suitable for calculation, that 303(d) lists are not based on scientifically defensible data, or that the listing criteria is too inflexible***." (66 Fed. Reg. 41817, 41819; emphasis added.)<br>Despite comprehensive efforts to address the problem and extensive public commentary on the issue, the unresolved concerns resulted in EPA again delaying (66 Fed. Reg. 41817, 41819), and then abandoning altogether, the proposed rule because the controversial regulations could not serve as an "efficient and effective TMDLs program without significant revisions." (68 Fed. Reg. 13608.)<br>In a Report issued for Congress by the National Research Council ("NRC"), a member of the National Academies of Science, entitled "*Assessing the TMDL Approach to Water Quality Management*," dated September, 2001, (see Exhibit "33"), the NRC concluded as follows:<br>Many debates in the TMDL community have centered on the use of "phased" and "iterative" TMDLs. Because these terms have particular meanings, this report uses a more general term – adaptive implementation. Adaptive implementation is, in fact, the application of the scientific method to decision-making. It is a process of taking actions of limited scope commensurate with available data and information to continuously improve our understanding of a problem and its solutions, while at the same time making progress toward attaining a water quality standard. (Exh. "33," p. 90.) | |

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| | | | Here, the TMDL documents are devoid of any indication the Board has: (1) identified any analytical methods, (2) developed any modeling techniques, or (3) prepared a database to develop a technically defensible TMDL. Instead, the existing record reveals the TMDL has been developed without supporting technical data and without the use of modeling techniques or a database on which to base the TMDL.<br>To adhere to the CWA, the Board is required to determine how, and to what degree, the beneficial uses of the Los Angeles River are actually impaired as a result of the existence of trash, so it can establish proper analytical parameters to determine what level of pollutants would not unreasonably impair the beneficial uses. Without scientifically defensible data, an assimilative capacity study, and a baseline established by adequate monitoring, "***proper technical conditions***" for the TMDL did not exist. Because the TMDL is not "suitable for calculation," its adoption would be contrary to law. | |
| 1.102 | | | In the *City of Arcadia* case, the Court of Appeal rejected the City's argument that the 2001 Trash TMDL was not "suitable for calculation," on the grounds that EPA had also approved the trash TMDL, and had previously approved a trash TMDL for the East Fork of the San Gabriel River. Thus the Court concluded that EPA's 1978 regulation should not be viewed as prohibiting a TMDL for trash. (*City of Arcadia, supra,* 135 Cal.App.4th 1392, 1434.) However, subsequent to the *City of Arcadia* case, the U.S. Court of Appeal for the District of Columbia, struck down a TMDL because it did not establish a "daily" load as required by the Clean Water Act. The Court then recommended that EPA reconsider its position in the 1978 regulation (referenced by the *City of Arcadia* Court of Appeal), that "all pollutants . . . are suitable for the calculation of total maximum daily loads." | Comment noted. See response to comment 1.21. |

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| | | | (*Friends of the Earth, Inc. v. Environmental Protection Agency* (D.C. Cir. 2006) 446 F.3d 140, 144 ("*Friends of the Earth*").)<br><br>In *Friends of the Earth*, the District of Columbia Court of Appeal also held that the CWA was not ambiguous, and found that it required a TMDL be expressed as a "daily" load. "The law says 'daily.' We see nothing ambiguous about this command. 'Daily' connotes 'everyday.'" (*Id.* at 144.) Here, not only has the Board developed a TMDL that is not yet "suitable for calculation," it has moreover adopted interim waste load allocations that are based on percentage reductions of trash on an annual basis. For example, by the end of the first year of adoption, the TMDL requires that the Cities show a reduction in trash from the baseline of 30%. This 30% is identified as the "interim waste load allocation." Each year thereafter a 10% reduction in trash must be shown, with the Board establishing compliance points and subjecting the Cities to enforcement action if these interim waste load allocations are not met.<br><br>However, with the exception of the final waste load allocation of "zero," the interim waste load allocations are clearly not expressed as "daily" loads, in spite of the fact that the CWA unambiguously requires a "daily" load. (See, *Friends of the Earth,* 486 F.3d 140, 144; also see 33 U.S.C. § 1313(d)(C) and (D).) In light of the plain language of the CWA, as well as the recent U.S. Court of Appeal decision in *Friends of the Earth*, the subject TMDL is improper as trash is "not suitable for calculation" at this time, and as the Board has improperly included interim waste load allocations which are not "daily" loads. (*See also* Draft EPA Memorandum, dated July 11, 2006, regarding "Establishing TMDL 'Daily' Loads in Light of the D.C. Circuit Decision in *Friends of the Earth*," Exh. "34.") | |

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| | | | Clearly, the establishment of waste load allocations which are not "daily" loads, is contrary to law. | |
| 1.103 | | | **THE BOARD HAS FAILED TO DEVELOP AN IMPLEMENTATION PLAN FOR NONPOINT SOURCES OF TRASH, THEREBY IMPROPERLY INCREASING THE BURDEN ON THE MUNICIPALITIES.**<br><br>In *City of Arcadia*, the Court of Appeal rejected the Cities' argument that the Water Boards acted contrary to the Clean Water Act when they failed to develop an implementation plan for nonpoint source pollution sources. (*City of Arcadia, supra,* 135 Cal.App.4th 1392, 1431.) The Court went on to find that Congress did not require the States to take regulatory action to limit the amount of nonpoint source water pollution, but rather encouraged States to develop area-wide waste treatment management plants. (*Id.* at 1432.) A problem nonetheless remains with the revised TMDL in that, although the Cities continue to maintain that federal law requires the Boards to do more to address nonpoint source contamination (particularly when failure to do so increases the burden on the point source dischargers, see, 40 C.F.R. § 130.2(i)), the Cities also contend that the Board's failure to develop an implementation plan for nonpoint sources has increased the burden and potential liability of the Cities, and as such, is arbitrary and capricious action which violates State law. (See CCP § 1085.)<br><br>***The Failure To Adopt Implementation Measures For Nonpoint Sources Is Action Contrary To Law***<br><br>Despite the fact that the Board has determined that the numeric target for Trash in the Los Angeles River Basin should | See response to comment 1.22. Arcadia, 135 Cal.App.4th at 1431 |

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| | | | be zero, the Board has elected not to require implementation measures for nonpoint sources. By ignoring nonpoint sources, the Board has acted arbitrarily, and has improperly increased the burden and liability of the Cities for pollution which federal law plainly recognizes is not the responsibility of the Cities. Without adopting an implementation plan similar to the implementation plan the Board developed for the East Fork San Gabriel River (Exh. "35"), the trash TMDL imposes upon the Cities the responsibility for all nonpoint source trash, including that generated by State and federal facilities and universities and school districts.<br>Under the TMDL, the Board evaluates compliance by simply evaluating the amount of trash that exists at the monitoring points. Enforcement action may then be taken if the percentage reduction requirements have not been met, as measured at such compliance points. Thus, it is not simply the lack of an implementation plan that has resulted in the Board acting contrary to State and federal law, but just as importantly, the lack of recognition by the Board, within the TMDL itself, that the Cities are not responsible for trash that flows into their storm drain system from nonpoint sources like State and federal facilities, the Angeles National Forest, colleges and universities, and school districts. By transferring the burden of addressing nonpoint source loads of trash from the nonpoint sources onto the Cities, the Board has acted directly contrary to law, and arbitrarily and capriciously.<br>The CWA's comprehensive regulation of water pollution prevention plainly "focuses on ***two*** possible sources of pollution: point sources and ***nonpoint sources***." (*BayKeeper*, 297 F.3d at 880.) In EPA's "Guidance for Developing TMDLs in California," EPA described the importance of establishing load allocations for nonpoint sources, and stressed the need for | |

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| | | | discussing the methodology "in detail."<br>Load allocations for nonpoint sources may be expressed as specific allocations for specific dischargers or as "gross allotments" to nonpoint source discharger categories. Separate nonpoint source allocations should be established for background loadings. Allocations may be based on a variety of technical, economic, and political factors. **The methodology used to set allocations should be discussed in detail**. It is advisable to include some assessment of the feasibility of the allocations in order to increase the likelihood that the TMDL can actually be attained through implementation actions and, accordingly, is sufficient to be approved by EPA. (EPA Guidance Memo, Exh. "12," p. 5)<br><br>Thus, EPA plainly confirmed both that a separate allocation is required for nonpoint sources and that a "detailed" methodology to set the allocation is required. (*Id*.)<br>The TMDL includes no discussion whatsoever of the methodology used to set the allocation for nonpoint sources. Likewise, it contains no implementation measures, and thus no assessment of the feasibility of the implementation actions needed to achieve a "zero" load allocation from all nonpoint sources, including the homeless, aerial deposition, and State and federal facilities, schools and other facilities that are not yet required to be permitted under the CWA.<br>The "load allocation" analysis for nonpoint sources is not only an important part of the "legal" analysis, it is similarly an important part of the "practical" analysis. EPA has found that "54% of California's substandard rivers and waters are impaired | |

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| | | | by nonpoint sources and another 46% are impaired by a combination of point and nonpoint sources." (*Pronsolino v. Marcus* (N.D. Cal. 2000) 91 F. Supp. 2d 1337, 1337-38.) Yet the TMDL contains a series of implementation measures directed only at point sources, i.e., an Implementation Plan requiring that only municipalities and Caltrans prevent **all** trash from entering the River, and fails to include a single implementation measure for a nonpoint source, even though it expressly recognizes that trash is being discharged into the River from various nonpoint sources, and even though it imposes a "zero" load allocation, regardless of whether trash comes from a point source or a nonpoint source.<br><br>In the trash TMDL for the East Fork of the San Gabriel River the only load allocation that was assigned was assigned to a nonpoint source, i.e. the U.S. Forest Service. And directly contrary to the position taken by the Board with respect to this trash TMDL, in the East Fork San Gabriel River Trash TMDL, the Water Boards expressly adopted an implementation plan that imposes various obligations upon a nonpoint source of trash. (See East Fork San Gabriel River Trash TMDL, Exh. "35," p. 13.) Various nonpoint sources of trash account for a significant portion of the trash in the Los Angeles River, but yet the Board has arbitrarily transferred the obligation of removing such nonpoint source trash to the Cities.<br><br>For example, the TMDL Report references a significant problem of trash in the River resulting from direct deposition by the homeless. The TMDL Report provides that as a result of a | |

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| | | | clean up effort organized during the Sacred Music Festival on Saturday, October 16, 1999, over a distance of just 1.5 miles, ***eleven shopping carts and six 40 gallon bags of trash were removed between Los Feliz Boulevard and Fletcher Drive***. The TMDL Report provides further that the Regional Board staff "***noticed more shopping carts and more trash on the same site the very next afternoon***." (Staff Report, p. 17, emphasis added.) The Report then includes a photograph of various shopping carts and other trash collected from this area of the River. There is no contention in the TMDL Report that this trash, particularly the trash discovered "the very next afternoon," flowed from municipal storm drain system. Likewise, obviously, none of the shopping carts were discharged from storm drains.<br>The evident point of this discussion in the TMDL Report was to illustrate a common example of the problem of trash in the River, and to do so in a fashion that reinforces the need for the TMDL. Yet, the TMDL fails to include an Implementation Plan to deal with the problem of this nonpoint source of trash.<br>Significantly, EPA has stated in its November 22, 2002 Guidance Memorandum and its regulations that storm water discharges from sources that are not currently subject to NPDES permits should be addressed by the "load allocation" component of the TMDL, i.e., they are to be considered nonpoint sources. (40 C.F.R. § 130.2(g); EPA Guidance Memorandum, p. 1, Exh. "12.") But the TMDL lacks any consideration of the nonpoint source load allocation component, such as trash from universities, school districts, State and federal facilities, and other large institutions, that would qualify as "stormwater discharges associated with industrial activities." (40 C.F.R. § 122.26(b)(14).) Because these facilities are not subject to permits, and thus "WLAs" have not yet been allocated to these facilities (see 40 C.F.R. § 130.2(g)), such facilities are "existing" | |

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| | | | nonpoint sources to be accounted for in setting the "load allocation" in the TMDL. (*Id.*)<br>As such, the Board is required to develop "implementation measures" not only for the homeless and aerial sources of trash, but also for the other nonpoint sources of trash consisting of State and federal facilities, and other facilities not yet subject to NPDES Permits. The CWA does not authorize the Water Boards to transfer the load allocation for all nonpoint sources of trash to the Cities. To the contrary, the regulations provide for the opposite.<br>[i]f Best Management Practices (BMPs) or other nonpoint source pollution controls make more stringent load allocations practicable, then wasteload allocations can be made less stringent. Thus, the TMDL process provides for nonpoint source control tradeoffs. (40 C.F.R. § 130.2(i).)<br><br>Rather than making WLAs less stringent, the Board have done the opposite and made the WLAs for point sources more stringent. It has ignored the problems with nonpoint sources, such as School Districts and State and federal facilities. In failing to develop a nonpoint source Implementation Plan, the Board is unlawfully imposing the obligation to address nonpoint sources onto the municipalities. The Board has acted arbitrarily and contrary to law. | |
| 1.104 | | | ***The Lack Of Implementation Measures For Nonpoint Sources Of Trash Wrongly Increases The Financial Responsibility Of The Cities***<br>The Board's failure to develop implementation measures for nonpoint sources of trash will also result in the elimination of | The state does have a nonpoint source management plan with tools to regulate nonpoint sources. See http://www.waterboards.ca.gov/nps/protecting.html |

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| | | | possible federal funding under 33 U.S.C. section 1329 of the Act, resulting in the loss of a valuable resource needed to remedy what is undeniably a societal/behavioral problem of controlling litter.<br>In addition, CWA section 1329 requires the Board to develop a nonpoint source management program that utilizes a process that includes "intergovernmental coordination and public participation for identifying BMPs and measures to control each category and subcategory of nonpoint sources and, where appropriate, particular nonpoint sources" that "add significant pollution to each portion of navigable waters" governed by TMDLs. (33 U.S.C. § 1329(a)(1)(B) & (C).) The Board's failure to develop implementation measures and an implementation plan to address the recognized nonpoint source contribution of pollution to the River has allowed the State to forego its responsibility to establish a process, and a public participation plan to address the problem of trash in the River. | Irrespective, the status of the Water Boards' nonpoint source management plan has no bearing on the cities obligations to control litter from their own point sources. |
| 1.105 | | | THE BOARD HAS FAILED TO PERFORM A COST BENEFIT ANALYSIS OR TO INDICATE THAT SUCH AN ANALYSIS WILL BE CONDUCTED AS REQUIRED BY THE CALIFORNIA WATER CODE.<br><br>Water Code sections 13267, 13225(c) and 13165 all require that a cost/benefit analysis be conducted whenever the State or Regional Boards require a local agency to investigate | See response to comment 1.25. |

5 Federal regulations as well, for nonpoint sources, require the use of "cost effective and reasonable best management practices," providing that "uses" are deemed obtainable if they can be achieved by the imposition of, among other things, "cost-effective and reasonable best management practices for nonpoint source control." (40 C.F.R. § 131.10.)

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| | | | and report on technical factors involved in water quality control, or require that a local agency obtain and submit analyses of water, including technical or water monitoring programming reports. (Water Code §§ 13165, 13225(c) & 13267).5<br>Under such circumstances, the State and Regional Boards are required to consider the burdens of conducting such analyses and monitoring reports, and may only require the same where "the burden, including costs, of such reports" bears a "reasonable relationship to the need for the report and the benefits to be obtained therefrom." (*Id.*) Further, under Water Code § 13267, the Regional Board is required to provide "a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the report." (Water Code § 13267.)<br>Likewise, under Water Code § 13225(c), the Regional Board only has the authority to "require as necessary any state or local agency to investigate and report on any technical factors involved in water quality control or to obtain its analyses of water" where it has conducted a mandatory cost/benefit analysis. Thus, without first conducting the cost/benefit analysis, the Board is without any statutory authority to impose such requirements upon a local agency.<br>The Trash TMDL includes significant monitoring requirements, and the Amendment to the Basin Plan specifically references Section 13267, providing, under the heading "Implementation," that: "This TMDL will be implemented through stormwater permits and <u>via the authority vested in the Executive Officer by section 13267 of the Porter-Cologne Water Quality Control Act: (Water Code section 13000 et seq.)</u>." (See Proposed Basin Plan Amendment, Table 7-2.1.) But there is no evidence that a cost/benefit analysis of such monitoring requirements has been performed by the Regional Board. | |

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| | | | In the *City of Arcadia* case, the Board took the position that a cost/benefit analysis of monitoring requirements necessitated by a TMDL is not required until the adoption by the Board of an actual order requiring a monitoring plan (i.e., a cost/benefit analysis is not required before the adoption of the TMDLs). That position was upheld by the Court of Appeal. (*See City of Arcadia v. State Water Resources Control Bd.* (2006) 135 Cal. App. 4th 1392, 1414.) The Cities continue to maintain that the requirements of Water Code §§ 13165, 13225(c) and 13267 are not triggered solely by an Order under said sections. However, recognizing the Court's decision in the *City of Arcadia* decision, at a minimum, the Board should recognize that it is clearly more practical to conduct the required analysis now, in conjunction with the development of the TMDL itself, rather than wait until the adoption of an actual order implementing the monitoring program required by the TMDLs, only to conduct a cost/benefit analysis of the already adopted TMDL. In either case, it is clear that a cost-benefit analysis must be completed before the adoption of an order requiring monitoring and/or reports necessitated by the TMDL. (*See Arcadia,* 135 Cal.App.4th 1390, 1414.) | |
| 1.106 | | | **THE BOARD HAS FAILED TO BASE THE TRASH TMDL ON PAST, PRESENT OR PROBABLE "FUTURE" BENEFICIAL USES OF THE L.A. RIVER.**<br><br>To establish a TMDL, the Water Boards must take into account the "severity of the pollution and ***the uses to be made*** of such waters." (33 U.S.C. § 1313(d)(1)(A), (C); 40 C.F.R. § 130.2(d) [defining "[w]ater quality standards" as State or | See response to comment 1.26. |

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| | | | federal law provisions consisting of a "designated use or uses for the waters of the United States."].) The CWA requires an analysis to determine the pollutant loading level necessary to implement water quality standards for ***actual*** existing or future beneficial uses of the water body. Similarly, under Water Code section 13241, water quality objectives must address past, present, and "probable" future beneficial uses. Neither federal or State law supports the Water Boards' misconception that a TMDL may be established based on a "possible," theoretical use of the water body. Indeed, this determination is directly contrary to the CWA's plain language. Nor does the TMDL program allow a standard be adopted to avoid any adverse impact of any kind, regardless of the "uses to be made" of the water body or the definable impact on such uses.<br>California's 303(d) list does not just identify the actual beneficial "uses to be made" of the water bodies listed. Rather, it identifies "existing" and "potential" beneficial uses, along with "intermittent" beneficial uses. As such, the TMDL for the River has not been developed based on the ***actual*** "uses to be made," as compelled by the CWA's plain language. (33 USC § 1313(d)(1)(A).) The development of a TMDL that relies on "***potential beneficial uses***," rather than the "***uses to be made***" of the River contravenes the controlling regulations and the express requirements of the CWA.<br>For example, one such purported "potential use" improperly relied upon is the use of the River "for recreation and bathing, in particular by homeless people who seek shelter there." (Staff Report, p. 9.) Even the Water Boards themselves have acknowledged that bathing and recreation by the homeless is ***specifically prohibited by law*** in substantial portions of the River. (Transcript of February 6, 2002 State Board Workshop, p. 22.) Plainly, an "illegal" use cannot be a "use to be made" for | |

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| | | | the water body. The Water Boards also relied on the faulty "potential use" of "swimming" in the River. (Staff Report, p. 15.) Yet, the Record lacks any evidence to support the actual existence of these uses, and in fact the vast majority of the River is lined with concrete. (Staff Report, p. 6.)<br>Not only is swimming illegal in many such areas, but, as shown by news accounts every storm season, swimming in storm channels is dangerous and deadly. Moreover, even if a minimal portion of the River may be used "lawfully" for swimming, this "use" cannot justify a TMDL applicable to the entire water body.<br>Moreover, under Water Code section 13241, water quality objectives must address past, present, and "probable" future beneficial uses. This requirement of establishing a water quality objective based on "probable" future beneficial uses is consistent with CWA's requirement that TMDLs address "uses to be made" of the impaired water body in issue. (33 U.S.C. § 1313(d)(1)(A).) As a numeric water quality objective, the TMDL must address the "uses to be made" of the River based on the "past, present and probable" future beneficial uses.<br>In the *City of Arcadia* decision, the Court of Appeal denied the Cities' request for relief on this issue, because it found that the Cities made "no showing of prejudice," finding that swimming and bathing were the only two examples the Cities had identified as being listed as "potential" uses of the Los Angeles River, and that there was no suggestion that the "zero" target would have been less stringent in light of the other beneficial uses identified in the Basin Plan. Yet, in addition to the potential beneficial use of swimming, the Basin Plan improperly identifies numerous "potential" beneficial uses for various portions of the Los Angeles River. (See Staff Report, pp. 10-11.) For example, The "Los Angeles River to Estuary" segment of the river alone lists the following "potential" | |

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| | | | beneficial uses: municipal and domestic supply; industrial service supply; industrial process supply; migration of aquatic organisms; spawning, reproduction and/or early development; and shellfish harvesting. (Staff Report, p. 10.) Other segments of the LA River have similarly lengthy lists of "potential uses." (See Staff Report, pp. 10-11.)<br>Given the number of "potential" beneficial uses identified in the TMDL, and the fact that the TMDL generally focuses on many of these "potential" uses designation as the basis for the development of the TMDL in the first instance, the Board must reevaluate the "zero" standard, without these "potential" uses designations.<br>In basing the TMDL on any uses of the River other than on "probable" future uses, or the actual "uses to be made" of the River, the Board is acting contrary to law. | |
| 1.107 | | | **THE BOARD HAS FAILED TO DETERMINE THE "LOADING CAPACITY" OF THE L.A. RIVER, AS REQUIRED BY THE FEDERAL REGULATIONS BEFORE DEVELOPING THE TMDL.**<br><br>Under the Act, "[e]ach State ***shall establish*** for the waters identified in paragraph (1)(A) of this subsection, and in accordance with the priority ranking, the total maximum daily load for those pollutants which the Administrator identifies under section 1314(a)(2) of this title as suitable for such calculation." (33 U.S.C. § 1313(d)(1)(C), emphasis added.) Thus, each state must "***establish***" the TMDL "at a level necessary to implement the applicable water quality standards." (*Id.*, emphasis added.) | See response to comment 1.27. |

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| | | | As set forth in the CWA and EPA's regulations and policy directives, to establish the maximum pollutant loading level, states must analyze the amount of a pollutant that the entire water body can accommodate without preventing the attainment of the water body's designated uses. That is, to establish a TMDL, it is necessary to analyze the water body's "***loading capacity.***"<br>EPA regulations define "loading capacity" as "***the greatest amount of loading that a water can receive without violating water quality standards***." (40 C.F.R. § 130.2(f), emphasis added.) Thus, EPA's regulations expressly require that the "loading capacity" of a subject water body be established as part of the TMDL development process. (See 40 C.F.R. § 130.2(f), and the definition of "load allocation" and "waste load allocation," which are both based on the water's "loading capacity." (40 C.F.R. § 130.2(g) & (h).))<br>In the *City of Arcadia* decision, the Court of Appeal overturned the trial court's decision invalidating the TMDL because the Water Boards had failed to prepare an "assimilative capacity study." (*City of Arcadia, supra,* 135 Cal.App.4th 1392, 1409-13.) The Court, however, failed to even reference, let alone analyze, the specific regulations cited above, which clearly require a determination of the "loading capacity" of a water body before any TMDL can be developed. The Court specifically ignored the express requirements in the regulations which not only define "loading capacity," but also condition the establishment of the "load allocations" and "waste load allocations" on the establishment of the "loading capacity" of the water body. (40 C.F.R. 130.2(f), (g) & (h).)<br>Instead, the Court of Appeal presumed that the appellants' analysis was based solely on EPA's Guidance Memo for developing TMDLs in California, and concluded that such | |

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| | | | Guidance Memo did not impose legally binding requirements on EPA or the State of California. Although the EPA Guidance Memo clearly supports the Cities' position in this regard, as discussed below, the basis for the authority cited in the Guidance Memo comes directly out of the federal regulations themselves, regulations which were not discussed by the Court of Appeal.<br>The EPA Guidance Memo for Developing TMDLs in California cites to various portions of the governing regulations and provides that the "loading capacity" of the TMDL must be established in developing the TMDL:<br>An understanding of pollutant loading sources and the amounts and timing of pollutant discharges **is vital** to the development of effective TMDLs . . . . [P]ollutant sources or causes of the problem need to be documented based on studies, literature reviews or other sources of information. Because the source analysis provides the key basis for determining the levels of pollutant reductions needed to meet water quality standards, and **the allowable assimilative capacity**, TMDL, wasteload allocations, and load allocations, quantified source analyses are required. . . .<br>**The TMDL document must describe the relationship between numeric target(s) and identified pollutant sources, and estimate total assimilative capacity (loading capacity) of the waterbody for the pollutant of concern** [citing 40 C.F.R. § 130.7(d) and 40 C.F.R. § 130.2(i) and (f)]. (Exh. "12," p. 2-3, emphasis | |

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| | | | added.)<br><br>EPA's Guidance Memorandum summarizes the data necessary for the state to "establish the TMDL." The need for understanding the pollutant loading sources, including both point sources and nonpoint sources, and the importance of documenting the causes of the problem and estimating the "total assimilative capacity" of the water body, are all "vital" to determine the "loading capacity," that is, the "greatest amount of loading that a water can receive without violating water quality standards." (40 C.F.R. § 130.2(f).) Thus, although the Guidance Memo is itself not "legally binding," the regulations are legally binding, and the Board has no authority to adopt a TMDL without complying with the requirements of federal law, including the requirement that it determine the "loading capacity" of the subject water body before developing the TMDL. (See 40 CFR 130.2(f), (g) and (h).)<br>CWA section 1313, of which TMDLs are but one component, demonstrates the importance of adequate data development and analysis in setting TMDL levels. Section 1313 requires that states develop a "Continuing Planning Process" ("CPP") for the attainment of water quality standards. (33 U.S.C. § 1313(d)(1).) EPA's regulations implementing the CPP require that states "establish appropriate monitoring methods and procedures (including biological monitoring) necessary to compile and analyze data on the quality of waters of the United States and, to the extent practicable, ground-waters." (40 C.F.R. § 130.4(a).) The purpose of these data collection and quality assurance and control programs is to *"assure scientifically valid data"* underlie TMDLs and other regulatory programs. (40 C.F.R. § 130.4(b), emphasis added.)<br>Further, TMDLs must analyze existing ambient water | |

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| | | | quality through the determination of "pollutant loadings" from all possible sources. (40 C.F.R. §§ 130.2(e)-(h), 130.7(b); *Dioxin/Organochlorine Center, et al. v. Clarke,* (9th Cir. 1995) 57 F.3d 1517, 1520 ("*Clarke*").) Each analysis of pollution levels, pollution sources, and the water body's ability to handle the pollutant forms a component in the final TMDL level. (40 C.F.R. § 130.2(e)-(i), *Clarke,* 57 F.3d at 1520.) Such analyses is part and parcel of the need for the State to establish the water body's "loading capacity," i.e., the "greatest amount of loading" the water can receive without being impaired (*see* 40 C.F.R. § 130.2(f)).<br>Yet, here, the Board has failed to gather and analyze data regarding the quantity of trash—the "greatest amount of loading"—that the River could "receive without violating water quality standards," and has wrongly adopted an absolute "zero" standard, without the data or analysis to justify that standard. | |
| 1.108 | | | THE BOARD HAS FAILED TO CONSULT WITH LOCAL AGENCIES AND TO COORDINATE WITH OTHER AGENCIES, SUCH AS THE SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS, AS REQUIRED by Water Code Section 13240, 13144, 33 USC § 1329(a)(1)(C) and EPA Guidance. | See response to comment 1.28. |
| 1.109 | | | **CONCLUSION**<br><br>As the trash TMDL has already been struck down once because of the Board's failure to comply with State law, and particularly to conduct an EIR or its functional equivalent, and given the | Staff believes the proposed regulation fully and adequately complies with CEQA, the appellate decision, and state and federal law. |

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| | | | Board's failure to develop a "reasonably achievable" TMDL and an implementation plan, or to consider the many studies and other evidence developed since the initial trash TMDL was first approved in 2001, and also given the Board's apparent pre-commitment to adopt this TMDL without including feasible "deemed compliant" alternatives to the full capture device alternative, the proposed trash TMDL is invalid. Forging ahead with the proposed trash TMDL will only result in further years of delay and the ultimate adoption of an invalid TMDL, to the detriment of the Board, the Cities, the public, and the environment. | |
| 2.1 | Downey Brand | 8/21/06 | The following represents the City of Los Angeles' comments on the July 7, 2006 Draft of the Trash Total Maximum Daily Load ("TMDL") for the Los Angeles River Watershed. Many of these changes are necessary to make the proposed revisions correspond to the terms of the Settlement Agreement entered into between the City of Los Angeles ("City") and the Regional Water Quality Control Board for the Los Angeles Region ("Regional Board") in 2001. As such, the City respectfully requests that the Regional Board make the following changes:<br><br>Section ll. Definitions, page 3, last para. - The paragraph heading, "Full Capture Device," should instead read, "Full Capture System," as provided as "Negotiated Language" in the September 2001 Draft and Settlement Agreement.<br>*Request: On page* 3, *replace the word "Device," in the heading "Full Capture Device," with "System," so that the heading reads "Full Capture System."* | It is the intent of the Regional Board to incorporate all revisions necessary to correspond to the terms of the Settlement Agreement entered into between the City of Los Angeles ("City") and the Regional Water Quality Control Board for the Los Angeles Region ("Regional Board") in 2003.<br><br>Comment noted. The requested change will be made to the Staff Report. |

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| 2.2 | Downey Brand | 8/21/06 | Table 1. Beneficial Uses of Surface Waters of the Los Angeles River, page 14 - The following language should come directly after the language "Conditional designation," which modifies Table 1: "(conditional designations are not used to develop effluent limitations and are not enforceable designations for Clean Water Act purposes)." This language was previously provided in the September 2001 Draft and Settlement Agreement as "Negotiated Language."<br><br>*Request: On page* 14, *following Table* 1, *the phrase "Conditional designation" should be modified to read "Conditional designation (conditional designations are not used to develop effluent limitations and are not enforceable designations for Clean Water Act purposes)."* | This change is not reflected in the Negotiated Language of the 2003 Settlement Agreement. However since the Basin Plan contains similar language the Staff Report will be modified to reflect the intent of the requested change. |
| 2.3 | Downey Brand | 8/21/06 | Section IV. Numeric Target, page 19, para. one - The phrase "narrative water quality objective" should instead read "narrative water quality objective," as provided in the September 2001 Draft and Settlement Agreement as "Negotiated Language."<br><br>*Request: Add an "s" to the word "objective" on page* 19, *in Section IV. Numeric Target.* | Comment noted. The requested change will be made to the Staff Report. |
| 2.4 | Downey Brand | 8/21/06 | Section VI. Waste Load Allocations, Subsection A. Reconsideration and Refinement Provision, page 21, para. 1 - The word "Waste Load" should be added to the following sentence, so that it reads, "The Regional Board will review and reconsider the final Waste Load Allocations once a reduction of 50% of the Baseline Waste Load Allocation has been achieved." | Comment noted. The requested change will be made to the Staff Report. |

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| | | | The word "reconsidered" should also be substituted for the words "reviewed only" in the following sentence, so that it reads, "This means that the final Waste Load Allocation will be *reconsidered* after substantial reductions are achieved." These changes are provided in the September 2001 Draft and Settlement Agreement as "Negotiated Language."<br><br>*Request: Modify second and third sentences of the paragraph on page* 21 *entitled UA. Reconsideration and Refinement Provision," so that it reads "The Regional Board will review and reconsider the final Waste Load Allocations once a reduction of 50% of the Baseline Waste Load Allocation has been achieved. This means that the final Waste Load Allocation will be reconsidered after substantial reductions are achieved. "* | |
| 2.5 | Downey Brand | 8/21/06 | Section VI. Waste Load Allocations, Subsection C. Refined Baseline Waste Load Allocations, page 23, first para.- The July 2006 Draft changes the percentage each permittee will be allowed of their baseline waste allocation from 90% in the September 2001 Draft to 80% in the July 2006 Draft.<br><br>*Request: Modify Section I~ Subsection C in the July 2006 Draft to provide a 90% baseline waste allocation (as was the case in the September 2001 draft) because the change to the new 80% amount in the July 2006 Draft has not been adequately explained.* | The 80% value was provided in error. Each permittee will be allowed 70% of their baseline Waste Load Allocation in the first implementation year, This 30% reduction of the baseline is an acknowledgement of the trash reduction carried out by responsible agencies in fulfillment of the previously adopted TMDL. As the baseline monitoring was based on conditions during the 2002/2003 and 2003/2004 storm years, Staff expects that significant reductions would have been made in the three year period prior to the first compliance date.. |

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| 2.6 | Downey Brand | 8/21/06 | Section VI. Waste Load Allocations, Subsection C. Refined Baseline Waste Load Allocations, page 24, para. two - This paragraph references Appendix I that shows the square mileage for each land use for each city in the watershed; however, this data seems to be incorrect. It is important that this information be accurate since this is the data used for cost sharing agreements and determining each cities monetary responsibility when implementing the TMDLs.<br><br>*Request: Please use the updated GIS information for both Appendices that was also used in the Santa Monica Bay TMDLs and cite this source in the TMDL staff report.* | The land use data will be updated using the most current GIS information, and the baseline Waste Load Allocations will be re-calculated to reflect this change. |
| 2.7 | Downey Brand | 8/21/06 | Section VI. Waste Load Allocations, Subsection E. Baseline Waste Load Allocations for Municipal Permittees, page 24, para one and two - These paragraphs discuss the baseline monitoring that was conducted by the County and the Regional Board analysis of this monitoring and subsequent waste load allocation. However, there are no details provided with regards to the monitoring data or the analysis and calculations completed to derive the waste load allocations for each city.<br>*Request: In an effort to provide transparency in the assignment of Baseline Waste Load Allocations, please provide the County baseline monitoring data and the Regional Board's analysis of this data and calculations as an Appendix to this document. In addition, please include the referenced September 19, 2001 prescribed monitoring requirements as an Appendix.* | Details of the calculation of the baseline Waste Load Allocation will be provided in an Appendix to the Staff Report. |
| 2.8 | Downey Brand | 8/21/06 | Section VI. Waste Load Allocations, Subsection E. Baseline Waste Load Allocations for Municipal Permittees, page 24, para. 3 - The Regional Board staff assumed the litter generation rate from public facilities and mixed urban land use to be equivalent to that from the commercial land use; however, the September | Comment noted. The Waste Load Allocations for both public facilities and mixed urban land use will be calculated based on the industrial land use trash generation rates. |

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| | | | 2001 TMDL report stated that the generation rate used would be the highest rate between the residential, commercial, and industrial (refer to page 24 of the 200 I report). From our review of the County data, the industrial land use was the highest land use generation of trash.<br>*Request: Please correct the Waste Load Allocations for both public facilities and mixed urban land use based on the industrial land use trash generation rates.* | |
| 2.9 | Downey Brand | 8/21/06 | Section VI. Waste Load Allocations, Subsection E. Baseline Waste Load Allocations for Municipal Permittees, page 24, last paragraph - The sentence "The WLAs for the second and third years of compliance will be a further reduction of 20% in each year The subsequent annual Waste Load Allocations will be a progressive 10% reduction in the baseline Waste Load Allocations over a period of 3 years" does not correlate with Table 6.<br>*Request: Please correct this sentence to reflect only a 10% reduction annually after the first year of implementation for the next 10 years.* | The 20% value was provided in error. The Staff Report will be revised to reflect that, after an initial 30% reduction in the first year, there will be a required 10% annual reduction in the baseline waste load allocation until the zero numeric target is met. |
| 2.10 | Downey Brand | 8/21/06 | Section VI. Waste Load Allocations, Subsection E. Baseline Waste Load Allocations for Municipal Permittees, page 25, para. 1 and Table 5 - The Baseline Waste Load Allocation values are shown in gallons of uncompressed trash; however, the County monitoring data provided information in both gallons and pounds and anthropogenic trash and total trash (with vegetation). For the purposes of reporting compliance, a combined trash and vegetation allocation or conversion factor and a weight-based allocation as opposed to a volume-based, is necessary. Sorting anthropogenic trash from vegetation is not possible with the current City of Los Angeles trash collection operations. | Comment noted. A weight value for the Baseline WLAs will be included to allow for maximum flexibility for cities to report compliance. |

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| | | | *Request: Please include a weight value (ie - pounds) for the Baseline WLAs along with the volume value to allow for maximum flexibility for cities to report compliance. In addition, please include either a combined trash and vegetation allocation and/or a conversion factor.* | |
| 2.11 | Downey Brand | 8/21/06 | Section VI. Waste Load Allocations, Subsection E. Baseline Waste Load Allocations for Municipal Permittees, page 25 - Table 5 contains asterisks that are unexplained.<br>*Request: Provide an explanation of the asterisks contained in Table* 5, *or remove the asterisks.* | The asterisks indicate that military installations were not included in the calculation of the waste load allocations. The Table in the Staff Report will be revised to provide this explanation. |
| 2.12 | Downey Brand | 8/21/06 | Section VII. Implementation and Compliance, Subsection A. Compliance Determination, page 26, para. 3 - The fifth sentence reads "Exceedance of the allowable discharges will subject the permittee to enforcement action." Per the September 19, 2001 draft, the sentence read "Exceedance of the 3-year rolling average discharge may will...", which is reflective of Table 6. Since the Regional Board maintains the enforcement discretion !o not issue an enforcement action for exceedances of the allowable discharges, the word "will" should be changed to "may."<br>*Request: Please correct the fifth sentence to read the same as the previous TMDL version as follows, "Exceedance of the 3-year rolling average discharge may subject the permittee to enforcement action." Enforcement actions are only authorized once these allocations are converted into permit requirements and a complaint for violating the permit requirements has been issued.* | The 3-year rolling average is not applicable to the first two years of compliance, as is evident in Table 6. The current language in the Staff Report reflects this. |
| 2.13 | Downey Brand | 8/21/06 | Section VII. Implementation and Compliance, Subsection A. Compliance Determination~ Table 6. Los Angeles River Trash | Comment noted, the Basin Plan Amendment and Staff Report will be |

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| | | | TMDL Implementation Schedule, page 27 - The July 2006 draft of Table 6 is modified from the version of Table 6 provided in the September 2001 Draft. Specifically, footnote number 47 is located in implementation year 4 or after 60% reduction instead of in implementation year 3 or after 50% reduction.<br>*Request: Please correct the location of this footnote to be in Year 3 after a 50% reduction as specified in the Settlement Agreement document dated September 19, 2001.* | revised to reflect this change. |
| 2.14 | Downey Brand | 8/21/06 | The City of Los Angeles thanks you in advance for your consideration of these requested changes. The City hopes that these changes are made so that the Settlement Agreement will be fully implemented and further litigation over these matters will be rendered unnecessary. | Staff will make all revisions necessary to provide consistency between the Settlement Agreement and the TMDL Staff Report and Basin Plan Amendment. |
| 3.1 | LAUSD | 8/21/06 | While LAUSD agrees with the goal of eliminating trash in storm water and at our school facilities, we are very concerned with the Regional Board's proposal for implementing this goal, and the consequences of adopting an enforceable "zero" numeric standard on public schools throughout the Los Angeles Basin. First and foremost, LAUSD wishes to address the Regional Board's conclusion that there will be "NO IMPACT" to public schools from the proposed Trash TMDL. (CEQA Checklist, 14c Schools.) This is simply not the case. The Trash TMDL indicates that waste load allocations will be assigned to public schools under Phase II NPDES permits. (Draft Trash TMDL, pp. 21, 24.) Currently, it remains unclear when or how elementary and secondary schools will be assigned waste load allocations. This places LAUSD and other school districts in a very difficult position of having to evaluate potential implementation of costly compliance measures, absent adequate of environmental impacts the Regional Board. The Regional Board needs to be much clearer about how and when it intends to apply these | See Comment and Response 1.27. School districts are considered "non-traditional" Phase 2 MS4s under USEPA storm water regulations. The designation, permitting, and scheduling, of "non-traditional" MS4s is left to the discretion of the Regional Board based on its priorities. TMDL analyses show that storm drains operated by the City of Los Angeles and the County of Los Angeles, and Caltrans are the principle sources of trash to the Los Angeles River. Regional Board staff is aware of control measures educational institutions have |

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| | | | requirements to public schools. | implemented to reduce trash. This TMDL includes provisions for special studies to quantify the loads from small MS4s such as educational institutions, and includes a reconsideration of Waste Load Allocations at 50 % of the baseline WLA, at which time, WLAs for small MS4s could be developed based on the results of these studies. The Regional Board is also contemplating designation of small MS4 facilities on a watershed basis based on TMDL priorities. In such a case, designated small MS4 facilities may be required to seek coverage under a small MS4 watershed general permit that could be developed for the Los Angeles River Watershed. |
| 3.2 | LAUSD | 8/21/06 | For years, California's public schools have operated under severe budget pressures. LAUSD devotes a substantial portion of our annual budget to facility maintenance, including grounds maintenance. The proposed Trash TMDL would result in a substantial, further budgetary strain on LAUSD and other school districts.<br>In order to comply with the Regional Board's target of "zero" trash, it may be necessary to install costly structural BMPs at hundreds of school facilities. This may require retrofitting existing facilities and reconfiguring new or planned facilities to | See Comment and Response 1.12, 1.35, and 1.44.<br><br>Trash removal and disposal within school premises is an existing responsibility of the school district. The TMDL simply requires that this service be conducted more effectively in order that trash ceases to be a source of impairment to the waterbodies in the |

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| | | | include adequate trash capture devices. Since the Regional Board has not provided school districts with "design storm" criteria, full compliance may require BMP design to account for "worst-case scenario" peak wet weather flows. Furthermore, LAUSD will incur additional costs as a result of increased workloads by school staff in order to continually monitor each school site for litter or' trash throughout the facility, and to ensure that removal devices are properly functioning. | Los Angeles River Watershed. Compliance costs are wholly dependent on the method by which agencies choose to comply with the TMDL. The implementation strategy selected should take cost into consideration. |
| 3.3 | LAUSD | 8/21/06 | LAUSD is also concerned with long-term impacts the Trash TMDL may have, on its ability to operate existing and future school facilities. For instance, if structural methods of trash control are not properly designed and constructed, flood hazards may occur. Further, the volume of waste that will be collected at the trash control, devices will significantly increase the amount of trash disposed in school site trash bins. This will necessarily' increase LAUSD's trash disposal costs. The trash control devices themselves are also likely to result in objectionable odors without constant upkeep and monitoring. | The Regional Board cannot dictate the method of compliance with the proposed TMDL. See Comment 3.2 |
| 3.4 | LAUSD | 8/21/06 | To address these concerns, as a starting point, the Regional Board needs to more clearly delineate how the Trash TMDL program will be applied to school districts. At a minimum, the Regional Board should be required to comply with the California Environmental Quality Act's ("CEQA") mandate that any environmental analysis include an "analysis of the reasonably foreseeable environmental impacts of the methods of compliance" with new permit requirements.1 Beyond this, the Regional Board has yet to address the range of impacts to LAUSD and other school districts, nor proposed any mitigation measures to reduce or eliminate such impacts. | Aside from numerous references to budgetary constraints, the commenter has failed to provide instances of foreseeable negative impacts, specific to the LAUSD that have not already been analyzed in our CEQA analysis. |
| 3.5 | LAUSD | 8/21/06 | Moreover, the Regional Board should evaluate the cumulative | See Comment 1.82 |

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| | | | impacts of the Trash TMDL and other Los Angeles River TMDLs on LAUSD. This should include a discussion of the cumulative impacts and mitigation measures of the recently adopted Metals TMDLs and forthcoming bacteria TMDL In sum, the Trash TMDL and CEQA Checklist prepared by the Regional Board do not adequately address these numerous, significant impacts. As a matter of policy, this is inconsistent with CEQA's fundamental goal of affording the public and other agencies a meaningful opportunity to participate in the environmental review process. | |
| 3.6 | LAUSD | 8/21/06 | Furthermore, while the District currently implements a variety of programs to reduce and remove trash and litter at each school site, we are concerned that achieving a numeric limit of "zero" is unattainable. This, of course, raises numerous issues related to potential enforcement for violations of the zero permit requirements by the Regional Board or citizen groups. For example, while the Trash TMDL would require LAUSD to administer a comprehensive trash reduction program, at substantial costs, the Regional Board has not proposed any mechanism to ensure that LAUSD will not be held accountable for trash it could not prevent from other sources (e.g., windborne trash). Once again, these issues should be more clearly addressed by the Regional Board, before these requirements are made enforceable, so that public schools and members of the public can evaluate the reasonableness of proposed enforcement mechanisms. | The programs being implemented for trash removal and removal should be effective for all trash from the school site, regardless of the source. It is not feasible to make distinctions based on the source of the litter emanating from the school site (e.g., windborne or from persons littering on the school site.)<br><br>Further discussion and development of plans and requirements will take place at the time of permit development. |
| 3.7 | LAUSD | 8/21/06 | We urge the Regional Board to carefully and more fully evaluate these issues, in a manner consistent with CEQA, before adopting a proposal with the goal of removing trash from the Los Angeles River. We look forward to discussing these measures with Regional Board staff in greater detail in the hopes we can | Comment noted. |

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| | | | achieve a mutually-satisfactory resolution of these issues. | |
| 4.1<br><br>5.1 | City of San Gabriel<br>City of Commerce | 8/21/06 | The CEQA clearance prepared by Regional Board does not constitute a functional equivalent of an EIR. The CEQA clearance, while addressing potential adverse impacts associated with the installation and maintenance of structural controls (e.g., vortex separation systems, catch basin debris excluders, screens, etc.) does not address:<br>1.Potential adverse impacts associated with the cost of compliance on municipal services and programs; and<br>2. Potential adverse impacts on the region.<br><br>The CEQA clearance also does not look at project alternatives, nor does it discuss the cumulative effects of other TMDLs on affected Permittees. | See Comments 1.3, 1.7, 1.82, 1.45, 1.72 |
| 4.2<br><br>5.2 | City of San Gabriel<br>City of Commerce | 8/21/06 | Cost Impact Not Defined<br>Although economic effects are not directly CEQA-subject, the cost associated with a project could impact a jurisdiction's ability to adequately provide services to its citizens. As the Sierra Club has noted:<br>If a project fails to generate revenue adequate to fund its share of public services, will the level of such services available for existing residents decline? Will roads fall into disrepair? Will the availability of parks decline- as existing ones are used by more people? Will illegal dumping increase? These would all be physical effects on the environment stemming from project economics.<br>The City, therefore, encourages Regional Board staff to accurately define the project and provide updated cost information for each implementation alternative, based on current dollars. | It is expected that each responsible agency will select their implementation strategy based on considerations such as cost-effectiveness and available funding mechanisms. Full capture BMPs can be as simple and cost-effective as the catch basin brush inserts and screens being installed by some smaller cities, or as complex as vortex separation systems being installed by the County. There is a wide range of costs associated with the various BMPs which allows agencies great flexibility in complying with the TMDL requirements while simultaneously being cost-conscious. Also see response to comment 1.11 |

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| 4.3<br><br>5.3 | City of San Gabriel<br>City of Commerce | 8/21/06 | Scope of Cost Impact of Compliance on Affected Permittees Must be Defined. The scope of cost impacts on municipal permittees must include the following:<br><br>*Aesthetics* because the magnitude of trash and other TMDL implementation costs, whatever they might be, could significantly reduce a municipality's ability to provide: (1) urban renewal as a hedge against blight; and (2) adequate code enforcement of zoning requirements that have an aesthetic impact (e.g., weed abatement); and (3) adequate street sweeping.<br><br>*Hazards and Hazardous Materials* because the magnitude of trash and other TMDL implementation costs, whatever they might be, could significantly reduce a municipality's ability to: (1) provide adequate personnel to promptly remove and dispose of hazardous materials from the right of way; (2) inspect businesses for conformance with hazardous materials business plans, which could result in the increase of hazards at a subject site or the potential for a hazard to occur at a business site; (3) provide adequate fire department responses to hazardous materials releases; and (4) promptly deploy personnel to respond to sewer releases (exposing persons to health hazards), clogged catch basins (which could result in a flood hazard), and debris in the right of way, including trees on sidewalks and streets.<br><br>*Public Services and Utilities* because the magnitude of trash and other TMDL implementation costs, whatever they might be, could significantly reduce a municipality's ability to: (1) provide adequate police and fire protection (personnel and equipment); (2) maintain streets; (3) maintain traffic signals; (4) create new parks and maintain existing ones (for aesthetics and recreation); (5) maintain play grounds, swimming pools, and bike paths; (6) | The environmental impacts related to aesthetics, Hazards and Hazardous Materials, Public Services and Utilities, Utilities/Services Transportation/Traffic and Housing/Population have been analyzed individually in the CEQA Checklist and Determination document. A further analysis of associated costs is unnecessary. |

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| | | | maintain storm drains and install new ones (to prevent flooding); (7) maintain and replace sewers to prevent sewage releases (a health issue); (8) replace rolling stock (vehicles and equipment), necessary to perform a variety of services including trash collection, tree trimming, park maintenance, catch basin clean outs, sewage spill response,<br>code enforcement inspections, fire and police response; (9) maintain a level of recreation programs for citizens, such as adult, senior, and youth programs (including but not limited to various recreation, education, and health-related activities); (10) maintain adequate library services (maintaining facilities, staffing levels, and purchasing books, magazines, etc.); (11) refuse collection and disposal (including recycling); (12) street sweeping; (13) tree trimming; and (14) emergency preparedness and response (earthquakes and other natural or manmade disasters, including acts of terrorism). [Note: Schools could also be impacted because the trash and other TMDLs impact them as well because they are storm water permittees. The Regional Board should have noticed these stakeholders.]<br><br>*Utilities/Services* because the magnitude of trash and other TMDL implementation costs, whatever they might be, could significantly reduce a municipality's ability to: (1) produce adequate supply and quantity of potable water to its customers; (2) if it provides electricity, the ability to provide a consistent and adequate supply of electric power; (3) if it owns/operates a sewer treatment facility, to provide adequate sewage treatment capacity, including treating dry weather discharges; and (4) if it owns and operates a landfill to provide adequate capacity to dispose of solid waste.<br><br>*Transportation/Traffic* because the magnitude of trash and other | |

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| | | | TMDL implementation costs, whatever they might be, could significantly reduce a municipality's ability to: (1) provide adequate public transportation (fixed and nonfixed routes) for the general population and senior citizens which depend on city sponsored public transportation; and to (2) adequately manage traffic congestion.<br><br>*Housing/Population* because the magnitude of trash and other TMDL implementation costs, whatever they might be, could significantly reduce a municipality's ability to provide an adequate supply of affordable housing to keep up with population growth. Municipalities do this through re-development programs, which include the purchase of old and/or blighted property or uses that are no longer viable and replace them with housing and mixed-use developments. | |
| 4.4<br><br>5.4 | City of San Gabriel<br>City of Commerce | 8/21/06 | The structural and non-structural BMPs that may be required of the Project should also be scoped to discuss the potential adverse impacts. Structural controls include vortex separation systems (VSS), catch basin inserts that block the entry of trash, catch basin debris excluders, and trash nets. Non-structural controls include increased street sweeping, increased catch basin clean-outs, and enhanced anti-litter enforcement. The tables below show the impact of each control that may be associated with the Project.<br><br>**Air quality**<br>PM 10 emissions associated with excavation and installation<br>Increase of vehicle emissions through increased sweeping/catch basin clean-outs | The CEQA document provided by staff provides detailed analysis of the foreseeable negative environmental impacts of the trash BMPs offered as potential implementation measures.<br><br>Potential impacts to air quality are discussed in detail under Item 2 of the CEQA Checklist and mitigation measures are provided. |

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| | | | **Human Health Risk**<br>Potential release of pathogens into the atmosphere associated with excavation<br>Installation in a confined space could expose workers to health risks<br>Potential injury (accidents) associated with Vactor equipment<br><br>**Hydrology**<br>Potential to cause flooding through improper design or installation, incorrect location deployment, or malfunction<br><br>**Hazardous Materials**<br>Exposure of maintenance workers to hazardous waste and materials intercepted/collected<br><br>**Noise**<br>Increase in noise associated with increased street sweeping/catch basin cleanouts | Potential human health risk issues are discussed in detail under Item 17 of the CEQA Checklist and mitigation measures are provided.<br><br>Potential impacts to hydrology are discussed in detail under Item 3of the CEQA Checklist and mitigation measures are provided<br><br>Potential hazardous materials issues are discussed in detail under Items 10 and 17 of the CEQA Checklist and mitigation measures are provided<br><br>Potential noise impacts are discussed in detail under Item 6 of the CEQA Checklist and mitigation measures are provided |
| 4.5<br><br>5.5 | City of San Gabriel<br>City of Commerce | 8/21/06 | **Regional Impacts**<br>Also absent from the Regional Board's scoping session are the potential "regional" adverse impacts associated with the Project. It was mentioned earlier that municipalities face potential adverse impacts on programs and services resulting from enormous expenditures of general funds on trash and other TMDL compliance. Compliance costs are likely to have an adverse impact on the region in terms of air quality, housing, population growth, employment, transportation, and flood | Trash removal and disposal is an existing service being provided by responsible agencies. The TMDL simply requires that this service be conducted more effectively in order that trash cease to be a source of impairment to the waterbodies in the Los Angeles River Watershed. Compliance costs are |

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| | | | control.<br>The City recommends that Regional Board include SCAG as a stakeholder asset and as the region's 208 planning agency in determining how TMDL compliance costs could impact air quality, population, housing, employment, transportation, and the local economy. | wholly dependent on the method by which agencies choose to comply with the TMDL. The implementation strategy selected should take cost into consideration. …….. |
| 4.6<br><br>5.6 | City of San Gabriel<br>City of Commerce | 8/21/06 | The CEQA clearance for the LAR-TMDL does not discuss reasonable alternatives. The most favored means of compliance is the installation of vortex separation system (VSS) controls - which are costly. Based Regional Board cost data, the cost of installing CDSVSS units range from $56,000 per square mile over 10 year period to $296,000 per square mile over a 10 year period (based on 2001 dollars). These costs could have a significant impact on municipal programs and services, which in the final analysis may prove infeasible. For example. for the City of San Gabriel the annual cost of complying with the trash TMDL using VSS/CDS devices is more than the City's park maintenance budget. | See Comment 1.7, 1.12 |
| 4.7<br><br>5.7 | City of San Gabriel<br>City of Commerce | 8/21/06 | Alternatives such as the installation of catch basin-resident controls (catch basin inserts and debris excluders) should be included, notwithstanding that the Regional Board does not deem them to be "full capture" device they are also capable of 80-85% debris removal. The table below provides examples of capital costs associated with this alternative, which is significantly lower than a VSS/CDS based compliance strategy.<br>The cost impact of this alternative on municipal programs and services, as well as regional impacts needs to be evaluated as well to determine its feasibility. The cost of installing catch basin debris excluders for the City of Pasadena would reduce its library budget by 57%, which would substantially reduce library services to its citizens. Of course, given that municipal budget | See Comment 1.12 |

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| | | | issues are political, each affected municipality should be given an opportunity to determine which programs and services would be affected and by how much. Once this is achieved, the impact on program and service recipients can then be determined. | |
| 4.8<br><br>5.8 | City of San Gabriel<br>City of Commerce | 8/21/06 | **Cumulative Effects of Other TMDL Compliance Costs**<br>The Regional Board's CEQA clearance also needs to identify and evaluate the cumulative effects of Permittee compliance with other TMDLs (e.g., metals).<br>… the cost of complying with the metals TMOL for the City of Commerce would exceed its policy and fire budget.<br>It should be obvious that the cost of cumulative compliance of just these two TMDLs would have a devastating impact on each of these municipal permittee's ability to continue to provide a variety of programs and services. In the case of the City of Compton the cost of complying with just the metals TMDL would exceed its general fund budget four-fold. It would be unreasonable to conclude that the cost of complying with the metals and trash TMDLs would effectively force each of these municipalities into bankruptcy. | See Comment 1.18 |
| 4.9<br><br>5.9 | City of San Gabriel<br>City of Commerce | 8/21/06 | the City recommends that the Regional Board:<br>1. Conduct a CEQA reevaluation that meets the requirements for a functional equivalent EIR including a thorough evaluation of (i) the potential adverse impacts associated with installation of structural trash controls; (ii) the cost impact of complying with the LARTTMDL municipal programs and services; and (iii) the impact of LAR-TTMDL compliance on the region (economy, transportation, air quality, housing. etc.).<br><br>2. Assess the cumulative effects of the LAR-TTMDL and the LAR-MTMDL on municipal programs and services and on the | See Comments 1.3, 1.7, 1.12, 1.18 |

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| | | | region.<br><br>3. Identify less costly alternatives to complying with the LAR-TTMDL that would not place at risk important municipal programs and services. | |
| 4.10<br><br>5.10 | City of San Gabriel<br>City of Commerce | 8/21/06 | *Inclusion* of *Other Full-Capture Devices*<br>The revised LAR-TTMDL staff report also does not mention the compliance strategies developed by the City and County of Los Angeles in their settlement agreement with the Regional Board. Included in those agreements is the acknowledgement that a "train" of structural controls could meet the full capture requirement, instead of the installation of vortex separation systems, which according to LAR- TTMDL staff report is the only device that qualifies as a full capture control. The alternative full capture systems proposed by the City and County of Los Angeles should be referenced in an updated LAR-TTMDL staff report, along with their costs. | See Comment 1.12 |
| 4.11<br><br>5.11 | City of San Gabriel<br>City of Commerce | 8/21/06 | *No Adjustment of Compliance Costs*<br>The revised LAR- TTMDL staff report has not adjusted costs for full capture VSS/CDS controls. The costs presented in the proposed draft LAR-TTMDL are the same as in the 2001 staff report. Costs should be adjusted to reflect 2006 dollars. Without this adjustment it is difficult to provide an accurate impact of compliance costs on municipal programs and services and on the region. | See Comment 1.10 |
| 4.12<br><br>5.12 | City of San Gabriel<br>City of Commerce | 8/21/06 | ***No Discussion* of *LAR- TTMDL Implementation through the MS4 Permit***<br>The draft LAR- TTMDL does not provide any discussion of how this trash TMDL is to be implemented through the Los Angeles | Each NPDES permit assigned a WLA shall be reopened or amended at re-issuance, in accordance with applicable laws, to incorporate the applicable |

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| | | | County MS4 Permit. According to USEPA policy, TMDLs implemented through MS4 Permits are subject to an iterative process. Instead, it seems that the TMDL itself controls implementation. More discussion of how the iterative process applies and what affected Permittees can do to meet the trash TMDL through their Storm Water Quality Management Plans (SQMPs). | WLAs as a permit requirement. |
| 4.13<br><br>5.13 | City of San Gabriel<br>City of Commerce | 8/21/06 | ***Absence* of *LAR- TTMDL WLAs for Other Permittees***<br>A revised LARTTMDL staff report is needed to include waste load allocations (WLAs) for the following permittees: facilities that are subject to General Industrial Activity Storm Water Permits; construction projects subject to the General Construction Activity Storm Water Permits; Phase II Permittees, including school districts (viz. school districts, community college districts, and state universities and UC facilities). Including these Permittees to comply with WLAs would reduce the burden on municipal Permittees to comply with trash reduction requirements. Phase II Permittees, especially subject educational facilities should be assigned their own WLAs. This is needed since Phase I municipal Permittees are preempted by State law from imposing any requirement on public educational facilities because they are considered State facilities over which municipalities have no control. | See Comments 1.22, 1.23 |
| 4.14<br><br>5.14 | City of San Gabriel<br>City of Commerce | 8/21/06 | ***Re-setting Compliance Schedule***<br>The draft LAR-TTMDL sets September of *2007* as the first compliance point, with the expectation that *70%* of the baseline load must be achieved by affected Permittees. This schedule needs to evaluated and explained against the background of the MS4 Permit's iterative process. Specifically, one or more BMPs need to be identified that can be reasonably expected to achieve | Effective trash-reduction BMPs have already been identifies and are currently being installed by several responsible agencies in response to the compliance requirements of the 2001 Trash TMDL that was recently set-aside. There is therefore no need to push back the |

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| | | | this goal; and if it is not achieved, Permittee's should then intensify existing BMPs or add new ones to reach this and other targets contained in the implementation schedule. Further, Permittees will need time to budget for the implementation of trash reducing BMPs to achieve the numeric targets. It is recommended, therefore, that the implementation schedule for the first compliance point be pushed back by one year to September of 2008. | TMDL compliance date.<br>In addition, the lengthy implementation time frame allows for an iterative implementation process thereby rendering a separate period for evaluation unnecessary. |
| 4.15<br><br>5.15 | City of San Gabriel<br>City of Commerce | | **Piloting Structural Controls**<br>The Regional Board should also revise the LAR-TTMDL staff report to include a period (e.g. 5 years) to try out various structural controls, including vortex separation systems, catch basin inserts, screens, nets, etc. This would give affected Permittees the opportunity to evaluate the performance and cost-effectiveness of each structural control. Compliance points would be determined by a plan to install the controls on a small scale and to collect performance data on each. This information would then able to give affected Permittees the opportunity to make a fully informed decision about which structural control(s) could qualify as cost-effective full capture devices. One of the problems with the 2001 trash TMDL is that it assumes that vortex separation systems are the only full capture systems - even though data shows that they are only capable of removing 80-85% of trash. | The lengthy implementation time frame allows for an iterative implementation process thereby rendering a separate period for evaluation unnecessary.<br>In addition, the 2001 and current Trash TMDLs have made clear that the Executive Officer will certify devices and/or systems other than vortex separation systems as “full capture” if they are able to meet the criteria specified in the definition. |
| 6.1 | SCAG | 8/21/06 | As part of our Regional Council's commitment to improving the water quality of the Los Angeles River Watershed, it created the Water Policy Task Force (Task Force) in 1998 to advise the Regional Council and other SCAG policy committees on water supply and water quality issues…. The Task Force has considered the Regional Board's proposed plans for removing the | Responsible agencies have long been aware of all TMDLs slated for their jurisdictions as a result of the 303(d) listing process, the consent decree, and Regional Board Staffs outreach efforts to stakeholders and interested parties. It |

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| | | | water quality impairments created by pollutants of concern, including trash, for the Los Angeles River Watershed. In its deliberations~ the Task Force has emphasized its concerns about the piecemeal formulation of TMDL policies and plans.<br>These concerns relate to the complex nature of removing pollutants, especially when removal technologies for different pollutants impairing a water body may, over time, result in the need to replace earlier treatment trains.<br>These considerations argue for greater integration of TMDL development much as has been done in the Calleguas Creek Watershed. This kind *of* comprehensive approach lowers the risk of control measures becoming obsolete *as* other TMDLs are implemented and of scarce financial resources being wasted. The coordination between participating public agencies also contributes to greater cost effectiveness. | is up to each agency to take this into consideration when determining what implementation approaches to employ in order to achieve compliance with TMDL requirements. In addition, the Regional Board has always encouraged coordination between responsible agencies in the development and implementation of TMDLs, to avoid redundancy and enhance cost-effectiveness. |
| 6.2 | SCAG | 8/21/06 | Subject to the Regional Board's interest, our Task Force would be willing to serve as a sounding board for this Trash TMDL and future TMDL development. The Task Force values partnership strategies as a more productive approach for implementing changes in current practices and<br>behavior. Additionally we urge the Regional Board to make maximum use of regulation phasing in which near-term standards require changes that are achievable; later standards can build on initial progress and make full use of new thinking and technologies then available. Taken together, this approach will inspire greater support and participation among local governments, including SCAG's constituent agencies, and bring higher levels *of* regional water quality. | Staff suggest that the Task Force become involved in the various stakeholder-led TMDL implementation workgroups that currently exist in the region.<br>In addition please see response to 6.1. |
| 7.1 | FOLAR | 8/21/06 | For 20 years, Friends of the Los Angeles River (FoLAR) has advocated for the protection, revitalization, and restoration of the Los Angeles River. FoLAR has intimate knowledge of the trash | Comment noted. The Regional Board is appreciative of all support of its actions to remove the trash impairment |

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| | | | problem in the LA River. For the past 17 years we have hosted our annual *La Gran Limpieza:* the Great Los Angeles River CleanUp where thousands of volunteers remove tons of trash from the River and its tributaries. We welcome the hard work of the California Regional Water Quality Control Board (RWQCB) in furthering our common goal of water quality that supports a safely swimmable, fishable, and boatable Los Angeles River.<br><br>Overall, we are supportive of the RWQCB's Trash TMDL. The analysis is thorough and appears to comply with standard environmental clearance documentation. In the context of our support for the approval of this TMDL, we would like to take this opportunity to share some remarks, none of which is intended to undermine our support of the TMDL. | in the waterbodies of the Los Angeles River Watershed, and to improve overall water quality. |
| 7.2 | FOLAR | 8/21/06 | <u>Shifting of Local Environmental Impacts</u><br>FoLAR strongly concurs with an important point made repeatedly in the document. For example:<br>"To the extent that significant costs may be imposed on a given locality, those effects are already occurring in the watershed and should be considered baseline impacts, as they are presently carried by downstream communities. ... On balance, it is not unfair to subject localities to the effects of abating litter generated locally in local storm drains, rather than causing the downstream cities to pay the cost of cleaning up the trash... from all the upstream cities." (CEQA Requirements, page 32, section *14e)*<br><br>We interpret this to mean that local cities are correct in expressing their frustration that TMDL compliance could cause **local** environmental impacts that are indeed **locally** potentially significant. FoLAR asserts that the RWQCB is correct, though, | Comment noted. |

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| | | | in its broader **regional** analysis; these apparent local impacts are not actual environmental impacts of the TMDL, but only a shifting of the trash burden from downstream to upstream.<br>FoLAR concurs with the broad implication here: that, for the overall watershed, the TMDL does not appear to impose any significant adverse environmental impacts.<br>Even if trash TMDL compliance can be shown to have some adverse impact on the environment, this would be outweighed by the TMDL's positive effects on beneficial uses of the receiving waters. Trash impacts human health and wildlife habitat in our rivers and oceans; preventing trash from entering our waters results in a healthier public and healthier ecosystems. | |
| 7.3 | FOLAR | | FoLAR is aware that many municipalities have expressed concern over the numeric target of zero trash in the water (Trash TMDL, p.19, IV Numeric Target). FoLAR concurs with a numeric target of zero.<br>In the light of controversy and litigation, and in the spirit of moving forward with efforts to prevent trash from entering the River, FoLAR supports an iterative approach. While maintaining the numeric target of zero, FoLAR supports the RWQCB's settlement arrangements, including with city of Los Angeles, where parties agreed to implementing measures that will reduce trash entering the River by 50% over five years, then reevaluate future compliance measures. Rather than taking a hard line on the eventual target of 100% of trash, it makes sense to agree first to pursue "low hanging fruit." | Comment noted. |
| 7.4 | FOLAR | | As the region implements initial anti-trash measures (programs and structural solutions), we will gain experience and will better understand costs and effectiveness of various approaches. Some day, after a large percentage of trash no longer enters the River, it | Comment noted |

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| | | | may become clear that efforts are reaching a point of diminishing returns: a point where public and environmental health funds would be more effective when spent on things other than anti-trash measures. This is not to say that we will reach an acceptable level of trash in the River, only that we should proceed with initial measures where we have relative consensus, and respectfully reserve the option to review, re-evaluate, and renegotiate in the future. | |
| 7.5 | FOLAR | | Additional Study and Mapping<br>Despite a great deal of study by the RWQCB, the city of Los Angeles Bureau of Sanitation, FoLAR, and others, there still appears to be a lack of data on trash. Additional data, potentially including mapping and tracking of catch basins, should help make antitrash measures be more effective. | Comment noted. |
| 7.6 | FOLAR | | FoLAR supports implementing low-cost non-structural solutions, before investing heavily in expensive underground hardware. Underground hardware makes the trash problem proverbially "out-of-sight and out-of-mind," enabling residents to litter with impunity.<br>Initial interventions may be focused on governmental efficiency in ensuring trash makes it into trash receptacles and remains in the waste stream. One idea for this approach would be to involve the public in reporting overfull trash cans in public areas. Each trash can could be numbered and could have a sign stating a phone number (such as 311) to call if the can is full or overflowing. Concerned passersby could steward their community by calling the number to report the overfilled receptacle. | Comment noted. The Regional Board encourages responsible agencies to come up with simple and cost-effective solutions to the trash problem. |
| 7.7 | FOLAR | | Generally FoLAR supports multiple-benefit measures. The | Comment noted. Also see response to |

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| | | | overall goal is not just to keep trash out of our waters, but to restore healthy functional ecosystems. Anti-trash measures should be incorporated into natural treatment train systems that use vegetation to cleanse stormwater. One example of this is the Bimini Slough Ecology Park. The park cleanses street runoff by initially filtering trash via a grate, then channeling the water through a vegetated creekbed bioswale. The park's multiple benefits include water quality, water supply, flood protection, habitat, recreation, and education.<br>Most of the anti-trash measures touched on in the Trash TMDL are essentially grates located underground, outside the view of the public. One opportunity for multiple-benefit anti-trash measures are catch basin grates/covers. Catch basin covers/grates at the curb are visible to the public. Covers could not only prevent trash from entering catch basins, but also incorporate aesthetic designs with an educational messages such as "this drains to Compton Creek". Beautifully designed catch basin covers could capture trash, raise awareness and enhance neighborhoods, and may be able to generate sponsorship opportunities from the private sector. | 7.7. |
| 8.1 | HTB/SMBK | 8/21/06 | Heal the Bay and Santa Monica Baykeeper ***strongly*** support the Draft Trash TMDL. We were major proponents of the original Trash TMDL adopted by the Regional Board on September 19, 2001, as the provisions of the TMDL paved the way for water quality standards attainment. Also, we helped negotiate the definition of full capture device with the Regional Board, LA County, and City of LA. In the same vein, the new Draft Trash TMDL meets the threshold of attaining and maintaining water quality standards as set forth in the Clean Water Act. 33 U.S.C. § 1313(d). Of particular note, the original Trash TMDL itself stood strong against many legal challenges over the past four years, as | Comment noted. The Regional Board is appreciative of all support of its actions to remove the trash impairment in the waterbodies of the Los Angeles River Watershed, and to improve overall water quality. |

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| | | | the Court of Appeals ruled in favor of the Regional Board in every one of the Plaintiff's claims against the TMDL, except with respect to CEQA. | |
| 8.2 | HTB/SMBK | 8/21/06 | uses of the Los Angeles River. It is a well established fact that runoff from urban storm drains is the number one source of coastal pollution, and is a continuing threat to marine life and human health in Los Angeles County. Urban runoff carries trash and other pollutants that go directly to local streams, such as the Los Angeles River, and eventually to the ocean unfiltered and untreated. Heal the Bay has routinely documented excessive trash in the River during annual Coastal Cleanup Days—in 2005 volunteers collected nearly 4,000 lbs of trash in a period of several hours at two sites on the Los Angeles River (Elysian Park and Sepulveda Basin at Balboa Blvd). Compton Creek, a tributary of the LA River, is arguably the most trash impaired waterbody in the region. Large amounts of trash have been collected and removed from Compton Creek through various cleanup efforts. For instance, Los Angeles County Department of Public Works has employed a contractor for over four years to implement a cleanup program in the channelized portion of Compton Creek. They report that a total of 21.55 tons of trash were removed between June and October of 2005. At an April 2003 Heal the Bay-sponsored Compton Creek clean-up event, volunteers removed over 10 tons of trash in a period of less than three hours. | Comment noted. |
| 8.3 | HTB/SMBK | 8/21/06 | The Los Angeles River supports, or should support, a host of beneficial uses. Today, at various reaches of the river, people bike, jog, walk, horseback ride, bird-watch, photograph, picnic, swim, fish, and collect mussels off of the rocks. There are also numerous species of fish and wildlife that spawn, migrate and live in the Los Angeles River waters.[1] There can be no question | Comment noted. The trash TMDL is designed to address these impaired beneficial uses. |

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| | | | that trash has tremendously impaired these beneficial uses of the river, particularly, but without limitation: REC1; REC2; GWR; WARM; MAR; WILD; RARE; potential MUN, IND., MIGR, SPWN, and SHELL. | |
| 8.4 | HTB/SMBK | 8/21/06 | *Staff is Correct in Concluding that the Basin Plan Water Quality Standards Require a Trash TMDL of Zero*<br>The Draft Trash TMDL establishes a numeric target of zero trash and a final Waste Load Allocation ("WLA") of 0% of the Baseline WLA. We strongly support the Draft Trash TMDL requirement of zero trash discharge, as zero is the only appropriate TMDL for trash given the water quality standards for the Los Angeles River set forth in the Basin Plan. Moreover, the Regional Board acknowledged that the zero trash discharge limit was appropriate when they adopted the original LA River Trash TMDL in 2001.<br>The federal Clean Water Act requires states to establish TMDLs "…at levels necessary to obtain and maintain the applicable narrative and numerical WQS [water quality standards] with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality."[2] The Basin Plan calls for no floatables or settleables that will cause a nuisance or adversely affect beneficial uses. Even small quantities of trash violate the Clean Water Act and Basin Plan. For instance, small amounts of trash can maim or kill wildlife that becomes entangled in, or ingests, the debris. Plainly, zero is the only fair interpretation of the Basin Plan water quality standards that will guarantee protection of the beneficial uses of the Los Angeles River with an appropriate margin of safety. Thus, the Regional Board staff's proposal of zero trash discharge is, clearly, appropriate. | Comment noted. |

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| 8.5 | HTB/SMBK | 8/21/06 | ***The Proposed Baseline Waste Load Allocations are Appropriate***<br>The Draft Trash TMDL includes Baseline Waste Load Allocations for each city in the Los Angeles River Watershed. These values were calculated from two years of trash data collected by municipal stormwater permittees through the Baseline Monitoring Program prescribed in the original Trash TMDL. Heal the Bay strongly supports this approach. Clearly, the use of actual trash data for the purposes of redefining WLAs strengthens the Draft Trash TMDL considerably. However, the Draft Trash TMDL Staff Report does not sufficiently describe the monitoring program or the data. How many data points were used in the calculations? How was County data used to calculate baselines for the cities? Some additional explanation would be useful. | Comment noted. |
| 8.6 | HTB/SMBK | 8/21/06 | ***The Draft Trash TMDL Should Include Baseline Waste Load Allocations for Caltrans***<br>The Draft Trash TMDL provides Baseline Waste Load Allocations for each city in the Los Angeles River Watershed but does ***not*** include a baseline WLA for Caltrans. However, Table 4 of the Draft Trash TMDL Staff Report presents preliminary Baseline WLAs for freeways that were calculated using Caltrans data. Staff Report at 23. Why is this value not included in the Basin Plan Amendment? The Regional Board should include this value or another volume that is deemed appropriate in the Basin Plan Amendment itself, as a baseline is crucial for future compliance assurance analysis. | Not including the Baseline Waste Load Allocation in the Basin Plan Amendment was an oversight. This will be corrected in the revised Basin Plan Amendment. |
| 8.7 | HTB/SMBK | 8/21/06 | ***The Proposed Definition of a Full Capture System is Appropriate***<br>The Implementation Element of the Draft Trash TMDL specifies that compliance with final waste load allocations may be | Comment noted. |

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| | | | accomplished by using a "full capture system." Draft Trash TMDL at 4. In addition, the document provides the technical requirements of such a system. *Id*. As you know, this stems from a settlement that was negotiated through a series of stakeholder meetings with the Regional Board, the City of Los Angeles, Los Angeles County, Heal the Bay and Santa Monica Baykeeper. We believe that this agreed-upon definition is protective of water quality. Thus, we strongly support Regional Board staff's decision to include this provision in the Trash TMDL. | |
| 8.8 | HTB/SMBK | 8/21/06 | ***The Proposed Implementation Schedule is Appropriate***<br>The Implementation Schedule in the Draft Trash TMDL requires full compliance, meeting zero percent of the baseline load, after ten years of implementation. Draft Trash TMDL at 7. The required percent reductions begin during the first implementation year. *Id.* Heal the Bay strongly supports this implementation schedule. The responsible parties have had four years—since August 22, 2002--to develop trash reduction strategies and collect data. In additional, millions in Bond funds from the State have been available for trash capture BMPs, and Los Angeles has allocated over 25 million dollars in Proposition O funds for trash exclusion inserts. There is no reason to delay actual trash reductions any longer. Thus, we urge the Regional Board to adopt the Implementation Schedule proposed by their staff. | Comment noted. |
| 8.9 | HTB/SMBK | 8/21/06 | ***The Regional Board Should NOT Reconsider or Refine the Final Waste Load Allocations***<br>The Draft Trash TMDL Staff Report includes a provision for the reconsideration and refinement of the final WLAs once a reduction of 50% in the Baseline Allocation occurs. Staff Report at 21. This provision is inappropriate. The facts will not change in this three-year time frame. Clearly, zero is the only fair | The purpose of this re-opener is to reconsider the Waste Load Allocation based on the findings of any future studies regarding the threshold levels needed for protecting beneficial uses. |

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| | | | interpretation of the Basin Plan water quality standards that will guarantee protection of the beneficial uses of the Los Angeles River with an appropriate margin of safety. Thus, there is no logical reason to reevaluate the final WLA of 0% of Baseline WLAs for municipal permittees and Caltrans. The Regional Board should remove this provision from the Staff Report. | |
| 8.10 | HTB/SMBK | 8/21/06 | ***The Regional Board Should Be Ready to Enforce Compliance by September 30, 2007***<br>The first compliance point during the implementation phase, reducing discharges between October 1, 2006 and September 30, 2007 to 70% of the baseline load, occurs on September 30, 2007. By this date, the Regional Board should be ready to take enforcement action for any exceedance of the WLAs. Appropriately, the Basin Plan Amendment outlines that "[t]his TMDL will be implemented through stormwater permits and via the authority vested in the Executive Officer by §13267…." Draft Trash TMDL at 4. As demonstrated by the postponement of the hearing to incorporate the Santa Monica Bay Beaches Dry Weather Bacteria TMDL into the MS4 Permit only two days before the first major compliance deadline, the Regional Board should incorporate WLAs into stormwater permits well in advance of the first compliance point. | Comment noted. The Waste Load Allocation should be incorporated into the stormwater permits prior to the first compliance point. |
| 8.11 | HTB/SMBK | 8/21/06 | We appreciate the opportunity to comment on this important proposed step toward restoring the Los Angeles River. The original Trash TMDL adopted by the Regional Board in 2001 was precedent setting and a major step forward for water quality protection. We urge the Regional Board to adopt the Draft Trash TMDL for the Los Angeles River set at zero and to ***not*** take a step backwards in water quality protection. | Comment noted. |

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| 9.1 | Caltrans | 8/21/06 | The title of the document, "California Environmental Quality Act (CEQA) Requirements", is unclear and leaves the reader wondering what type of "functional1yequivalent CEQA document" the Los Angeles Regional Water Quality Control Board (LARWQCB) is referring to and has prepared for CEQA compliance. | The type of "functionally equivalent" or substitute environmental documents which the Regional Board prepared for this TMDL and Basin Plan Amendment are discussed in detail in the text of the document the commenter cites. |
| 9.2 | Caltrans | 8/21/06 | According to CEQA Guidelines Section 15088(b), the scoping meeting comments should provide the reader with adequate knowledge about the environmental issues and concerns raised during the scoping process so that he or she can determine if the document satisfactorily responds to the issues raised by the public.<br>While the CEQA document mentions the types of mitigation projects that may be implemented by permitting agencies, it does not provide a sufficient level of detail about how these projects would be constructed and the actions necessary to install various trash mitigation projects as required by CEQA Guidelines Section .4.<br>The frequency, magnitude and duration of the actions is unknown, making it difficult to understand the severity of potential environmental impacts. The document provides general descriptions of the types of trash mitigation that may be implemented as part of this regulatory program. Although, this is a program-level document, more specificity about the various control devices, their construction and installation requirements is essential for meaningful environmental analysis as required by the court decision. | This is a program-level document and the level of environmental analysis is appropriate; reasonably foreseeable means of compliance and environmental effects have been identified and are analyzed. |
| 9.3 | Caltrans | 8/21/06 | CEQA Guidelines Section 15124 addresses requirements for information in a CEQA project description. This document clearly does not meet information requirements as stated in this | CEQA Guidelines Section 15124 addresses requirements for information in a project description for a project |

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| | | | section. The project description should at a minimum provide: graphics of representative treatment systems; installation descriptions; and lists of the types of equipment used in their construction and installation so the reader can get an idea of the potential environmental impacts. | level EIR. The project description complies with the requirements of a certified regulatory program; the purpose and extent of the TMDL and Basin Plan Amendment are described in detail and reasonable foreseeable means of compliance and environmental impacts are analyzed. … |
| 9.4 | Caltrans | 8/21/06 | Page 2, third paragraph: Significant and Unavoidable Impacts - This paragraph suggests that there maybe significant and unavoidable environmental impacts (SUEI) associated with TMDL compliance. CEQA Section 15126.2 requires lead agencies disclose significant environmental effects that cannot be avoided. Such issues should be disclosed in this program level document as well as in future project level analyses. Although SUEI are mentioned, any discussion about them is lacking. If the regulatory program does have significant and unavoidable environmental impacts that can be identified at this stage, this program document should have evaluated a range of alternatives that could avoid, reduce the severity of, or eliminate these impacts. | This paragraph reminds the reader that the most of the responsible jurisdictions are public agencies subject to their own CEQA obligations and must, when implementing projects to comply with this TMDL and Basin Plan Amendment, properly implement and mitigate to avoid significant environmental effects. While not speculating, the paragraph allows that an implementing municipality may be required to balance negative environmental effects of not implementing trash control devices with negative effects at the project level. |
| 9.5 | Caltrans | 8/21/06 | Page 7, fourth paragraph, last sentence: Significant and Unavoidable Environmental Impacts - This sentence implies that there are substantial benefits to water quality and the Los Angeles watershed ecosystem that outweigh (or, in CEQA terms, override) the unavoidable adverse effects of the project. If the project, in fact, has unavoidable adverse impacts, they should be disclosed in a functionally equivalent Environmental Impact Report (EIR) that evaluates alternatives. The document's | This paragraph states, unequivocally, that there are substantial benefits to the implementation of this TMDL and Basin Plan Amendment.<br>The adverse impacts are disclosed and analyzed in this document. |

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| | | | preamble leaves the reader unclear as to whether it is functionally equivalent to an EIR or some other type of CEQA document. | |
| 9.6 | Caltrans | 8/21/06 | *Earth* 1a. CEQA Section 15125 states that an EIR must include a description of the physical environment conditions in the vicinity of the project at the time the notice of preparation (NOP) is published or if no NOP is published, at the time environmental analysis is commenced. This document does not provide basic information on the existing conditions in the watershed for most topic areas. No substantial evidence or citation of literature is provided to back up the claim that the project would not be of the size or scale to result in unstable earth conditions. Better documentation should be provided attesting to this. | CEQA Section 15125 addresses requirements for description of the physical conditions for a project level EIR. A thorough description of environmental conditions including existing conditions in the watershed, is contained in the Staff Report in Section III *Problem Statement*.<br>Evidence of the size and scale of methods to comply with the TMDL and Basin Plan Amendment are reviewed in the *Description of Proposed Activity* and *General Environmental Comments* sections of the CEQA checklist and analyzed in detail in discussions within the CEQA checklist item 1a. In addition, size and scale of methods of compliance are discussed in the Staff Report Section VII *Implementation and Compliance*. |
| 9.7 | Caltrans | 8/21/06 | Earth 1 c. The document incorrectly claims that the project would not impact topography or ground relief features. It also lacks substantial evidence to support this conclusion via literature citation or other form of documentation. Certainly, the construction of the various treatment control devices may require changes in topography or relief. The appropriate checklist response should be that there may be some changes from the project, but they will be judged less than significant, because | The evaluation considers whether the impacts to topography or ground relief features will have a substantial, adverse change. It is not reasonably foreseeable that the project will cause a substantial change to topography or ground relief features because those changes can be avoided or mitigated through |

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| | | | most of them will be in an urban environment. | appropriate siting. |
| 9.8 | Caltrans | 8/21/06 | Earth 1 d. The document should have presented factual information on any unique geological or physical features in the Los Angeles River watershed from relevant state or federal resource agencies (e.g., CGS or USGS). Substantial information describing such existing conditions is available and should have been used. The intent of CEQA is to describe the existing conditions in the Los Angeles watershed and identify and delineate these unique geological areas for future planning by the permittees in order to produce subsequent project-level CEQA documents. | The appropriate level of analysis for considering unique geologic features is at the project level. Implementing municipalities must consider any unique geological or physical features when siting structural devices.<br><br>Listing known geologically unique sites in a programmatic analysis will not assist in project level analysis as each project site will have to be considered individually by inspection of the site in addition to whether it is currently considered by a state or federal resource agency to be geographically unique. |
| 9.9 | Caltrans | 8/21/06 | Future CEQA documents prepared by the Department and/or cities in the watershed will use this document to tier off *for* their compliance process, and perhaps implement mitigation measures, recommended in this document. The document lacks a setting section for each topic area, and such geological information should have been included. | Future CEQA documents may use this document to tier off of for their CEQA analyses and documents; however, the appropriate level to consider specific sites to place structural devices is at the project level. |
| 9.10 | Caltrans | 8/21/06 | *Air*: This section needs a description of the existing air quality in the Los Angeles River watershed, specifically regarding the types of air pollution that would be generated from the various actions that may be implemented by the regulated community. The LARWQCB should use existing information from relevant state agencies [e.g., the Air Resources Board (ARB)] and other sources of pertinent information. | The section is sufficient to consider the reasonably foreseeable effects of implementing the TMDL and Basin Plan Amendment. The potential sources of air pollution such as trucks, and construction equipment, are well understood. The degree to which air effects are seen will correspond to the |

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| | | | | degree to which responsible agencies choose to use structural devices which require construction for compliance and how often responsible agencies schedule maintenance such as catch basin clean-outs and street sweeping. Several mitigation methods are possible and are discussed in the CEQA checklist |
| 9.11 | Caltrans | 8/21/06 | Air 2a: This analysis does not provide the air emission estimates related to NOX, SOX and ROG and how they were calculated. The disclosure did not provide the actual numbers, which should be compared to the air district standards. | See 9.10.<br>An estimation of predictions of ranges of air contaminant levels would not substantially alter or improve the section. |
| 9.12 | Caltrans | 8/21/06 | *Water*<br>3b. It is unclear as to how these devices would result in changes to absorption rates or drainage patterns of the watershed or subwatersheds. This section requires more information. | Full capture and partial capture devices may alter drainage patterns by impeding overland flow to storm drains. Mitigation of this possible effect is through proper design and maintenance of these devices and must be considered at the project level when the responsible party designs and sites the device. |
| 9.13 | Caltrans | 8/21/06 | *Plants*<br>4b. The document should at the least present information, at a programmatic or watershed scale, results from the California Natural Diversity Database (CNDD) and describe where existing rare, threatened, or endangered plants are found in the Los Angeles River watershed. To simply state that this will be done later by the cities is inadequate disclosure under CEQA. We agree it is a highly urbanized environment, but there is always a possibility that species may be impacted from indirect activities associated with a mitigation project in laydown areas and vehicle | The California Natural Diversity Database is easily available on the internet and a suitable source of information rare, threatened or endangered plants. Including in the CEQA checklist a list of plants which are rare, threatened or endangered in the Los Angeles Watershed, in addition to it's availability on the internet, would not assist in project level |

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| | | | parking, etc. The document should have identified these areas within the watershed and the range of mitigation measures that could be employed by project-level permittees. | determinations. At the time of the project level analysis, the project proponent must consider rare, threatened or endangered plants as appropriate.<br>The range of mitigation measures that could be employed by project level parties are discussed in Plants 4b. |
| 9.14 | Caltrans | 8/21/06 | *Plants*<br>The Department conducted a database search of the CNDD and found over 2365 occurrences of Rare, Threatened or Endangered (RTE) species in the county. The section does not adequately describe potential plant and wildlife impacts or meet the disclosure requirements of CEQA. We suggest the section be revised and recirculated for another round of review. | The inclusion of a list of plants which are rare, threatened or endangered (available on the internet, as the commenter points out) will not substantially change nor improve the analysis in this item of the checklist nor require recirculation. Responsible parties implementing structural devices will still be required to consider rare, threatened or endangered plants at the project level in siting decisions. |
| 9.15 | Caltrans | 8/21/06 | *Animal Life*<br>5b. Last paragraph - This section does not meet CEQA requirements according to CEQA Guidelines Section 15125 . It defers wildlife surveys to two weeks prior to construction. Survey requirements are specific to the species, and the frequency and breadth of surveys can be vastly different. If special-status species are observed at the initiation of construction, the project in question would suffer substantial delays, because coordination with and approvals from the U.S. Fish and Wildlife Service (USFWS) or California Department of Fish and Game (CDFG) would be required. We recommend the LARWQCB revise the plant and animal life sections of this document to better disclose potential impacts to state and federal | See answers 9.13 and 9.14.<br><br>A range of possible mitigation methods are discussed in the checklist item including surveys two weeks prior to construction. Responsible parties are not limited to these mitigation methods, however, and if earlier or more in-depth surveys are needed, the project proponents can conduct them. The reasonable range of mitigation methods discussed in the checklist item does not limit the project proponents; they must |

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| | | | Endangered Species Act (ESA) species. | comply with laws and regulations concerning special status species in all implementation of this TMDL and Basin Plan Amendment. |
| 9.16 | Caltrans | 8/21/06 | *Animal Life*<br>5c. This section needs to better describe the mechanisms of potential impacts and recommended mitigation measures that may be adopted and implemented by Tier 2 permittees to address species protected by the Migratory Bird Treaty Act (MBTA). The range of impacts to these species is unclear to the reader. This section also begins to discuss fisheries in the Los Angeles River but does not provide any information on fishery habitat or species in the river or its tributaries. It is unclear whether fisheries would be impacted by construction projects. We recommend the LARWQCB revise the document to better disclose fishery impacts (as well as potential benefits) and recirculate the document as required in CEQA Guidelines Section 15183, for another round of public review. | As discussed in depth in the CEQA checklist, over 800 species of birds are protected by the Migratory Bird Treaty Act (MBTA). Repeating the Act or listing bird species will not substantially alter the section nor require recirculation.<br>As stated in the CEQA checklist "Full capture and partial capture trash control systems would not be located within the river channel, but rather in the storm drain itself. As such, a foreseeable deterioration of existing fish habitat is not anticipated."<br>While it is strongly held that implementation of the TMDL and Basin Plan Amendment will have substantial beneficial effects, these effects are not discussed in exhaustive detail as the CEQA process is designed to focus on adverse effects. |
| 9.17 | Caltrans | 8/21/06 | The noise section needs to provide more details about potential impact and mitigation measures that would be used by those entities implementing mitigation projects. Information should be presented about noise ordinances or policies in the noise elements of the general plans of the various cities in the watershed. Predictions of noise levels from various construction activities should be estimated to provide the reader with a sense | A sufficient amount of detail is included in the CEQA checklist about the impact of noise and mitigation measures for noise for a programmatic level review. The impact of construction noise is discussed and the impact of noise due to on-going maintenance activities is |

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| | | | of possible noise impacts and mitigations. | discussed. A number of mitigation methods are identified and discussed. Municipalities, contractors and equipment manufacturers have been addressing noise problems for many years and many mitigation methods are well known, as discussed.<br>Each of the individual municipalities may have their own ordinances for noise and may develop new ordinances for noise or modify existing ordinances and the ordinances must be considered as the responsible parties implement the TMDL and Basin Plan Amendment and consider mitigation methods for noise impacts. An estimation of predictions of ranges of noise levels would not substantially alter or improve the section as construction noise is frequently encountered in urban areas and well known to CALTRANS and any hypothetical "reader." |
| 9.18 | Caltrans | 8/21/06 | *Transportation and circulation*<br>This section, which attempts to quantify traffic impacts from the proposed project using various assumptions for maintenance of these devices, has inconsistencies. For example, the checklist question response is less than significant (L TS) with mitigation, but the impact statement in the analysis deems it less than significant. | The commenter is incorrect. In the CEQA Checklist, in the checklist section and in the discussion section all items under 13 Transportation/Circulation are listed as "Less Than Significant with Mitigation Incorporated" |
| 9.19 | Caltrans | 8/21/06 | *Cultural*<br>This section does not provide any evidence or documentation to | The section does not need to be revised; it is a complete and thorough analysis |

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| | | | support its conclusions and needs to be revised. There are many historical and cultural sites in the Los Angeles region that could potentially be impacted by a future implementation project. The LAR WQCB should conduct a records search of the South Central Information Center of the California Historical Resources Information System and present an analysis of the range of impacts that could occur from implementation of the various devices on these cultural resources in the watershed. | for a programmatic level review. If CALTRANS disagrees with the statement that responsible agencies would not site structural controls in places where doing so would create adverse impacts to significant archeological or historical resources but instead would opt for non-structural measures or siting structural controls away from such resources, we ask CALTRANS for its reasons for so believing. The South Central Information Center of the California Historical Resources Information System is a site-specific research tool; it is not possible to do a watershed wide search. To include a list of all the potential cultural or archeological sites in the watershed will not substantially alter nor improve the section. |
| 10.1 | LBUSD | 8/21/06 | The RWQCB asserts that the proposed Trash TMDL is exempt from certain aspects of the California Environmental Quality Act (CEQA), and that functionally equivalent "substitute" documents may be prepared in place of an Initial Study and Environmental Impact Report.<br>……Notwithstanding the lack of clarity regarding the scope and *timing* of the applicability to schools of the proposed Trash TMDL regulation (see comments below), the RWQCB's "substitute" environmental documents do not adequately discuss potential impacts to schools, do not identify or address mitigation measures for those impacts, and do not discuss alternatives to the proposed method of compliance. | See Comment and response 3.4. |

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| 10.2 | LBUSD | 8/21/06 | The RWQCB environmental report indicates that there is "NO IMPACT" on public schools (See 14c. Schools in the environmental checklist) from the Trash TMDL. This is not the case. The Trash TMDL clearly intends to regulate schools under the Phase II US Environmental Protection Agency storm water program, as illustrated by the following language:<br>*Waste Load Allocations are assigned to the Permittees and OJ-permittees of the Los Angeles County Municipal Stormwater Permit and Caltrans. In addition, Waste Load Allocations may be issued to the additional facilities in the future under Phase II of the US EPA Stormwater Permitting Program." (Page* 21, *Draft TMDL)*<br>*"While public education institutions will also be covered under .separate permits under Phase II, the analysis did not differentiate between public and private educational facilities under this land use. Therefore, the cities ha1'e the option of providing information 'on the acreage of such 1and uses within their jurisdiction in order that contributions from these facilities be removed*<br>*.from their as.5igl1ed base line waste load allocations." (Page* 24, *Draft TMDL)* | See responses to comment 3.1. |
| 10.3 | LBUSD | 8/21/06 | …., it is unclear from this language if the Regional Board intends to assign a waste load *reduction* for public schools. The first paragraph indicates that schools "may" be assigned a waste load allocation in the future. The second section allows cities to calculate the waste load from our facilities and to remove it from their responsibility. It is presumed that this waste load allocation will then be assigned to public schools, since the goal of the Regional Board is assigning responsibility for trash reduction to various public agencies. | See response to comment 3.4. |
| 10.4 | LBUSD | 8/21/06 | We have concerns with the process of computing the waste load | The Waste Load Allocations were |

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| | | | allocations proposed under the TMDL. The allocation appears to be a simple mathematical calculation based on a sample survey. It is unclear from the draft TMDL report where these samples were taken, so we do not know if it truly represents potential impacts from school sites to the local storm drain system. It is unclear from the proposed regulation if our School District will be assigned a waste load allocation. If the RWQCB does plan to calculate a waste load for our facilities, when and how will that be done? | computed based on trash generation rates per land use based on data collected by the Los Angeles County Department of Public Works during their baseline monitoring program. A more detailed breakdown of the analysis used will be provided in an appendix to the staff report.<br>With respect to concerns about assigning WLAs to school districts, please see response to comment 3.1. |
| 10.5 | LBUSD | 8/21/06 | The TMDL would be better suited to implementation focused on our trash reduction programs, rather than a waste load allocation based on a simplified mathematical formula. The LBUSD has a variety *of* programs dealing with trash and litter. We are also concerned that reaching a numeric limit of “zero" using "Maximum Extent Practicable" (MEP) technology is an impossible task and will be setting up the schools for certain failure. It is unclear under the proposed implementation schedule if our District will be required to reduce the amount *of* trash by 30% by Year One, as is the proposed requirement for the cities. If we were to attempt to implement a 1/3 rd reduction in Year One, this aggressive schedule would create a hardship on our other programs. | See response to comment 3.1. |
| 10.6 | LBUSD | 8/21/06 | Although you are proposing to implement trash reduction programs in our Phase II NPDES Permit, we believe that these requirements should be described now. The RWQCB should prepare an environmental impact report that describes all of the related requirements, including those for the proposed school programs. The report should disclose the impacts to our School District and propose mitigation measures to reduce *or* eliminate these impacts. The environmental impact report should study the | See responses to comment 3.1 and 3.4 |

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| | | | cumulative impacts *of* the Trash TMDL and other Los Angeles River TMDLs on our School District. We believe our schools are not significant sources of pollution. We believe our schools do not warrant any TMDL regulations. | |
| 11.1 | PPC | 8/21/06 | These comments address the CEQA Checklist and the Staff Report entitled, "Total Maximum Daily Load for Trash in the Los Angeles Watershed," issued on July 7, 2006. Prior to the issuance of these documents, PSPC provided comments to Regional Board staff regarding the proposed scope of CEQA compliance for the Trash TMDL. We are surprised and disappointed that the CEQA Checklist and Staff Report fail to address—or even mention—the concerns raised in our scoping comments. | The comments provided by the PPC are addressed in response to comments to the CEQA scoping meeting and in the responses below. The June 30, 2006 comments made reference to the City of Downey's oral comments at the CEQA scoping meeting that a Regional effort should be considered to ban polystyrene packaging for food products. A Region wide ban of polystyrene food packaging is not a foreseeable means of compliance because these bans are typically implemented on a municipal or County-wide basis. In the CEQA checklist circulated by Regional Board, municipal bans of polystyrene were listed as a potential non-structural BMP and a foreseeable means of compliance with the TMDL. Consequently, the CEQA checklist has been revised to strike "municpal ordinances prohibiting food packaging with polystyrene materials."<br><br>Staff notes that the above-referenced revision to the CEQA checklist indicates that the municipalities that |

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| | | | | implement polystyrene packaging bans would be the lead agency for CEQA compliance and evaluation of environmental impacts, if necessary. |
| 11.2 | PPC | 8/21/06 | In particular, the CEQA Checklist (pp. 4-5) states that the "most likely" non-structural alternatives that cities may adopt to comply with the Trash TMDL include "development of municipal ordinances prohibiting food packaging with polystyrene materials." Referring to the list of likely compliance alternatives, the CEQA Checklist (p. 5) goes on to state that: "Foreseeable environmental impacts and mitigation measures are well known because these compliance methods have been implemented throughout the United States and within the Los Angeles River watershed." With respect to the possibility of ordinances prohibiting polystyrene food packaging, that statement is simply not true. On the contrary, the limited scientific information available (as described in the documents attached hereto, incorporated by reference in these comments) suggests that such alternatives have the potential to cause serious indirect adverse environmental consequences. Moreover, feasible alternatives may exist which would reduce those consequences. These issues must be more fully explored in the context of specific proposed ordinances to implement the TMDL, as required by CEQA. | Regional Board staff notes the studies cited by the PPC are life-cycle studies pertaining to the resource requirements to produce substitute materials for food packaging on a global scale. Regional Board staff assess that the studies cited may not apply in the Los Angeles River watershed because the TMDL call for a reduction in trash loading to the Los Angeles River rather than a substitution of one type of trash for another. |
| 11.3 | PPC | 8/21/06 | Tiered Approach. The Regional Board has indicated (see CEQA Checklist, p. 2) that the CEQA Checklist and Staff Report (collectively referred to as "CEQA documents") serve as "Tier 1" environmental review documents for the Trash TMDL. The CEQA documents analyze the impacts of both structural control measures (designed to trap and collect trash) and non-structural control measures (such as anti-littering campaigns and street sweeping) at a general, programmatic level. However, the Regional Board also makes clear (see *id*.) that it is prohibited from mandating the specific compliance strategies that the | Comment noted. This is an accurate interpretation of the approach to CEQA compliance. |

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| | | | entities subject to the Trash TMDL Waste Load Allocations ("WLAs") – primarily the cities in the Los Angeles River watershed – must implement to achieve their respective WLAs. Accordingly, as the Regional Board acknowledges (see *id.*), the Tier 1 environmental review must be followed by Tier 2 documents, prepared by the regulated entities as CEQA compliance for adoption of their own specific control measures. PSPC agrees that a tiered approach, as authorized by CEQA, is correct where, as here, the specific strategies that individual cities may choose to adopt are not yet determined. | |
| 11.4 | PPC | 8/21/06 | Unsupported Conclusion on Non-Structural Alternatives. The CEQA Checklist (pp. 4-5) states that the "most likely" non-structural alternatives that cities may adopt to comply with the Trash TMDL include "development of municipal ordinances prohibiting food packaging with polystyrene materials." Referring to the list of likely compliance alternatives, the CEQA Checklist (p. 5) goes on to state that: "Foreseeable environmental impacts and mitigation measures are well known because these compliance methods have been implemented throughout the United States and within the Los Angeles River watershed." Further, the CEQA Checklist (p. 39) concludes that its analysis has demonstrated that properly designed and implemented structural and non-structural methods of compliance should not have significant adverse effects on the environment. | Staff note that polystyrene bans have been initiated in many Cities including Huntington Beach, Berkeley, Malibu and Calabasas. In supporting documents for the development of these bans, the environmental benefits of polystyrene packaging bans are cited. |
| 11.5 | PPC | 8/21/06 | There is no discussion anywhere in the CEQA documents of either reasonably foreseeable adverse environmental impacts or feasible mitigation measures associated with this "most likely" non-structural alternative. This omission is especially surprising since PSPC had raised concerns regarding potential adverse impacts to the Regional Board staff's attention in our scoping comments. Accordingly, with regard to such bans, the conclusory statements that impacts and mitigation measures are "well known" and should not have significant | Please refer to comment 11.1 |

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| | | | adverse effects are without support in the CEQA documents. | |
| 11.6 | PPC | 8/21/06 | The Regional Board cannot have it both ways, relying on tiered analysis to avoid developing such support, yet claiming to demonstrate (even at the Tier 1 level) that non-structural alternatives should not have adverse environmental effects. Moreover, neither the CEQA documents nor, to our knowledge, any other studies have ever produced evidence establishing any direct benefit in trash reductions through product bans. | Please refer to 11.1 |
| 11.7 | PPC | 8/21/06 | Tiered Analysis of Adverse Environmental Consequences. It is well-settled that, where there is evidence that a program or regulation intended for environmental protection may have unintended adverse environmental consequences, those consequences must be analyzed and, if feasible, mitigated in accordance with CEQA before the program or regulation may be implemented. See, e.g., County Sanitation District v. County of Kern, 127 Cal. App. 4th 1544 (2005). The Regional Board was specifically directed to analyze such impacts for the Trash TMDL, by the Court of Appeal in City of Arcadia v. State Water Resources Control Board, 135 Cal. App. 4th 1392 (2006). Where a tiered CEQA analysis is conducted, the rule established in No Oil, Inc. v. City of Los Angeles, 196 Cal. App. 3d 223, 237 (1987), as recently reiterated in Ebbetts Pass Forest Watch v. California Dept. of Forestry and Fire Protection, 139 Cal.App.4th 165 (2006), applies: if a later act "is reasonably foreseeable in general terms, the [Tier 1 EIR] must include a general discussion of the act and its possible environmental effects, but need not include a detailed analysis of specific acts that cannot reasonably be foreseen at the time the [EIR] is prepared."<br><br>Given that the CEQA Checklist asserts that municipal bans of polystyrene food packaging are not only reasonably foreseeable, but are actually "most likely," the CEQA documents must appropriately | Please refer to 11.2 |

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| | | | address the possible adverse environmental effects of such bans at the Tier 1 level. By failing to provide any discussion at all of that issue, the Regional Board has failed to comply with the court's directive in City of Arcadia. Consistent with the No Oil rule, at the Tier 1 analytic level, a general discussion of reasonably foreseeable impacts and alternatives requiring further evaluation must be provided, to guide the Tier 2 detailed analysis of specific proposals – such as proposed polystyrene packaging ordinances – by the municipalities seeking to comply with the TMDL. | |
| 11.8 | PPC | 8/21/06 | Recirculation of CEQA Documents. Since the Regional Board purports to be utilizing a tiered approach, we do not believe it is necessary to delay the proposed accelerated schedule for re-adoption of the Trash TMDL, in order to recirculate a revised CEQA Checklist to address these issues. However, in order to timely adopt the Trash TMDL consistent with the requirements of CEQA, the Regional Board must make clear what issues are covered at the Tier 1 level of analysis, and what issues ***must*** be analyzed by the cities at the Tier 2 level, prior to adopting polystyrene food packaging bans or restrictions as a non-structural alternative for achieving their TMDL targets. | Please refer to comment 11.1 |
| 11.9 | PPC | 8/21/06 | Reasonably Foreseeable Increase in Use of Bio-plastics. Should cities enact bans on the use of polystyrene food packaging, those actions are unlikely to affect the total amount of food service packaging used, but will divert users to alternate materials. As a result, a ban on polystyrene food packaging serves as a mandate for alternate food packaging material. A common alternative material for polystyrene food packaging is plastic made from biodegradable materials, such as corn-based polymers, polylactic acid ("PLA") and polyhydroalkanoate ("PHA") commonly referred to as bio-plastics. Consequently, if a ban changes the mix of materials used locally, without significantly reducing the existing litter rate, the ban can be expected to increase the amount of bio-plastics in the litter stream and the local environment. While PSPC does not object to the use of bio-plastics in itself, the | Please refer to comment 11.2 |

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| | | | prospect of increased amounts of bio-plastics inadvertently entering the Los Angeles River watershed in the litter stream has the potential to cause serious environmental problems. ……., there is growing awareness and concern among the scientific community over the adverse environmental consequences of biodegradable food packaging, including bio-plastics that enter the litter stream. This evidence should be considered in the general discussion of the Regional Board's Tier 1 CEQA document, and evaluated by the cities in the context of specific proposals in their Tier 2 analyses. | |
| 11.10 | PPC | 8/21/06 | Air Quality Impacts. Evidence suggests that increased use of bio-plastics, when inadvertently introduced into the litter stream in the Los Angeles River watershed, would result in adverse air quality impacts. (Institute for Environmental Research and Education ("IERE"), 2006 [Exhibit 1]; Stein, 2006 [Exhibit 2].) For example, the report by IERE indicates that a substantial portion of bio-plastic litter in the watershed can be expected to undergo anaerobic degradation. According to the IERE report, anaerobic degradation of organic material, such as bio-plastics, generates carbon dioxide, methane, nitrous oxide, hydrogen sulfide and volatile organic compounds.<br>Note that both emissions of pollutants and noxious odors are considered environmental impacts for CEQA purposes. *See* CEQA Guidelines, Appendix G checklist. In addition, life cycle analyses suggest that replacing polystyrene food packaging with bio-plastics will increase the amount of greenhouse gas emissions and other pollutants required to produce an equivalent amount of bio-plastic food packaging. (Gerngross, 1999 [Exhibit 3]; Gerngross and Slater, 2000 [Exhibit 4]; Kurdikar et al., 2001 [Exhibit 5].) | Please refer to comment 11.2 |
| 11.11 | PPC | 8/21/06 | Water Quality Impacts. Evidence suggests that bio-plastics, when introduced into the litter stream in the Los Angeles River watershed, will result in adverse water quality impacts due to the release of nutrients and nitrogenous compounds. (IERE, 2006; Stein, 2006.) For | Please refer to comment 11.2 |

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| | | | example, as discussed in Comment 6 above, the IERE report indicates that these adverse impacts could occur whether the bio-plastic litter in the Los Angeles River watershed undergoes aerobic or anaerobic degradation. Aerobic degradation would produce nitrate, whereas anaerobic degradation would produce ammonia. According to IERE, the nitrate migrates easily in groundwater and surface water. Ammonia is released to the atmosphere, but can still disperse into surface water. Both nitrate and ammonia can contribute to eutrophication of surface waters.<br><br>Further, the production of corn for the raw material of bio-plastics has substantial water quality impacts. (Royte, 2006 [Exhibit 6].) In particular, commercial corn agriculture requires the use of nitrogen-based fertilizers, herbicides and insecticides. These chemicals enter surface waters during runoff. In addition, Royte (2006) notes that high levels of erosion are associated with commercial corn agriculture.<br><br>Finally, there may be other foreseeable water quality impacts for which further study is required, including whether the byproducts of degradation affect any of the other water quality TMDLs currently in effect or proposed on the LA River watershed. | |
| 11.12 | PPC | 8/21/06 | Plant Life Impacts. Scientific evidence indicates that there are a number of foreseeable adverse consequences to aquatic plant life that could result from an increased use of bio-plastic food packaging when it inadvertently enters the Los Angeles River watershed as litter. As discussed in Comment 7 above, IERE (2006) and Stein (2006) report that nitrogenous compounds released during the aerobic and anaerobic degradation of bio-plastics can cause eutrophication of surface waters. This can result in explosive growth of certain types of plants in the water body, typically algae, periphyton attached algae, and nuisance plant weeds. This increased plant growth, often called an "algal bloom," can crowd out other plant species and reduce their population. In addition, such an algal bloom will ultimately reduce the dissolved oxygen in the water as a result of an increase in the mass of | Please refer to comment 11.2 |

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| | | | decomposing dead plant material. The resulting oxygen depletion can adversely affect the populations of aquatic species in the area. | |
| 11.13 | PPC | 8/21/06 | Impacts to Fish and Wildlife. Scientific evidence indicates that there are a number of foreseeable adverse consequences to fish and wildlife that could result from an increased use of bio-plastic food packaging that inadvertently enters the Los Angeles River watershed as litter. First, as discussed in Comments 7 and 8 above, IERE (2006) reports that nitrogenous compounds released during the aerobic and anaerobic degradation of bio-plastics can cause eutrophication of surface waters, leading to harmful algal blooms. An algal bloom reduces dissolved oxygen in the water when dead plant material decomposes. Low dissolved oxygen content can kill fish.<br><br>Another foreseeable adverse consequence to animal life stems from the reasonable possibility that increasing the amount of bio-plastics in the local environment could lead certain species to adopt these bio-plastics as a food source. This may cause populations of those species that use bio-plastics as a food source to increase, which in turn can negatively impact (i.e., reduce) the population levels of other species. | Please refer to comment 11.2 |
| 11.14 | | | Clear Evidence of Foreseeable Impacts to Air Quality, Water Quality, Plant Life, Fish and Wildlife. As indicated in Comments 6 to 9 above, the increased use of bio-plastics as a substitute for polystyrene food packaging will lead to foreseeable impacts to air quality, water quality, plant life, fish and wildlife once the material enters the Los Angeles watershed as litter.<br>Accordingly, these potential environmental impacts must be considered by the Regional Board in its Tier 1 environmental assessment, and in Tier 2 assessments conducted by cities considering the adoption of a polystyrene packaging bans to achieve their WLAs. | See 11.12. In conjunction with the trash TMDL which will most likely result in a reduction of total trash, the assertion that the increased use of bio-plastics will lead to impacts to Air Quality, Water Quality, Plant Life, Fish and Wildlife are merely speculative. |
| 11.15 | PPC | 8/21/06 | Energy Impacts. Life cycle analyses suggest that replacing the polystyrene food packaging with bio-plastics will increase the amount of energy required to produce an equivalent amount of bio-plastic food | Please refer to comment 11.2 |

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| | | | packaging (Gerngross and Slater, 2000). For example, in the case of PLA, more fossil fuels must be burned to fertilize and harvest the corn and then to convert it into bio-plastic than is required to make an equivalent amount of petroleum-based plastics. | |
| 11.16 | PPC | 8/21/06 | Increased Litter. It is also reasonably foreseeable that the public response to a switch to bio-plastics or other biodegradable materials following a ban on polystyrene food packaging could lead to increased litter. Experts indicate that, without proper education, consumers have a tendency to think that there are no adverse environmental impacts from throwing trash items labeled "biodegradable" or "compostable" onto the ground. (Lingle, 1990 [Exhibit 7]; Comstock et al., 2004 [Exhibit 8]; Stein, 2006.) Consequently, the use of such materials could increase the amount of trash on streets, storm drains, and in the Los Angeles River. Not only would this be an adverse environmental consequence on its own, increased levels of bio-plastics and other biodegradable materials in the litter stream would further exacerbate the adverse environmental consequences……. | Please refer to comment 11.1 |
| 11.17 | PPC | 8/21/06 | Impacts to Utilities and Service Systems. It is also foreseeable that increasing the quantity of bio-plastics in the waste stream could impair the efficiency of existing recycling services. Royte (2006) notes that plastics recycling companies consider bio-plastics to be a contaminant that must be removed from recyclable plastics at considerable cost. Therefore, consumers must be educated to ensure that bio-plastics are not mixed with PET and other recyclable plastics. | Please refer to comment 11.1 |
| 11.18 | PPC | 8/21/06 | Increased Composting. Another reasonably foreseeable consequence of increased use of bio-plastics is that cities would seek to compost as much bio-plastic food packaging as possible. In fact, the bio-based packaging industry recommends that its products be disposed of in a municipal or industrial composting facility in order to realize the packaging's maximum environmental efficiency. (Royte, 2006.) There | Please refer to comment 11.1 |

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| | | | currently is no available capacity in Los Angeles County to handle additional compostable foodservice materials. Unless new facilities are built in the County, the materials would need to be transported to facilities in Kern County or San Bernardino County. This could result in increased fuel consumption and increased air quality impacts if more truck trips are required to pick up this new solid waste stream of compostable material and haul it to these relatively distant composting facilities. | |
| 11.19 | PPC | 8/21/06 | Increased Composting<br>On the other hand, the decision to build new composting facilities in Los Angeles County could result in environmental justice impacts related to siting the facility, given the air emissions (odors, etc.) from the composting process, air emissions from equipment used at the facility, noise from operations, and potential disease vectors created by the presence of a potential food source for vermin. (IERE, 2006.) In addition, there are foreseeable land use impacts resulting from the construction of the facility. These environmental consequences should be addressed at the programmatic level in the Regional Board's CEQA documents. In addition, these issues would have to be addressed in greater detail in the Tier 2 environmental analysis conducted by a city considering a ban on polystyrene food packaging. | Please refer to comment 11.1 |
| 11.20 | PPC | 8/21/06 | Feasible Alternatives. Alternatives exist that would avoid the potential adverse environmental consequences of banning polystyrene food packaging, and which are also more effective at achieving the objective of the Trash TMDL and implementing the WLAs. Such alternatives, discussed in the following comments, should be addressed at the programmatic level in the Regional Board's CEQA documents. In addition, these alternatives must be considered in greater detail in the Tier 2 environmental analysis conducted by a city considering a ban on polystyrene food packaging. | Please refer to comment 11.1 |
| 11.21 | PPC | 8/21/06 | Educational Programs to Reduce Litter. Changing people's behavior to | Comment noted. |

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| | | | reduce littering is the most effective alternative to avoid most or all, of the adverse environmental consequences associated with banning polystyrene food packaging. While paid advertising or public service announcements can be effective if the message is well targeted, one of the most effective means of promoting positive behavior change over time is a school curriculum taught at the age when students are most prone to peer pressure to engage in antisocial behaviors. ……., an ideal educational program would be a junior high curriculum that teaches students the proper way to recycle and dispose of trash, the effects of littering on the environment, and the social consequences of littering. | |
| 11.22 | PPC | 8/21/06 | Targeted Litter Cleanups. Improving the effectiveness of litter cleanup efforts is a reasonable alternative that avoids many of the foreseeable adverse impacts associated with banning polystyrene food packaging. While littering is a problem throughout the Los Angeles River watershed, it is known that there are specific areas that contribute a disproportionate amount of trash. Certain trash "hot spots" in the Los Angeles River watershed have been identified on a broad level, but, as yet, there has not been an organized effort to systematically reduce these potential sources of large volumes of litter. Targeted cleanups of such trash "hot spots" would assist cities with achieving their individual WLAs and promote achievement of the goals of the Trash TMDL. | Comment noted. |
| 11.23 | PPC | 8/21/06 | Litter Surveys. The effectiveness of educational programs and targeted litter cleanups could be improved by an ongoing program of litter surveys done on a regular schedule throughout the LA River watershed. Effective trash reduction programs depend on accurate, quantifiable surveys conducted regularly throughout the duration of the program. (Don't Mess with Texas, 2001 [Exhibit 10].)The primary objective of a litter survey program in the Los Angeles River watershed would be to characterize the composition of waterborne litter so that advertising, behavior modification, and educational programs could be more precisely targeted at the demographic groups primarily responsible. | Comment noted. |

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| | | | The secondary objective of such a survey would to establish a quantitative baseline litter benchmark for targeted areas so that the reduction of litter rate can be assessed going forward. The effectiveness of paid advertising can be improved if the target audience as well as advertising content and message are constantly modified as data from successive litter surveys is obtained and analyzed. (Don't Mess with Texas, 1998 [Exhibit 11].) In addition, as with the comprehensive computerized map of the Los Angeles River watershed discussed in Comment 17 above, the survey could lead to other innovative strategies to keep litter out of the Los Angeles River. | |
| 11.24 | PPC | 8/21/06 | Distributed Garbage Can Management. Properly managing municipal garbage can infrastructure can lead to litter reductions while avoiding the foreseeable adverse environmental consequences associated with banning polystyrene food packaging. Litter surveys have established that properly maintained garbage cans can be very effective in reducing litter. (Institute for Applied Research, 2006 [Exhibit 13]). However, if cans are allowed to overflow, they contribute directly to litter by becoming a source of uncontrolled debris. They also indirectly contribute to litter by encouraging the perception that there is no point in disposing of trash properly. Therefore, cities could consider ways to improve the management of municipal garbage cans. | Comment noted. |
| 11.25 | PPC | 8/21/06 | Landscaping. Among the VLS research conducted for the Don't Mess With Texas program was a study of two chronically litter-strewn vacant lots. After wildflowers were seeded on both lots, litter was reduced by 71 percent over six years. In comparison, litter reductions at five similar sites without groundcover plants averaged only five percent. Based on these findings, the litter researchers recommended that all high-litter areas be seeded with wildflowers. (Institute for Applied Research, 1991 [Exhibit 14]) In Los Angeles, high-trash open areas could be targeted for groundcover plantings, which could be required to be drought-tolerant native species. It is likely that many of the "hot spots" will be vacant lots, medians, and other currently bare pieces of | Comment noted. |

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| | | | land that would gain multiple benefits from beautification. An "Adopt-A-Spot" landscaping program would complement volunteer neighborhood litter programs, since it would add an attractive long-term positive benefit of open-space beautification to the immediate goal of litter reduction. | |
| 12.1 | City of Signal Hill | 8/21/06 | We do not agree with the Board staff assertion that the CEQA checklist document satisfies the state requirements for a fair and complete disclosure of the impacts of the proposed TMDL regulation. We request that the Regional Board direct staff to complete the Court-required functional equivalent of an Environmental Impact Report, incorporating our comments and, analyzing alternatives, and then recirculating the document through the State Clearinghouse for public and agency comments. | See response to comment 1.3 |
| 12.2 | | | We have significant concerns with the proposed TMDL and offer these suggestions on how it could be improved to assist in meeting worthwhile environmental goals, while reducing the impact of these unfunded mandates on local governments in the watershed. Much of the trash and debris found in storm water is consumer-derived plastics, which are beyond the ability of local government to effectively regulate. The TMDL is inappropriately shifting the burden of cleaning up plastics to local government, when the plastics industry and consumers should be financially responsible for source control. Additionally, state legislation is required in lieu of individual local government bans, much like the existing state plastic beverage redemption requirements. Cities will continue to share in the burden by implementing institutional controls, like street sweeping and anti-littering enforcement, as well as structural controls such as catch basin inserts, however these controls may not be as effective as state legislation. | This TMDL addresses the discharge of litter through the storm drain system. It is within the ability of responsible agencies to properly collect and dispose of trash prior to discharge into waterbodies of the Los Angeles River Watershed.<br>Writing bills and lobbying for state legislation is beyond the purview of the Regional Board. While a change in state law may be an effective means of reducing trash in waters of the state, such a change is not a reasonably foreseeable means of compliance with the LA River Trash TMDL and is beyond the purview of the Board to propose, approve, or enforce. |

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| 12.3 | | | The Board's overall approach of requiring unfunded mandates of full capture devices and a "zero" trash requirement violates constitutional and statutory limitations, specifically "nexus" and "rough proportionality" principals and the "takings" requirements of the Fifth Amendment. The Board is requiring our City to solve a problem that is not of its making, and is imposing expensive mandates that far exceed any reasonable relationship to the impacts caused by our City. | See Comments 1.10, 1.12, 1.14 |
| 12.4 | | | The TMDL and the CEQA Document should acknowledge that progress has been made in reducing the amount of trash reaching the Los Angeles River and Long Beach Harbor. In a demonstration of our commitment to the environment, our City has implemented several trash reduction programs, even though the courts voided the TMDL. These include additional catch basin cleaning, additional street sweeping, installation of pet-waste station, curbside pick program up of waste motor oil and filters, special neighborhood clean-up programs and implementation of developer controls under the SUSMP. Signal Hill has also installed one-vortex systems and seven trash nets, as part of the Hamilton Bowl Project. We would request that you recognize these BMPs and credit these contributions towards meeting our trash reduction goals.<br>The draft TMDL document contains data from four rain years, stopping in 1998-99. Seven additional years of data are now available. With the exception of the EI Nino years of 2003-04, trash has been declining since the adoption of the TMDL in 2001. It also appears that 2005-06 will be very low year as well. | The vortex system and trash units installed by the City of Signal Hill have already been recognized as full capture systems. In fact, the Hamilton Bowl Project was funded in part by a grant from the State Water Resources Control Board. The Regional Board would be happy to credit the additional trash reduction efforts towards compliance with the TMDL once the City provides documentation of the trash reductions achieved through these BMPs. |
| 12.5 | | | The Angeles National Forest comprises 32% of the watershed (200 square miles). We are extremely concerned that the Regional Board has not assessed the contribution of trash from the Angeles National Forest, nor from the Army Corp of Engineers facilities, nor assigned a waste load allocation or load | See Comments 1.22, 1.23 |

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| | | | reduction to the Forest Service or the Corp of Engineers. This is seems to be a direct contradiction to the Trash TMDL for the East Fork of the San Gabriel River (adopted by the Regional Board in 1999), where the Regional Board found that the National Park Service has a "fiduciary responsibility" to fund trash and debris reductions programs in the San Gabriel River watershed. The Park Service has instituted trash and debris reduction programs, since the adoption of this TMDL. This same "fiduciary responsibility" should exist for the LA River, and the Cities should not be left to shoulder this burden alone. | |
| 12.6 | | | We believe that the rainfall and debris chart illustrates the tremendous amounts of trash, debris and vegetation during the EI Nino storm years, much of which may originate from the Angeles National Forest. The environmental documentation for the TMDL needs to assess how much trash and debris originate from the National Forests. Trash and debris spiked to 12,225 tons in 2003-04. This was second wettest year since rainfall records have been kept since 1881. Rainfall was significantly greater in the San Gabriel Mountains, where the steep slopes concentrate the rain, sending it surging down valleys, creeks and the flood control channels that are tributary to the Los Angeles River. While downtown Los Angeles was struggling with 37.25 inches of rain, Orpids Camp, located near Mount Wilson, registered 107 inches of rainfall. The Regional Board will not reach its goal of "zero" trash in the Los Angeles River and the beaches in Long Beach, without assigning a waste load allocation and load reduction requirements to the Forest Service and the Army Corp of Engineers, as it did with the Trash TMDL for the East Fork of the San Gabriel River. The Regional Board is leaving a significant federal funding partner on the "sidelines" by not including this source of trash and debris and it has provided no legitimate reason for excluding these federal agencies. | Based on the data provided, there is no indication that the Angeles National Forest is a contributor to the trash that impairsthe waterbodies of the Los Angeles River Watershed. Special studies would need to be conducted to determine whether or not the Angeles National Forest is a significant source of trash in the watershed. General speculation as to the origins of the debris collected is not sufficient basis for assigning load allocations to the Angeles National Forest.<br><br>Also, see Comments 1.22, 1.23 |

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| 12.7 | | | We support the findings and recommendations of the State Board Storm Water Panel of Experts that it is "not feasible at this time to set enforceable numeric limits for urban discharges and municipal Best Management Practices (BMPs)." These finding and recommendations should be acknowledged and addressed in the environmental document. The TMDL's numeric limits should be deemed complied with through the use of BMPs beyond installing full capture devices (vortex separators and nets) throughout the watershed. Alternative "projects" to the "full capture" Trash TMDL project, such as street sweeping and installing catch basin inserts and excluders throughout the watershed, instead of installing large, intrusive full capture devices throughout the watershed, should be discussed and analyzed as feasible alternatives. We remain very concerned over the "zero" numeric limit, which, although a laudable goal, will be impossible to achieve without some other deemed compliance alternative to the vortex and net systems, such as catch basin inserts and excluders. | See Comments 1.12, 1.14<br><br>The TMDL's numeric limits will be deemed complied with through the use of any BMPs designated as "full capture" devices or systems. These devices/systems are not limited to vortex separation systems and nets. The Executive Officer will provide "full capture" certification to systems that meet the performance requirements set fourth in the TMDL. To date four other systems have received this certification: 2 gross solid removal devices for Caltrans, Trash nets for the City of Signal Hill, and Catch Basin Brush Inserts and Mesh Screens for the "four cities" (Cities of Glendale, Pasadena, La Canada Flintridge, and Burbank). |
| 12.8 | | | Trash and debris is very difficult to measure and quantify. The TMDL's baseline calculation is based on catch basin surveys and land use data from Los Angeles County's 2002-04 surveys. This survey data does not properly characterize our community's waste load allocation. This is verified in the report *"Market Based Strategies for Reducing Trash Loads to the Los Angeles Area Watersheds,"* (March, 2006, US EPA Grant #XP-979790001-0). The study revealed that the Regional Board should not rely on the County's catch basin and land use data to determine the baseline and waste load allocations. This report revealed that about 15% of the outfalls in into the Los Angeles River generate 50% of the volume of trash in the River. A total of 40% of the outfalls account for 80% of the trash. The report | The Baseline Monitoring conducted by the Los Angeles County Department of Public Works determined trash generation rates based on land use. The results from this effort were the basis for determining the WLAs. The highest generators of litter were Industrial and Commercial land uses. Focusing initial trash reduction efforts on these areas within a city would be an effective way of tackling the trash problem. Since the Regional Board does not dictate the method by which compliance should be |

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| | | | suggests that better predictor of trash generation is *"historic inlet trash volumes,"* which are more likely to result in accurate identification of priority control locations. | attained, responsible agencies can use any approach to trash reduction that they feel would be more cost effective as long as compliance is achieved. |
| 12.9 | | | We suggest that the Regional Board allow the Cities to complete the Keep America Beautiful "Litter Index" survey in order to estimate the amount and characterize the areas of substantially littering in each community, prior to adopting the Trash TMDL. The Litter Index has been in use for over twenty years and will identify areas where each community has historically encountered trash. It is more valid designation of high priority areas for the trash reduction programs, since it is based on real conditions in each community. It will also be more accurate than the proposed baseline waste load allocations in the TMDL. | The purpose of the Baseline Monitoring Program was to quantify the amount of trash generated per land use and in doing so, identify high trash generation areas. This was accomplished during the 2002/03 and 2003/04 storm years and further characterization should not be necessary.<br>Furthermore, the baseline waste load allocations do not predict nor require a specific pattern or method of implementation. Dischargers are encouraged to find the most cost-effective means of compliance. |
| 12.10 | | | We believe that the TMDL needs an "off ramp" for cities demonstrating substantial compliance or that are cleaner than the "baseline" proposed by the Regional Board. For example, our City and several watershed cities have large single-family residential neighborhoods that are very clean. Good examples are the Cities of Bradbury, La Canada-Flintridge, San Marino and Sierra Madre. This cleanliness reflects their existing high level of cleanup efforts, frequency of street sweeping and other litter reduction programs. We request that the Board allow Cities to use the Keep America Beautiful Littering Index as an indication of compliance with the TMDL, based on existing cleanliness. The TMDL should not penalize clean cities by forcing them to reduce trash to "zero" through the use of current deemed compliant full capture devices, which may not be feasible. These | Cleaner municipalities are not punished for their efforts under the Trash TMDL. To the contrary, cities that are cleaner than their assigned baseline Waste Load Allocation have the advantage of more time to implement trash reduction strategies as they will be in compliance until existing trash levels exceed the allowable load allocations.<br>In addition, the cleaner cities likely will find that compliance with the TMDL will cost less than the cost incurred by other cities. Less severe trash problems will require less capital investment than |

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| | | | communities may find that installing catch basin inserts/excluders in commercial or multi-family residential areas is sufficient. Full capture alternative such as these should be addressed in the environmental documentation. | larger trash problems.<br>Regarding the use of the Keep America Beautiful Littering Index, as an indication of compliance; the TMDL clearly states that alternative compliance monitoring programs may be approved by the Executive Officer if the program provides a scientifically-based estimate of the amount of trash discharged from the storm drain system. |
| 12.11 | | | We are concerned over the Regional Board's proposal that Cities implement 30% reduction in trash levels by the end of the first year after TMDL adoption. As pointed out above, it is will be very difficult to quantify the "baseline" and to demonstrate the reduction levels required each year of the TMDL, much less in Year One. Furthermore, as explained above, the TMDL has not given the Cities any credit for the substantial trash reduction efforts undertaken in the last five years. The potential adverse impacts of accelerating projects to achieve a 30% reduction in discharge of trash within one year should be addressed in the environmental document.<br>The following table illustrates the multiple scheduling issues confronting the Cities in implementing both the Trash and Metals TMDL, which are on separate and accelerated schedules. As the Board is aware, planning for capital improvements is time intensive and includes several steps - concept planning, design & engineering, plan checking, financing, bidding, right-of-way acquisition, utility line rerouting and construction. | See Comments 1.5, 1.41 |
| 12.12 | | | The Board has anticipated that the Cities must coordinate multiple TMDLs; however the Regional Board has burdened the Cities with two unrealistic and conflicting TMDL time schedules, instead of working with the Cities to examine ways to | Implementation of multiple TMDLs may result in more cost-effective compliance, particularly in cases where the same implementation strategy can |

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| | | | coordinate and improve the schedules. The environmental document should address the potential adverse impacts of the conflicting time schedules.<br>The Metals TMDL envisions the Cities reaching the 50% wet-weather in compliance point in 2024. This also may be a more appropriate date for cities to reach the 50% Action Level for the Trash TMDL. The completion of the Metals TMDL in 2028, may be the more appropriate time date for "deemed compliance" with Trash TMDL through the implementation of various BMPs, such as the proposed catch basin insert/excluder alternative proposed by the Cities. This would allow for Cities to coordinate debris removal, with metals reductions. | be applied to more than one TMDL. In addition, it is unnecessary for a pollutant that is relatively simple to address, such as trash, to be on the same compliance schedule as more complex pollutants such as metals. |
| 12.13 | | | As expressed in the ROWD applications, we believe that the TMDL should be implemented through an enforceable Memorandum of Understanding (MOU), instead of the MS4 NPDES Permit. The proposed implementation of the TMDLs as strict numeric "end-of-pipe, never to be exceeded" limits, through the MS4 NPDES permit, will place the Cities in the untenable position of having to defend themselves from third-party litigation should they fail to meet the strict numeric limits proposed in the TMDL, limits which are not reasonably achievable or practicable.<br>In a hypothetical scenario, a City that fails to reach the 80% numeric limit by one percent could be exposed to third-party litigation and Regional Board fines. Although the Board would presumably act reasonably, the Cities have no assurances that citizen litigants will show similar restraint. As such, the MOU approach is appropriate, since BMP performance is recognized as imprecise at this point in time even by the State Water Board's Storm Water Panel of Experts. The MOU would allow the Regional Board and the City to focus on the best course of action to correct any BMP deficiencies and implement a BMP approach | The Clean Water Act mandates that the TMDLs are implemented through the MS4 permits. However, MOUs can be very effective means of implementing actions in order to meet the compliance requirements and can be used in conjunction with waste load allocations in the MS4. Regional Board staff would be pleased to review specific proposals for MOUs to be used in conjunction with the WLAs.<br>It should also be noted that the TMDL provides a lengthy implementation time frame which will allow responsible agencies to focus on the best course of action to correct any BMP deficiencies and implement a BMP approach. Therefore, the flexibility being sought through, an enforceable MOU is already provided. |

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| | | | rather than strict numeric limits approach. Such an MOU could include options to install additional BMPs or support BMPs on a regional Los Angeles Region California Regional Water Quality Control Board level, based on high trash generating outfalls. The alterative of implementing the Trash TMDL through an enforceable MOU should be analyzed in the environmental document. | |
| 12.14 | | | The cumulative environmental impacts of the Los Angeles River Trash TMDL, mandated by the Heal the Bay Consent Decree (1999), are obscured from the Regional Board members, our City and general public by an incomplete project description and an inadequate CEQA substitute document by the Regional Board staff, instead of the Court ordered functional equivalent of an Environmental Impact Report (EIR). The checklist is not an adequate "substitute" for an Environmental Impact Report. The CEQA document appears to be no more than an inadequately prepared Mitigated Negative Declaration, that is completely inconsistent with a project of this magnitude and impact. | See Comments 1.3, 1.42, 1.44, 1.45 |
| 12.15 | | | No EIR has been prepared. The checklist does not qualify as such and contains no meaningful analysis of the potentially significant adverse impacts. For example, the proposed CEQA document does not adequately describe the number of TMDLs that our City will be required to implement. The checklist does not reveal the full range of physical impacts on the environment in our community, if the TMDL moves forward as proposed or a reasonable alternative moves forward. It is also very important that the public understand the "cumulative" impacts of multiple TMDL mandates, not just the impacts of the Trash TMDL standing alone, especially since the Consent Decree mandates multiple TMDLs for the Los Angeles River. | See Comment 1.3, 1.82, 1.45 |
| 12.16 | | | One key fact left out of the checklist is the overwhelming amount of plastics comprising debris in the River. A survey completed | See Comment 12.2 |

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| | | | by the U.S. Environmental Protection Agency in 1999, revealed that 89% of the trash found on a representative Southern California beach is from plastics - the vast majority being foamed plastics (i.e. polystyrene food containers and cups) and hard plastics (i.e. beverage and water bottles). The 2004 Los Angeles River Catch Basin Clean Out Survey revealed that 78% of the debris consisted of plastics, with similar characteristics.<br>This is a key omission from the checklist since it obscures significant facts from the Regional Board members. With full knowledge of these facts, the Board could choose to adopt one or more source control alternatives, instead of mandating remediation type requirements on the Cities through the TMDL. For example, the Board and the Cities could work together to sponsor legislation that would enhance redemption rates. Deposits could be placed on foam cups, plastic bags, foam food containers and nonbeverage plastic bottles. The redemption process would encourage recycling and redemption funds could be used as grants to the Cities to implement trash reduction programs. Alternatively, the Board could sponsor legislation banning these products. Our City would work with the Board on co-sponsoring this type of legislation. | |
| 12.17 | | | Signal Hill has prepared a separate review of the proposed CEQA Document, entitled a *"Review* of *the Proposed Substitute Environmental Document, On the Trash TMDL on the Los Angeles River, Its impacts on the City* of *Signal Hill, and Discussion* of *the Significant Environmental Issues, " August 10, 2006.* This document is attached and a part of the comments contained in this letter. The review was prepared by key Signal Hill staff, including the City Manager, Public Works Director, Community Development Director and Finance Director.<br><br>As noted in this review, the Regional Board has been led to | The referenced document raises CEQA and TMDL compliance issues that have been addressed in the preceding comments and responses |

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| | | | believe that its CEQA review need only discuss the physical impacts of the TMDL, such as the construction impacts from large full capture devices, and that the impacts to municipal budgets need not be discussed, since they are not physical impacts. We strongly disagree with this assertion. First, the Porter-Cologne Act requires the consideration of "economics" before adopting the TMDL (see Water Code Section 13000 and 13241(d). So does CEQA itself, as confirmed by the Chief Counsel's Office in legal memoranda, concluding that the economic analysis under Water Code Section 13241 is virtually the same analysis to be conducted under CEQA. Moreover, these "economic" impacts will foreseeably result in physical impacts to the environment as Cities' resources are diverted from other public services to fund this program. | See Comment 1.10, 1.72 |
| 12.18 | | | Finally, the Trash TMDL and the TMDL Program for the Los Angeles River are unfunded mandates. As unfunded mandates, they must be paid for with either new taxes or reductions in current and future municipal budgets. The Regional Board has previously expressed their frustration that state and federal grant programs are insufficient to address the high costs of the TMDL program, so Cities cannot depend on grants to insure compliance. The Regional Board has a responsibility to understand both the financial and the physical impacts, to specify mitigation measures, and to look for cost-effective alternatives. | The Regional Board has an understanding of the physical and financial impacts of this proposed TMDL as evidenced by the cost considerations in the Staff Report and the environmental analysis provided in the CEQA Checklist and determination. Also, the Regional Board cannot specify the method by which responsible agencies achieve compliance with the TMDL. Finally, with regard to cost-effective alternatives, please see response to comment 4.2 |
| 12.19 | | | The cost estimation sheet revealed that the TMDL Program is likely to cost our community $53.64 million to implement. The worksheet illustrates the problems created when the Regional Board does not include appropriate construction costs and does | See Comment 1.13, 1.17 |

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| | | | not include land acquisition costs in the implementation of the TMDLs. We do not have sufficient General Fund Reserves or additional revenues to finance the TMDL Program. It is likely that we will have to issue municipal bonds to finance the TMDL Program, especially considering the accelerated implementation schedule. The debt service model developed by Hoffman estimates that bonds would be required in 2007, 2012 and 2020 in order to have sufficient funds and time to comply with the schedules in the Trash and Metals TMDLs.<br>We estimate that the maximum annual debt service could be in the range of $6,149,617. The implementation schedule contained in the Trash TMDL is not regulated by the Consent Decree, will be decided by the State and Regional Boards. The financial impact on local government from the Trash TMDL and the TMDL Program, and the resulting physical impacts to our community, could be substantially mitigated by adding more compliance time into the schedule and by developing more cost effective feasible alternatives, such as the deemed compliance catch basin insert/excluder alternative. | |
| 12.20 | | | The City could consider various voter-approved taxes to pay for the annual debt service, much like the City of Los Angeles and Proposition "0". The City of Los Angeles has indicated that the half billion dollars raised through Prop "0" is insufficient to fund the TMDL program and that it will need to consider additional bond issues. We examined adopting a utility tax to provide revenues for our bond issues, in order to understand the magnitude of the financial issues confronting our community. Voters in our City would have to approve a 13.56% utility tax to support the maximum annual debt service of $6.149 million. Voter approved utility taxes of this size are extremely difficult to pass. Storm water taxes require a 2/3rd voter approval. | These cost-related concerns are based on estimates of installing complex and potentially costly BMPs to achieve compliance. As mentioned in an earlier response, it is expected that each responsible agency will select their implementation strategy based on considerations such as cost-effectiveness and available funding mechanisms. Full capture BMPs can be as simple and cost-effective as the catch basin brush inserts and screens being installed by some smaller cities, or as |

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| | | | | complex as vortex separation systems being installed by the County. There is a wide range of costs associated with the various BMPs which allows agencies great flexibility in complying with the TMDL requirements while simultaneously being cost-conscious. |
| 12.21 | | | We believe our local voters would not approve of a tax of this size. A 3% utility tax to construct our police station was defeated by local voters in November of 2005 (support was only 44.7% of the vote). Based on this experience, it is foreseeable that a 13% utility tax would not be approved. The only remaining option would result in the City having to reduce existing critical municipal services. Reductions or eliminations in municipal services will have physical impacts. Our entire General Fund Budget (FY2005-06) is $16.6 million. Annual debt service of the first bond issue (2007) is estimated at $$1.18 million or 7.1 % of the budget total. | See response to 12.20. |
| 12.22 | | | We have examined a 7.1 % reduction in several of our operations. Public Safety is a critical component of our community. A 7.1 % reduction in Public Safety would result in a reduction of three officers patrolling in our community. These reductions in patrol time equate into increases in crimes against persons and property, including increases in vandalism, graffiti, arson and burglaries. Budget reductions would also result in slower response times to emergencies, placing the population in greater risk. These budget reductions would also impact our response to fires, resulting in additional property damage. The budget reductions would also eliminate one detective and the secretary. | See response to 12.20. |
| 12.23 | | | These initial staff reductions would be limited to only the first | The Trash TMDL does not mandate a |

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| | | | five years of the TMDL program. During the next period (2012), additional staff reductions would be required in order to fund the increases in debt service. If is foreseeable that the debt service for the phase II and phase III bonds would require further reductions in patrol, detective services, administration, records, communications and jail services. The City is very concerned about the deterioration in the safety of the community that will result from the public safety reductions, including increases in graffiti and vandalism as a direct result in the reductions in patrol officers and detectives. | specific means of compliance. Municipalities are free to choose the most effective and lowest impact means of compliance. It is possible that a municipality could comply with the Trash TMDL with little to no impacts to parks and other recreational facilities |
| 12.24 | | | We believe that the CEQA document is in error when it states that there will be "NO" impact to parks or other recreational facilities from the TMDL. Board staff has advocated that Cities locate storm water trash devices, filters and infiltration trenches in existing parks. Our City is deficient in parks and these storm water devices will encroach onto and disrupt valuable park space, creating further physical community impacts due to the loss of park space. A 7.1 % budget reduction would reduce our park maintenance. We will most likely implement twice-monthly mowing, which will cause a physical deterioration to our parks. Surrounding private properties will be impacted as well. | See response to 12.20. Additionally, the Trash TMDL does not mandate a specific means of compliance. Municipalities are free to choose the most effective and lowest impact means of compliance. It is possible that a municipality could comply with the Trash TMDL with little to no impacts to parks and other recreational facilities |
| 12.25 | | | The attached review of the environmental document includes additional discussion of public services that would be impacted by the implementation of the TMDL, without providing additional revenues and relying on budget reductions. For example, a 7.1 % budget reduction would result in the elimination of median and facility maintenance, as well as a 50% reduction in park maintenance. Reductions in these services will have physical impact on the parks and facilities, as well as impacting the surrounding properties. | See response to 12.24. |
| 12.26 | | | The City has also reviewed the impacts of a 7.1 % reduction in | See response to 12.20. |

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| | | | street maintenance services, including maintenance of streets, sidewalks and crosswalks. The TMDL would result in the elimination of two maintenance workers and one officer engineer. The TMDL will have dramatic impacts on the condition of City streets, increase response times to spills of hazardous materials and result in the deferral of maintenance. The City budgets $50,000 annually to repair sidewalks to eliminate tripping hazards. The City could eliminate this program, instead of reducing staff, however this would cause increased physical harm to citizens. | |
| 12.27 | | | The initial study states that the human health impacts from the TMDL are *"Less than significant with mitigation included."* We believe that the health impacts from West Nile Virus are understated in the environmental document and that the proposed mitigation measures are infeasible.<br>West Nile Virus is a particular problem in the watershed, according to records from the Greater Los Angeles County Vector Control District (District). The District provide mosquito control services 36 cities in the watershed, including Signal Hill. There were 331 human case of West Nile Virus in Los Angeles County in 2004, with 28 deaths. The District reported 180, with four (4) deaths. There were 22 cases reported in 2005. West Nile Virus was just recently reported for this summer in the Sepulveda Basin. More positive samples are expected as the warm summer months are just beginning. Signal Hill has experienced positive samples of West Nile Virus in the Hamilton Bowl area for the last three (3) years and it is reasonably foreseeable that West Nile Virus will continue to a major human health concern in the Hamilton Bowl and watershed in the future.<br>We are concerned that the initial study down plays the impacts of West Nile Virus, since few structural trash control devices exist that are not prone to standing water. It is also unreasonable to | Proper design and maintenance of trash control devices can significantly reduce the risk of disease vectors, such as mosquitos.<br>Also, the discussion or analysis on full capture devices in the staff report only serves as examples of potential compliance strategies. It does not exclude the use of other means to achieve trash reduction. Alternative trash reduction measures exist that are not prone to standing water. Staff suggest that in selecting the means by which compliance will be achieved, responsible agencies take human health and other concerns into consideration. |

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| | | | expect that the District will be able to service over 150,000 catch basins, or 73,856 small-scale full capture vortex units, or 12,306 mid-sized full capture vortex units or 3,693 large-sized full capture vortex units as estimated by the Regional Board in the Trash TMDL (or various combinations of these devices), without some impact to their operations. It is also unrealistic to assume that sufficient vacant land exists in either Signal Hill or the urban watershed to install structural BMPs away from high-density areas and housing areas, as called for in the environmental document. | |
| 12.28 | | | The Board's CEQA document does not consider alternatives means of implementing the TMDL. It also concludes that the adverse impacts of the proposed TMDL are acceptable, when weighed against the benefits of removing trash from the River. We believe that the adverse impacts have not been properly disclosed in the CEQA document, and that when they are properly disclosed the Regional Board will find it necessary to explore other feasible alternatives, such as the deemed compliant catch basin insert/excluder alternative. Also, we have previously discussed "source reduction" alternatives in banning consumer plastics and expanding the deposit fees to a wider range of plastics, yet these are given very little discussion in the CEQA document. We have also presented additional mitigation measures, including granting the Cities additional time to comply, for example, so that Cities are not all-at-once installing large full capture devices to meet the 30% reduction requirement within a year of the adoption of the TMDL. The Cities also propose providing an alternative survey instrument, creating "off ramps" for cleaner cities, and instituting a regional system of installing devices on inlets with historically high trash volumes. | See Comment 1.7, 1.45, 1.12 |
| 12.29 | | | We believe that the Regional Board should consider expanding the "full capture" certification to include catch basin inserts and | See Comment 1.7, 1.12, 1.34 |

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| | | | excluders and that this "feasible alternative" to the full capture deemed compliance project, will meet the majority of the basic objectives of the TMDL. All reasonable persons recognize that there is no means of actually eliminating all trash from the River (actually achieving zero). The Board has proposed the full capture vortex separators and net systems as full capture, yet even some trash bypasses these devices. The Cities propose the "full capture deemed compliance" status be extended to catch basin insert/excluder alternative.<br>Insert and excluder design and performance have improved dramatically in the last four years. We would see catch basins protected by the installation of both devices. We also believe that additional street sweeping, catch basin cleaning and other programs would be performed around these devices. In addition, the Cities would complete the Keep America Beautiful Trash Index survey and install these devices in high trash generation areas. | |
| 12.30 | | | The Regional Board should also consider granting "full capture" status to "in channel" nets, trash racks and river booms, and that this be considered by the Board as another deemed compliant alternative. These actions by the Regional Board would go a long way in mitigating the high costs to local government and adverse impacts on the urban environment of purchasing additional rights-of-way and private property to install the currently approved full capture devices - vortex separation units and trash nets. | See Comment 1.7, 1.12, 1.34 |
| 12.31 | | | We perceive that some Regional Board members do not believe the Cities when we disclose the high costs of the TMDLs, along with the amount of physical damage to our communities. It is truly unfortunate that the Regional Board does not accept the word of professional City staff, including engineers, finance directors and managers. We believe that we have presented | While the trash TMDL does provide the cost estimates for vortex separation systems, as described by the commenter, it is only one of several potential compliance strategies that responsible agencies may select. |

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| | | | credible evidence of the harm that the TMDL Program, and individual TMDLs, will cause to our community. The Regional Board has estimated the costs of the Metals TMDL at **$1.9 billion** and the Trash TMDL for capital and maintenance costs in excess of **$1.75 billion** for ten years alone (for low capacity VSS units and this estimate does not include land acquisition costs). The Trash TMDL will cost cities over $2.88 million per square mile, relying on Regional Board estimates. We believe that these estimated capital and maintenance costs are low, approximately by an order of magnitude, but even these Regional Board stated costs should give everyone pause and encourage consideration of more cost-effective alternatives and source control options. | It is at the discretion of these agencies to select the most cost-effective approach to TMDL compliance. |
| 12.32 | | | We desire to work with the Regional Board to implement the goals of reducing and eliminating trash and debris in the Los Angeles River. However, the current TMDL process includes untenable litigation risks and is therefore counterproductive. The State Board Panel of Stormwater Experts, explicitly dismissed the applicability of numeric standards from the MS4 Permit at this time. Similarly, EPA headquarters characterized numeric standards as an infrequent tool and explicitly favors the use of iterative BMPs. The current Los Angeles County TMDL process is producing misunderstandings, conflict and litigation over what should be shared goals to improve our environment. We encourage the Board to consider employing a facilitator to work with all the stakeholders to conceptualize a TMDL that will work for all parties. We stand ready to assist in funding a facilitator and will commit resources to working with the Board to find solutions. | Regional Board staff encourage responsible agencies to employ a facilitator to work with all the stakeholders in crafting a comprehensive implementation plan, should they feel it is necessary. |
| 13.1 | City of Signal Hill | August 21, 2006 | Regional Board members have stated in the past that more active litter enforcement by local police departments would solve the | In presenting enforcement of litter laws as a potential compliance strategy, Staff |

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| | – Police Departmen t | | majority of trash problems in storm water. The Regional Board cites the adoption of litter laws in our various communities in this regard. The Board estimated in the TMDL (July, *2006)* that additional enforcement for litter enforcement is expected to cost our Cities less than $1 million over a ten-year period (draft TMDL, page 40). The TMDL notes that there are additional revenues from littering tickets that would offset these costs. It is unclear if the Regional Board is proposing that we hire additional officers, whose salaries will be offset by the ticket revenues or if we reprioritize existing police resources towards increased litter enforcement. | assumed that this would be included in the daily routine of patrol officers already on staff. An increase in staffing for this purpose was not proposed. |
| 13.2 | | | The Regional Board should consider that all the watershed communities face chronic police officer/sheriff deputy shortages and will find it extremely difficult to increase litter enforcement activities. The Los Angeles Times reported on July 2,2006, *Los Angeles Police Under the Gun* to *Recruit,* by Patrick McGreevy, that chronic police officer shortages plague police departments nationwide, including California.<br>The Los Angeles County Sheriff reports similar staffing shortages.<br>As you are aware, the Los Angeles Police Department patrols over 290 square miles, of the 584 square mile watershed. The Sheriff patrols over 39 square miles of the watershed. Police officer and sheriff shortages make it difficult to patrol and enforce major crimes in major portions of the watershed, much less to have officers on watch for littering.<br>The City of Long Beach reports a need for 100 officers in the short term and 300 necessary in the future. As reported in the ***Thinning Blue*** *Line,* Long Beach Business Journal, Jennifer Wong, August 1, 2006, in an interview with Chief Anthony Batts and Long Beach Police Officer's Association President Steve James, | See comment 13.1.<br>In addition, directing patrol officers currently on staff to enforce litter laws was simply one alternative compliance measure presented in the TMDL. Should responsible agencies conclude that this is not feasible within their jurisdiction, it should not be considered as an alternative. The Regional Board does not dictate the means by which compliance with TMDLs should be achieved. |

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| | | | Signal Hill has been experiencing police staffing shortages for the last several years. We currently have vacancies for two sworn positions and have one officer on medical leave. Our total patrol compliment is 23 officers. We believe that Regional Board's proposed mitigation measure, the increased enforcement of litter laws, is infeasible due to the chronic shortage of patrol officers facing the communities in the watershed, including Signal Hill and the need for our police departments to respond to the Part I and Part II crimes, in lieu of littering violations. | |
| 13.3 | | | Signal Hill has reported the costs of compliance with the Trash TMDL to be over $1.5 million in the next ten years. Although $783,000 of this cost is funded through the State Grant, Signal Hill will still invest substantial funds in complying with the Trash TMDL, including annual estimated maintenance of $87,500. We are also aware that the Regional Board adopted a Metals TMDL, which went into effect earlier this year and that a Bacteria TMDL is due for adoption next year.<br>Signal Hill staff completed a review of the costs of these combined TMDLs and reports that over $53.64 million will be necessary to comply with the new mandates. These costs are summarized in a separate letter from Mayor Larry Forester. Stanley R. Hoffman & Associates reported that Signal Hill would need either to pass a 13.56% utility tax to finance the TMDL program or reduce the City's budget by $6,149,617 annually by 2020. The budget would need to be reduced by $1,189,791 in 2007 (7.1% reduction) in order to fund the TMDL program.<br>It is reasonable to conclude that our City will be required to move forward with voter-approved taxes to pay for storm water improvements, since no new revenues exist to implement the Board's order and the City has insufficient General Fund reserves. We have credible recent evidence to believe that there | See response to 13.2. |

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| | | | is a high likelihood that voter approved storm water taxes in our community will fail. We attempted a 3% utility tax for a new police station (November of 2005). This tax measure failed, gaining only 47% of the vote (2/3rds necessary). Los Angeles Sheriff Baca proposed a % cent sales tax for public safety last year and it failed to' generate the necessary 2/3rds vote, as well. Two other watershed cities proposed public safety taxes in 2005, the City of EI Monte and the City of Sierra Madre. These public safety taxes failed.<br>If a voter approved storm water tax fails, then Signal Hill will be forced to cut the municipal budget. The estimated "across the board" budget reductions in 2007 are 7.1 %. Police departments are heavily financed with General Fund revenues. Typically, police departments are the largest municipal department. Our department comprises 45% of the City's General Fund budget, with an operational budget of $7,707,900 (FY2006-07).<br>The majority of police department budgets are dedicated to providing salaries and benefits for staff. The Department can absorb smaller budget cuts (1 to 2%), without impacting personnel. The other major areas of police department budgets include vehicles and equipment. Mandatory police department budget cuts would result in delaying or the elimination of the replacement of patrol cars,<br>communications equipment and other necessary items.<br>However, budget<br>reductions in the area of 7.1 % would result in personnel cuts. Future year reductions (2012-2020) could result in the elimination of office staff, police officers, jailers, emergency dispatchers and detectives.<br>It is likely that the TMDL Program will result in the elimination of five-patrol officers in order to implement the first annual debt service expected under the TMDL (2007 to 2012). In order to | |

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| | | | finance the TMDL program in future years, we forecast the closure of our jail and the reduction of additional officers. We also note that Signal Hill will be required to implement a similar TMDL program on the Los Cerritos Channel, which is not discussed in this letter.<br>The direct physical impacts of these budget reductions will include less patrol resources in our communities. This will translate into an increase in property crimes, like vandalism, graffiti, arsons and burglaries. Police department budget reductions will also result in increased assaults, shoplifting and other crimes against persons. Budget reductions will also result in increases in response time, which lead to additional serious injuries to the public. We are also concerned that budget reductions will result in officer safety issues, since less "back-up" would be available for our officers. | |
| 13.4 | | | Signal Hill has been working in the last three years to finance the construction of a new police station. The existing station was constructed in the 1960's and has become overcrowded and obsolete. A citizen's Blue Ribbon Committee recommended replacing the station in 2005. The City currently has $6.301<br>million in reserve towards the station construction. The failed utility tax and bond issue in November of 2005 would have raised sufficient funds to complete the station. The new station is estimated to cost $10.129 million. I am concerned that the Trash TMDL and the overall costs of the TMDL program could result in the delay or elimination of the new police station, causing additional physical problems. | See response to comment 13.2. |
| 13.5 | | | The Board has failed to provide any meaningful mitigation measures to protect police department budgets. Since police | See response to comment 13.2. |

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| | | | department budgets can comprise over 45% of municipal budgets, public safety will be impacted by budget reductions caused by the unfunded mandates of the TMDL. These budget reductions will translate into indirect and direct physical impacts to Signal Hill. One simple alterative may be to suspend the TMDL requirements for a period of time, should our communities face homeland security or major public safety incidents, such as major earthquakes or riots. The Board needs to consider the financial hardships that could face our communities if required to meet the TMDL requirements, while dealing simultaneously with a major disaster. | |
| 14.1 | County of Los Angeles - Sheriff's Departmen t | 8/21/06 | I have heard from those cities that receive Sheriffs Department services about the enormous costs of complying with the proposed TMDL. I am concerned that increased mandates for environmental services, as important as they are, will impact available resources for public safety, which are not mandated. | See Comment 13.1 and 13.2 |
| 14.2 | County of Los Angeles - Sheriff's Departmen t | 8/21/06 | Moreover, the TMDL seems to suggest that additional law enforcement services may be required to ensure compliance with the TMDL. Clearly, the already over-stretched law enforcement services in Los Angeles County will be hard pressed to enforce the antilittering provisions of the TMDL. | See Comment 13.1 and 13.2 |
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| 15.1 | County Sanitation Districts of Los Angeles County | 8/21/06 | The Districts question the adequacy and scope of the environmental analysis done for the Revised Trash TMDL particularly in light of the new standard set forth in the case of *City of Arcadia v. State Water Resources Control Board,* 135 Cal.App.4th 1392, 1420 (2006). In that case, the appeals court ruled that the Los Angeles Regional Water Board had not adequately complied with CEQA in the Basin Plan Amendment | The environmental analysis in this TMDL is more comprehensive than the TMDL considered by the appeals court. The CEQA checklist, staff report, response to comments from the CEQA scoping meeting and from the public notice of the staff report and basin plan |

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| | | | context. Specifically, the Court of Appeal upheld the trial court's finding that the Basin Plan amendment adding the Trash TMDL to the 1994 Basin Plan for the Los Angeles Region did not comport with CEQA. The Regional Board's environmental checklist was held to be deficient and there was determined to be sufficient evidence of a fair argument that the project may have a significant effect on the environment, thus necessitating an EIR or its functional equivalent. | amendment constitute a functionally equivalent document. |
| 15.2 | County Sanitation Districts of Los Angeles County | 8/21/06 | The Revised Trash TMDL does not adequately consider the air quality impacts due to increased truck traffic needed to haul collected trash and other wastes, and the traffic impacts of the same. The Checklist merely discusses "short term increases in traffic during the construction and installation of trash removal devices and long-term increases in traffic caused by ongoing maintenance of these devices." *See* CEQA Checklist at pg. 16 at para. 2.a. The Checklist assumes 25 vehicle trips per day will be necessary in the watershed to perform cleaning once per storm season, but provides no evidence that a single cleaning would be adequate, and makes no analysis of the number of vehicle miles traveled in those trips. The only mitigation offered for these likely impacts is to design trash removal devices to minimize frequency of maintenance trips. *Id.* at 17. The Regional Board does not explore the feasibility of this mitigation measure or the related costs. For these reasons, it has not been demonstrated that the air impacts are able to be adequately or feasibly mitigated and, therefore, the analysis fails to comply with CEQA. | The air quality impacts are analyzed in the CEQA checklist. The assumptions in the analysis are based manufacturers guidance for maintenance of trash removal devices as well as CalTrans guidance. If the commenter were to provide additional bases for analysis, the Regional Board would conduct additional analysis. |
| 15.3 | County Sanitation Districts of Los Angeles County | 8/21/06 | The Regional Board has also not explored all of the environmental and water quality impacts of proposed compliance activities. For example, the Board has determined that the project will cause no increase in the rate of use of any natural resources. This determination is contrary to the finding of additional vehicle trips caused by the Trash TMDL and the finding of increased use | The Regional Board did explore the reasonably foreseeable environmental and water quality impacts of compliance activities in accordance with CEQA, not "all" of the potential impacts. Regarding natural resources |

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| | | | of energy on page 12 of the Checklist. Additional vehicle trips require additional fuel (e.g., gasoline, diesel, natural gas and/or electricity), which consumes natural resources. The Board's finding of "no impact" cannot be sustained. | used with increased vehicle trips, because the reasonably foreseeable increase in vehicle trips is not analyzed to be significant, any increase in fuel required for those trips is also not significant. |
| 15.4 | County Sanitation Districts of Los Angeles County | 8/21/06 | In addition, the Regional Board failed to consider in its review of impacts to public facilities and government services, the impacts on garbage hauling and landfill space. Additional trash hauled to landfills requires additional staff and will impact landfill capacity. Neither of these impacts were explored in paragraph 14. Furthermore, the Regional Board failed to demonstrate that the findings of potential significant impact on page 32 for paras. 14.e. and f. were mitigated or able to be mitigated. The Board merely stated that these impacts were not "environmental" impacts and concluded its inquiry. Additional analysis of these impacts was included in paragraph 16.f., but were written off as merely slight impacts with no supporting evidence. | The commenter takes comments 14 e and f out of context. The Board does not state that the impacts are not environmental, but rather that the costs of the impacts are not environmental. The CEQA addresses the current baseline and impacts to downstream cities from the failure of upstream cities to control its trash discharges to the Los Angeles River. The environmental impacts and their mitigation are well analyzed in the CEQA checklist. |
| 16.1 | City of Downey | 8/21/06 | The checklist environmental document, prepare by the Board Staff, fails to meet state requirements for a fair and complete disclosure of the reasonably foreseeable impacts of the proposed TMDL regulation. The proposed TMDL offers alternatives of significant concern. Staff should complete a functional equivalent of an Environmental Impact Report (EIR), which incorporates prior comments and analyses alternatives. | See Comments 1.3 |
| 16.2 | City of Downey | 8/21/06 | The most commonly collected material is consumer-derived plastics, which municipalities cannot effectively regulate. The Los Angeles River Trash TMDL overtly shifts the plastics source control burden from individual businesses and consumers, to local government. Downey has already taken our share of the trash control burden by sweeping gutters, maintaining public trash receptacles, and undertaking various litter control | See Comment 1.10, 1.12, 1.14 |

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| | | | campaigns; however the effectiveness of these controls would be leveraged by state or federal legislation banning the sale of disposable consumer plastics and using uncollected redemption refunds for trash controls. The trash TMDL mandate violates "nexus" and "rough proportionality" principals of constitutional and statutory rulemaking, while ignoring Fifth Amendment "takings" requirements. | |
| 16.3 | City of Downey | 8/21/06 | The Trash TMDL environmental documentation should include an alternative that acknowledges the progress in reducing trash discharges that are occurring in many cities. | Documentation of the environmental impacts of implementing the trash TMDL focuses properly on the reasonable foreseeable adverse environmental impacts. Progress in reducing trash discharges is more appropriately documented in annual reports submitted as part of the MS4 permit requirements. |
| 16.4 | City of Downey | 8/21/06 | The Angeles National forest comprises 32% of the watershed and the Forest Service was the first local agency to receive a Trash TMDL miles. However, for the Los Angeles River Trash TMDL the Board has neither assessed trash loadings from these lands, nor load reductions from the National Forest or Army Corp of Engineers facilities. | See Comment 1.22, 1.23 |
| 16.5 | City of Downey | 8/21/06 | We support the findings and recommendations of the State Board Storm Water Panel of Experts that it is "not feasible at this time to set enforceable numeric limits for urban discharges and municipal Best Management Practices (BMPs)." The foundation for the apparent decision to ignoring these recommendations should be characterized in the TMDL's environmental documents. | See Comment 1.12, 1.14 |
| 16.6 | City of Downey | 8/21/06 | Trash, and debris is very difficult to measure and quantify as many municipal agencies have already reported and was summarized in the report *"Market Based Strategies for Reducing* | The Baseline Monitoring conducted by the Los Angeles County Department of Public Works determined trash |

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| | | | *Trash Loads to the Los Angeles Area Watersheds,"* (March, 2006, US EPA Grant #XP-979790001-0). The study suggested that the Board should not rely on the County's catch basin and land use data to determine baseline and waste load allocations. This report revealed that 15% of the catch basins collected 50% of the trash volume, when 40% accounted for 80% of the trash volume. Given the foreseeable impacts of universally installing full capture devices, attention should focus on identification and control based on "historic inlet trash volumes" (page II-6). Alternatively, the Board could allow Cities to Keep America Beautiful "Litter Index" surveys to characterize the areas of substantial littering in each community, prior to adopting the Trash TMDL. The Litter Index has been in use for over twenty years and identifies areas in each community where trash is encountered. This method is based on real community conditions and must be more accurate than the proposed baseline waste load allocations. | generation rates based on land use. The results from this effort were the basis for determining the WLAs. The highest generators of litter were Industrial and Commercial land uses. Focusing initial trash reduction efforts on these areas within a city would be an effective way of tackling the trash problem. Since the Regional Board does not dictate the method by which compliance should be attained, responsible agencies can use any approach to trash reduction that they feel would be more cost effective as long as compliance is achieved. |
| 16.7 | City of Downey | 8/21/06 | Cleanliness that reflects existing efforts, including frequent street sweeping and other litter reduction programs should be rewarded by the Board. The Board should allow cities to use the Keep America Beautiful Littering Index as an indication of compliance with the TMDL, based on cleanliness. | The TMDL clearly states that alternative compliance monitoring programs may be approved by the Executive Officer if the program provides a scientifically-based estimate of the amount of trash discharged from the storm drain system. |
| 16.8 | City of Downey | 8/21/06 | The proposal that Cities implement 30% trash load reductions within one year, is unfair, given that the TMDL was invalidated based on the choice of CEQA compliance. | See Comment 1.5, 1.41 |
| 16.9 | City of Downey | 8/21/06 | The Board anticipates that Cities can coordinate multiple TMDLs, however the lack of cooperation has burdened the cities with two unrealistic and conflicting schedules. The CEQA document should address adverse impacts induced by overlapping schedules. The Metals TMDL envisions Cities | Staff note that the technologies for implementing trash and metals TMDLs are different and that the schedules provide significant overlap in order to coordinate implementation of actions |

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| | | | reaching the 50% wet-weather in compliance point in 2024, which would also be an appropriate date for cities to reach the 50% Action Level for the Trash TMDL. | for both TMDLs. |
| 16.10 | City of Downey | 8/21/06 | The TMDL should be implemented through an enforceable Memorandum of Understanding (MOU), instead of the MS4 Permit. | The Clean Water Act mandates that the TMDLs are implemented through the MS4 permits. However, MOUs can be very effective means of implementing actions in order to meet the compliance requirements and can be used in conjunction with wasteload allocations in the MS4. Regional Board staff would be pleased to review specific proposals for MOUs to be used in conjunction with the WLAs. |
| 16.11 | City of Downey | 8/21/06 | The cumulative environmental impacts of the Los Angeles River Trash TMDL are obscured by an incomplete project description and an inadequate CEQA substitute document by the Regional Board staff, instead of the functional equivalent of an Environmental Impact Report (EIR). The checklist is not an adequate substitute for an Environmental Impact Report. The CEQA document appears to be an inadequately prepared Mitigated Negative Declaration. (See *Arcadia* v. *State Water Resources Control Board (2006) J* 35, *Cat. App.4th,* 1434) | See Comments 1.3, 1.42, 1.44 |
| 16.12 | City of Downey | 8/21/06 | The checklist does not contain meaningful analysis of the potentially significant adverse impacts. The proposed CEQA document does not adequately describe the number of TMDLs that our City will be required to implement. The checklist does not reveal the full range of physical impacts on the environment in our community. | See Comments 1.3, 1.45, 1.82 |
| 16.13 | City of Downey | 8/21/06 | The Porter-Cologne Act requires the consideration of "economics" before adopting the TMDL (see Water Code Section 13000 and 13241 (d). Economic analysis under Water | See Comment 1.10, 1.11 |

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| | | | Code Section 13241 is virtually the same analysis to be conducted under CEQA. Moreover, these "economic" impacts will result in foreseeable physical impacts to the environment as Cities' resources are diverted from other public services to fund this program. | |
| 16.14 | City of Downey | 8/21/06 | The Trash TMDL and the TMDL Program for the Los Angeles River are unfunded mandates. They must be paid for with either new taxes or reductions in current and future municipal budgets. Cities Cannot depend on grants to insure compliance. The Regional Board has a responsibility to understand both the financial and the physical impacts, to specify mitigation measures, and to look for cost-effective alternatives. | This comment does not address foreseeable environmental impacts. The State provides grant and loan programs to assist in costs of TMDL compliance. |
| 16.15 | City of Downey | 8/21/06 | The CEQA document is in error when it states that there will be no impact to parks or recreational facilities from the TMDL. Board staff advocates Cities locate storm water trash devices, filters and infiltration trenches in posting parks. These devices will encroach onto and disrupt valuable park space, creating further physical community impacts due to the loss of park space. | See comment 1.7. Because several types of devices have been certified as full capture devices and the TMDL includes procedures for certifying other devices for full capture cities can site implementation actions to mitigate loss park space. Further, because many of the storm water trash devices are located below ground, it is not foreseeable that recreational facilities will be impacted as most recreation in parks takes place above ground. |
| 16.16 | City of Downey | 8/21/06 | The CEQA document does not consider alternatives means of implementing the TMDL. It also concludes that the adverse impacts of the proposed TMDL are acceptable when weighed against the benefits of removing trash from the River. We believe that the adverse impacts have not been properly disclosed in the CEQA document. Previously discussed source reduction alternatives and expanded deposit fees are given very little discussion in the CEQA document. | See Comment 1.7, 1.45 |

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| 16.17 | City of Downey | 8/21/06 | The Board should consider expanding the "full capture" certification to include other devices that meet the majority of the basic objectives of the TMDL. The Board has proposed the full capture vortex separators and net systems as full capture, yet even some trash bypasses these devices. The Cities propose "full capture deemed compliance" status be extended to catch basin insert/excluder alternative. The Regional Board should consider granting full capture status to "in channel" nets, trash racks and river booms. | See Comment 1.12 |
| 16.18 | City of Downey | 8/21/06 | The Regional Board has estimated the costs of the Trash TMDL for capital and maintenance costs in excess of $1.75 billion for ten years (for low capacity VSS units). We believe that these estimated capital and maintenance costs are low. | See Comments 1.11, 1.13 |
| 16.19 | City of Downey | 8/21/06 | We encourage the Board to consider employing a facilitator to work with all the stakeholders to conceptualize a TMDL that will work for all parties. | See Comment 12.32 |
| 17.1 | City of Arcadia | 8/17/06 | We do not agree with the Board staff assertion that the CEQA checklist document satisfies the State requirements for a fair and complete disclosure of the impacts of the proposed TMDL regulation. We request staff to complete the required functional equivalent of an Environmental Impact Report, incorporate comments, analyze alternatives and then re-circulate the document for further public and agency comment. | See Comment 1.3 |
| 17.2 | City of Arcadia | 8/17/06 | We support the findings and recommendations of the State Board Storm Water Panel of Experts that it is "not feasible at this time to set enforceable numeric limits for urban discharges and municipal Best Management Practices (BMPs)." These findings and recommendations should be acknowledged and addressed in the environmental document. The TMDL's numeric limits should be deemed complied with through the use of BMPs beyond installing full capture devices (vortex separators and nets) throughout the watershed. Alternative "projects" to the "full | The TMDL's numeric limits will be deemed complied with through the use of any BMPs designated as "full capture" devices or systems. These devices/systems are not limited to vortex separation systems. The Executive Officer will provide "full capture" certification to systems that meet the performance requirements set |

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| | | | capture" Trash TMDL project, such as street sweeping and installing catch basin inserts and excluders throughout the watershed, should be discussed and analyzed as feasible alternatives. We remain very concerned over the "zero" numeric limit, which will be near impossible to achieve without other compliance alternatives to the vortex and net systems; such as catch basin inserts and excluders. | foirth in the TMDL. To date four other systems have received this certification: 2 gross solid removal devices for Caltrans, Trash nets for the City of Signal Hill, and Catch Basin Brush Inserts and Mesh Screens for the "four cities" (Cities of Glendale, Pasadena, La Canada Flintridge, and Burbank). |
| 17.3 | City of Arcadia | 8/17/06 | We believe that the TMDL needs to provide relief for cities demonstrating substantial compliance or that are cleaner than the "baseline" proposed by the Regional Board. Cleaner communities may find that installing catch basin inserts/excluders in commercial or multi-family residential areas is sufficient. | The Regional Board is not so much concerned with the means taken to achieve compliance as it is that compliance with the final WLAs be met. Cities are encouraged to use the simplest and most cost-effective methods to achieve compliance. |
| 17.4 | City of Arcadia | 8/17/06 | We are concerned over the Regional Board's proposal that Cities implement 30% reduction in trash levels by the end of the first year after TMDL adoption, It will be very difficult to quantify the "baseline" and to demonstrate the reduction levels required each year of the TMDL, much less in Year One. The potential adverse impacts of accelerating projects to achieve a 30% reduction in discharge of trash within one year should be addressed in the environmental document. | The baseline waste load allocations have already been determined as provided in the TMDL staff report and proposed Basin Plan Amendment. Reduction levels will be determined using the DGR method or any other compliance determination method proposed by responsible agencies and approved by the Executive officer. The commenter needs to specify the negative environmental impacts associated with accelerating projects to achieve the required reductions. |
| 17.5 | City of Arcadia | 8/17/06 | The City of Arcadia is very concerned about the multiple scheduling issues in implementing both the Trash and Metals TMDL. The Board has anticipated that the Cities must coordinate multiple TMDLs; however the Regional Board has burdened the | Implementation of multiple TMDLs may result in more cost-effective compliance, particularly in cases where the same implementation strategy can |

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| | | | Cities with two unrealistic and conflicting TMDL time schedules, instead of working with the Cities to examine ways to coordinate and improve the schedules. The environmental document should address the potential adverse impacts of the conflicting time schedules. The Metals TMDL envisions the Cities reaching the 50% wet-weather in compliance point in 2024. This also may be a more appropriate date for cities to reach the 50% Action Level for the Trash TMDL. | be applied to more than one TMDL. In addition, it is unnecessary for a pollutant that is relatively simple to address, such as trash, to be on the same compliance schedule as more complex pollutants such as metals. |
| 17.6 | City of Arcadia | 8/17/06 | We believe that the TMDL should be implemented through an enforceable Memorandum of Understanding (MOU), instead of the MS4 NPDES Permit. The MOU approach is appropriate, since BMP performance is recognized as imprecise at this point in time even by the State Water Board's Storm Water Panel of Experts. The MOU would allow the Regional Board and the City to focus on the best course of action to correct any BMP deficiencies and implement a BMP approach rather than strict numeric limits approach. Such an MOU could include options to install additional BMPs or support BMPs on a regional level, based on high trash generating outfalls. The alterative of implementing the Trash TMDL through an enforceable MOU should be analyzed in the environmental document. | The Clean Water Act mandates that the TMDLs are implemented through the MS4 permits. However, MOUs can be very effective means of implementing actions in order to meet the compliance requirements and can be used in conjunction with wasteload allocations in the MS4. Regional Board staff would be pleased to review specific proposals for MOUs to be used in conjunction with the WLAs.<br>The TMDL provides a lengthy implementation time frame which will allow responsible agencies to focus on the best course of action to correct any BMP deficiencies and implement a BMP approach. The flexibility being sought through, an enforceable MOU is already provided. |
| 17.7 | City of Arcadia | 8/17/06 | The Board should consider expanding the "full capture" certification to include catch basin inserts and excluders. The Board has proposed the full capture vortex separators and net systems as full capture, yet even some trash bypasses these devices. The Cities propose the “full capture deemed | The “full capture deemed compliance" will be extended to any system and/or device that meets the performance requirements outlined in the TMDL, upon review and approval by the |

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| | | | compliance" status be extended to catch basin insert/excluder alternatives. The Regional Board should also consider granting "full capture" status to "in channel" nets, trash racks and river booms. | Executive Officer. |
| 17.8 | City of Arcadia | 8/17/06 | The Regional Board has estimated the costs of the Trash TMDL for capital and maintenance costs in excess of $1.75 billon for ten years (for low capacity VSS units). We believe that these estimated capital and maintenance costs are low. | See response to comments 1.11, 1.13 |
| 17.9 | City of Arcadia | 8/17/06 | We encourage the Board to consider employing a facilitator to work with all the stakeholders to conceptualize a TMDL that will work for all parties. | Responsible agencies can exercise the option of employing a facilitator when designing an implementation strategy that will work for all parties. |
| 18.1 | Richards, Watson, & Gershon | 8/21/06 | The Draft TMDL violates CEQA, set forth in Public Resources code §§ 2100-, *et seq.* CEQA requires the Regional Board to review any significant potential environmental impacts created by its actions. In adopting the Trash TMDL, the Regional Board relies on a certification from the Secretary of Resources set forth in California Code of Regulations, title, section 15251(g) to avoid most of the documentary and procedural requirements of CEQA. | See comment 1.3 |
| 18.2 | Richards, Watson, & Gershon | 8/21/06 | As part of its CEQA analysis, the Regional Board must identify a project's adverse environmental impacts, offer ways to mitigate those impacts through either "feasible mitigations measures" or the adoption of "feasible alternatives," and justify its decisions based on "specific economic, social or other conditions." | Comment noted. |
| 18.3 | Richards, Watson, & Gershon | 8/21/06 | The Regional Board's CEQA analysis must assess the cumulative impacts all of its proposed activities for the watershed will have on the environment. *See Friends of the Old Tree v. Department of Forestry & Fire Protection* (1997) 52 Cal. App. 4th 1383, 1393; *Environmental Protection Info. Ctr. V. Johnson* (1985) 170 Cal. App. 3d 604, 624. Finally, the document submitted in Lieu of an EIR must describe alternatives | Both impacts and mitigation methods appropriate to Tier 1 environmental analyses are contained in the functionally equivalent documents. The court did not state that an EIR was required, but functionally equivalent documents are acceptable. |

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| | | | to the proposed activities. Pub Resources Code §21080.5(d)(3)(A). | |
| 18.4 | Richards, Watson, & Gershon | 8/21/06 | Although it may conduct a tiered analysis, the Regional Board's first-tier analysis must contain more information regarding the specific environmental impacts of the proposed Trash TMDL. *City of Arcadia v. State Water Resources Control Board* (2006) 135 Cal. App. 4th 1392, 1425-26. The tiering process: "does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project and does not justify deferring such analysis to a later tier EIR or negative declaration. | The Board's tiered analysis is appropriate and the reasonably significant environmental effects of installing sotrmwater treatment devices were analyzed in detail that is consistent with other Tier 1 analyses (City of LA IRWMP EIR) |
| 18.5 | Richards, Watson, & Gershon | 8/21/06 | The Regional Board's checklist does not provide sufficient analysis of the impacts or offer evidence of ways in which the impacts can be mitigated to a level of insignificance. Pub. Resources Code §§ 21064.5, 21080.5, 21080 (c), Cal. Code Regs., tit. 14 §§ 15063 15250, 15252. No EIR has been prepared. The checklist does not qualify as such and contains no meaningful analysis of the potentially significant adverse impacts. For example, the checklist violates California law in that it fails to consider the "cumulative" impacts of the multiple TMDL mandates. *Friends of the Old Trees v. Department of Forestry & Fire Protection, supra,* 52 Cal. App. 4th at 1393; *Environmental protection info. Ctr. V. Johnson, supra*, 170 Cal. App. 3d at 624. In conduction a CEQA analysis for any TMDL in the Los Angeles River watershed, the Regional Board must consider the cumulative impacts that the multiple TMDLs will have on the Los Angeles River. | See response to comment 18.3 |
| 18.6 | Richards, Watson, & Gershon | 8/21/06 | When conducting its CEQA analysis, the Regional Board must consider Economic, social or other conditions present in the region. *Sierra Club v. State Board of Forestry, supra,* 7 Cal. 4th 1215 at 1233. The potential environmental effects that the trash TMDL's CEQA analysis fails to adequately analyze include, but | The commenter fails to note that the CEQA analysis analyzes the Economic, social or other conditions in the Region. |

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| | | | not limited to, the following: (i) significant changes in the water quality as a result of the proposed implementation plans, including water flow disruptions, soil displacement, an increase in noise and traffic levels, changes in absorption rates, drainage patterns, and the amount of surface water runoff; (ii) significant impacts on public service and facilities such as fire and police protection, schools, parks, and other governmental services; (iii) significant impacts on the availability of housing in the region. | |
| 18.7 | Richards, Watson, & Gershon | 8/21/06 | Another factor left out of the checklist is the overwhelming amount of plastics comprising debris in the River. A survey completed by the U.S. Environmental Protection Agency in 1999 revealed that 89% of the trash found in the representative Southern California beach is from plastics - the vast majority being foamed plastics (i.e. polystyrene food containers and cups) and hard plastics. (i.e. beverages and water bottles). The 2004 Los Angeles River Catch Basin Clean Out Survey revealed that 78% of the debris consisted of plastics with similar characteristics. With full knowledge of these facts, the Regional Board could choose to adopt one or more source control alternatives, instead of mandating remediation type of requirements on the Cities through the TMDL. Deposits could be placed on foam cups, plastic bags, foam food containers, and non-beverage plastic bottles. Alternatively, the Regional Board could sponsor legislation banning these products. The cities would like to work with the Regional Board to look at ways we could enact local laws accomplishing the same goals. | The checklist addresses non structural BMPs to address plastics loading, and specifically polystyrene loading. |
| 18.8 | Richards, Watson, & Gershon | 8/21/06 | The CEQA checklist violates California law in that it fails to properly analyze and present alternatives to the proposed implementation plan. Cal. Code Regs., tit. 14 §15126.6. A proper CEQA analysis should contain a "no project" alternative which would provide the public with a thorough analysis and understanding of the conditions present in the Los Angeles River | The CEQA checklist discusses the impairment of the Los Angeles River by Trash and the requirement, under the Clean Water Act, to develop a TMDL to address the impairment. |

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| | | | watershed. Cal. Code Regs., tit. 14, § 15126.6(e). The failure of the Regional Board to consider this option, as well as the failure to present an analysis of the effectiveness of the discussed and reasonably foreseeable Best Management Practices ("BMPs"), constitutes a violation of the Regional Board's CEQA obligations. *See City of Arcadia v. State Water Resources Control Board* (2006) 135 Cal. App. 4th 1392, 1426. | |
| 18.9 | Richards, Watson, & Gershon | 8/21/06 | The Cities believe that the adverse impacts have not been properly disclosed or supported by scientific evidence in the CEQA document. | The commenters fail to describe which adverse impacts were not properly disclosed. |
| 18.10 | Richards, Watson, & Gershon | 8/21/06 | The Cities and other stakeholders have also presented additional mitigation measures, including granting the Cities additional time to comply, for example, so that Cities are not installing large full capture devices to meet the 30% reduction requirement within a year of the adoption of the TMDL. As viable alternatives to the present program, the Cities propose that the Regional Board investigate providing an alternative survey instrument, creating "off ramps" for cleaner cities, and instituting a regional system of installing devices on inlets with historically high trash volumes. | An attachment to the comment letter from Rutan and Tucker describe how a limited number of storm drains contribute a disproportionate amount of trash to the Los Angeles River. By focusing on these drains, the Cities can mitigate the effects of installing large full capture devices to meet the 30% reduction requirement. By basing the compliance metrics on a percent reduction basis, the cleaner cities do not have to remove as much trash on a mass or volume basis as less clean cities thus providing an "off ramp" |
| 18.11 | Richards, Watson, & Gershon | 8/21/06 | The Cities believe that the Regional Board should consider expanding the "full capture" certification to include catch basin inserts and excluders. All Reasonable persons recognize that there is no means of actually eliminating all trash from Los Angeles River (actually achieving zero). The Board has proposed the full capture vortex separators and net systems as full capture, yet some trash bypasses even these devices. Insert and excluder design and performance have improved dramatically in the last | The TMDL includes procedures for the Executive Officer to certify different devices as "full capture" devices. Board staff request that the Cities provide the necessary information for the Executive Officer to consider certification for catch basin inserts and excluders. Staff note that catch basin |

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| | | | four years. The Cities recommend that the Regional Board analyze the effects of incorporating these systems, performed in conjunction with additional street sweeping, catch basin cleaning, and other programs, into the Trash TMDL. The Regional Board should also consider granting "full capture" status to "in channel" nets, trash racks and river booms. The regional Board should consider this method as another deemed compliant alternative. | inserts have been certified as full capture for the Cities of Glendale, Burbank and La Canada Flintridge. |
| 19.1 | City of Downey, (PD) | 7/26/06 | Upon review of the draft environmental evaluation, I was alarmed to discover the evaluation indicates the TMDL will have "Less Than Significant with Mitigation Incorporated" impacts on police protection. I strongly disagree with this conclusion in the evaluation. Based on my personal experience and knowledge in the field of public safety, I feel the adverse impacts are severely understated and the mitigation proposed is extremely insufficient in addressing the impacts the TMDL will have on the law enforcement community. | See response to comments 3.4 |
| 19.2 | City of Downey, (PD) | 7/26/06 | **Enforcement of Litter Laws**<br>Regional Board members have falsely stated that more active litter enforcement by local police departments would solve the majority of trash problems in storm water. The Regional Board cites the adoption of litter laws in our various communities as justification, and simply think that writing more tickets will reduce trash. The Board estimated in the TMDL (July, 2006) that additional enforcement for litter enforcement is expected to cost our Cities less than $1 million over a ten-year period (draft TMDL, page 40). The TMDL notes that the additional revenues from littering tickets would offset the cost of increased enforcement.<br>The Regional Board fails however to give any information on how staff estimated the increased litter enforcement cost of $1 million over a 10 year period. The additional $100,000 annual | See response to comments 13.1 and 13.2. |

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| | | | cost to the 20 municipal police departments in the watershed, in addition to the Los Angeles County Sheriff Department responsible for patrol and enforcement of a major section of the watershed, is not detailed and has no basis in fact. The cost is so ill-defined, readers may get the impression the Regional Board is stating the problem of trash can be solved by a few extra dollars being spent enforcing litter laws, and therefore the sole program required to comply with the TMDL. | |
| 19.3 | City of Downey, (PD) | 7/26/06 | It would be helpful if the environmental analysis included a description of what type of increased litter enforcement that Regional Board is anticipating. It should be noted that the typical annual salary including benefits for an entry-level police officer averages over $100,000 in my community. The Regional Board seems to be suggesting in the TMDL that one police officer would be sufficient for litter control compliance in the 584 square mile watershed. | See Comment 13.1 |
| 19.4 | City of Downey, (PD) | 7/26/06 | The environmental document states that the TMDL "will not result in the need for new or altered police protection services except for possible increased traffic control during construction projects and the potential temporary delays in response time of police vehicles during road closures/traffic congestion during construction activities," (page 31). The document goes on to suggest that police departments draft an "Emergency Preparedness Plan" for "proposed new facilities... to ensure that the proposed project's contribution to cumulative demand on emergency response services is less than significant and would not result in the need for new or altered police protection services." The document concludes, "there is no evidence to suggest that installation of structural devices would create any more significant impediment than such other ordinary activities," (page 31). | Besides expressing concern as to the financial impact of compliance with the TMDL, the commenter does not elaborate on the "additional physical impacts to police services." Additionally, specific project details will be provided in a project-level EIR, where necessary, by responsible agencies; once they have determined the method by which they intend to comply with the TMDL. |

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| | | | I have several concerns with the above statements. First, the discussion is limited to only construction impacts. There are additional physical impacts to police services that must be discussed, which I will explain in more detail below. Second, your staff suggests that we prepare "Emergency Preparedness Plans" (page 31), yet there are only vague descriptions of what type of projects are anticipated by the TMDL. The TMDL speculates that construction and maintenance activities are in "small, discrete, discontinuous areas over short duration," (page 31). The TMDL is lacking in the specific project details for me to draw the same conclusion. | |
| 19.5 | City of Downey, (PD) | 7/26/06 | If the Regional Board could better describe the full range of construction projects, including size and location of the projects, I would be able to better determine the exact scope and preparation cost of any Emergency Preparedness Plans needed in response to man-made or natural disaster affecting said project. | Specific project details will be provided in a project-level EIR, where necessary, by responsible agencies; once they have determined the method by which they intend to comply with the TMDL. |
| 19.6 | City of Downey, (PD) | 7/26/06 | I am concerned the environmental document fails to discuss other physical impacts both direct and indirect - that stem from the TMDL regulations on Downey and other communities in the watershed. My understanding is the costs of the Trash TMDL are estimated to range in area of $450 million (over ten years) to $1.758 billion (over ten years) to local governments in the watershed. I understand that there are several other TMDLs, including an adopted Metals TMDL and an upcoming Bacteria TMDL, which will place additional fiscal burdens on cities. The Board estimates the costs of implementing the Metals TMDL at $1.9 billion and has yet to provide an estimate of the costs of compliance with the Bacteria TMDL. To top the issue, the estimates after being reviewed by several storm water professionals are considered to be very conservative. | See Comment 19.4 |

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| 19.7 | City of Downey, (PD) | 7/26/06 | Regardless of this dispute, the stated costs of the TMDL program will be substantial to Downey and the surrounding watershed communities. Although Downey maintains the highest level of police protection, putting additional regulations and mandates on us and our neighbors will require tough decisions on where to direct resources. Downey leaders will need to decide how to best provide the level of service our residents demand. Ultimately, the decision may need to be made to move forward with a voter-approved tax to pay for storm water improvements and enforcement, since no new revenues exist to implement the Board's order. If the voters fail to approve the tax, Downey will be placed in a position where large budget reductions would be required in many programs to pay for the TMDL program. Regardless of this dispute, the stated costs of the TMDL program will be substantial to Downey and the surrounding watershed communities. Although Downey maintains the highest level of police protection, putting additional regulations and mandates on us and our neighbors will require tough decisions on where to direct resources. Downey leaders will need to decide how to best provide the level of service our residents demand. Ultimately, the decision may need to be made to move forward with a voter-approved tax to pay for storm water improvements and enforcement, since no new revenues exist to implement the Board's order. If the voters fail to approve the tax, Downey will be placed in a position where large budget reductions would be required in many programs to pay for the TMDL program. | See Comment 13.2. |
| 19.8 | City of Downey, (PD) | 7/26/06 | Recent events have provided evidence that such taxes are not highly regarded and have little or no chance of approval by voters. Signal Hill attempted a utility tax for a new police station in November of last year, which failed. Los Angeles Sheriff Lee | See Comment 13.2. |

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| | | | Baca proposed a YS cent sales tax for public safety last year, which failed at the polls. Sheriff Baca also proposes a 1;4 cent sales tax for gang prevention and would like to schedule the proposal for a vote but faces substantial opposition before the measure has even reached the ballot. Like these attempts to raise money, I believe storm water fees will face a substantial hurdle in our community.<br>As mentioned above, if voters fail to approve storm water taxes, Downey will be forced to cut other municipal services and shift limited funding to TMDL-related activities. This is compounded by the rapid seven year implementation schedule currently outlined in the TMDL. The city must start now with no ability to study or determine alternate approaches to meeting the requirements. In addition, the TMDL fails to provide a "per city" cost estimate of the TMDL Programs for Downey. Should we use land area or population to determine costs? Understanding the basis on how the Board anticipates<br>costs to be allocated would be helpful in assisting the public and local police agencies in understanding the impacts of the TMDL program on our community and department. | |
| 19.9 | City of Downey, (PD) | 7/26/06 | Police departments are heavily dependant upon General Fund revenues. Typically they are the largest expenditure of all departments within an agency. Downey's Police Department comprises 44% of the City's General Fund budget. The Board should consider that reductions in police budgets have direct and indirect physical impacts to the environment. The majority of municipal budgets, such as police department budgets, are dedicated to providing salaries and benefits for staff. The other major areas of police department budgets include vehicles and equipment. Police department budget cuts would result in delaying or elimination of the replacement of patrol cars, | See Comment 13.2. |

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| | | | communications equipment and other necessary items. Reductions in personnel would result in the elimination of office staff, police officers, jailers, emergency dispatchers and detectives. | |
| 19.10 | City of Downey, (PD) | 7/26/06 | Should the Metal TMDL be implemented without additional funding, voter approved or otherwise, the result could include the elimination of several patrol officers, detectives and support staff. These cuts would be a direct result of needing to pay for activities to achieve compliance to implement the first five years of programs under the Metal TMDL. In order to finance the TMDL program in future years, we are forecasting the reduction of additional sworn and non-sworn staff. Adding the expenses of the Trash TMDL on top of the Metals and Bacteria TMDLs will exacerbate the financial stress on our community.<br>The direct physical impacts of these budget reductions will include less patrol and detective resources in our communities. This could translate into increased property crimes, like vandalism, graffiti, arsons and burglaries. Police department budget reductions could also result in increased assaults, shoplifting and other crimes against persons. Budget reductions could result in increases in response time, which lead to additional serious injuries to the public. I am also concerned that budget reductions will result in officer safety issues, since less "back-up" would be available for our officers. | These cost-related concerns are based on estimates of installing complex and potentially costly BMPs to achieve compliance. As mentioned in an earlier response, it is expected that each responsible agency will select their implementation strategy based on considerations such as cost-effectiveness and available funding mechanisms. Full capture BMPs can be as simple and cost-effective as the catch basin brush inserts and screens being installed by some smaller cities, or as complex as vortex separation systems being installed by the County. There is a wide range of costs associated with the various BMPs which allows agencies great flexibility in complying with the TMDL requirements while simultaneously being cost-conscious. |
| 19.11 | City of Downey, (PD) | 7/26/06 | One of the critical needs of not only my department, but of all departments in the region is the need for seamless communication between first responders. The lack of communications interoperability hindered the emergency response in New York City, along with the lack of radio equipment. The Department of Homeland Security has made | See Comment 19.10 |

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| | | | interoperability a common deficiency nationwide. Los Angeles County is no exception where LAPD, LAFD, Port of Los Angeles Police, LAX Police, LA County Sheriff, LA County Fire and all of our local police departments and fire departments lack interoperability. A task force is currently working on resolving the technical and equipment issues.<br>However, the project will cost our community millions in radio upgrades and new equipment. The funding for such a project is not entirely clear at either the federal or state level and most likely will be made available based on the competing demands. We ask that the Regional Board balance the costs of the new water quality regulations, in light of the fact that our community has limited funds, and providing sufficient police department resources critical to the quality of our community. | |
| 19.12 | City of Downey, (PD) | 7/26/06 | The Board has failed to provide any mitigation measures to protect police department budgets. Since police department budgets can comprise nearly half the discretionary funding available in municipal budgets, public safety will be impacted by budget reductions. These budget reductions will translate into indirect and direct physical impacts to Downey and surrounding communities. One simple alternative may be to suspend the TMDL requirements for a period of time, should our communities face homeland security or major public safety incidents, such as major earthquakes or riots.<br>The Board needs to consider the financial hardships that could face our communities, if we are required to meet the TMDL requirements, while dealing simultaneously with a major disasters either man-made or natural. | See Comment 19.10 |
| 20.1 | City of South | 8/22/06 | *No Adjustment of Compliance Costs*<br>The revised LAR- TTMDL staff report has not adjusted costs for | See response to comment 1.11 |

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| | Pasadena | | full capture VSS/CDS controls. The costs presented in the proposed draft LAR-TTMDL are the same as in the 2001 staff report. Costs should be adjusted to reflect 2006 dollars. Without this adjustment it is difficult to provide an accurate impact of compliance costs on municipal programs and services and on the region. | |
| 20.2 | City of South Pasadena | 8/22/06 | ***No Discussion* of *LAR- TTMDL Implementation through the MS4 Permit***<br>The draft LAR- TTMDL does not provide any discussion of how this trash TMDL is to be implemented through the Los Angeles County MS4 Permit. According to USEPA policy, TMDLs implemented through MS4 Permits are subject to an iterative process. Instead, it . seems that the TMDL itself controls implementation. More discussion of how the iterative process applies and what affected Permittees can do to meet the trash TMDL through their Storm Water Quality Management Plans (SQMPs). | See response to comment 4.12 |
| 20.3 | City of South Pasadena | 8/22/06 | ***Absence* of *LAR- TTMDL WLAs for Other Permittees***<br>A revised LARTTMDL staff report is needed to include waste load allocations (WLAs) for the following permittees: facilities that are subject to General Industrial Activity Storm Water Permits; construction projects subject to the General Construction Activity Storm Water Permits; Phase II Permittees, including school districts (viz. school districts, community college districts, and state universities and UC facilities). Including these Permittees to comply with WLAs would reduce the burden on municipal Permittees to comply with trash reduction requirements. Phase II Permittees, especially subject educational facilities should be assigned their own WLAs. This is needed since Phase I municipal Permittees are preempted by State law from imposing any requirement on public educational | See response to comments 1.22, 1.23 |

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| | | | facilities because they are considered State facilities over which municipalities have no control. | |
| 20.4 | City of South Pasadena | 8/22/06 | ***Re-setting Compliance Schedule***<br>The draft LAR-TTMDL sets September of *2007* as the first compliance point, with the expectation that *70%* of the baseline load must be achieved by affected Permittees. This schedule needs to evaluated and explained against the background of the MS4 Permit's iterative process. Specifically, one or more BMPs need to be identified that can be reasonably expected to achieve this goal; and if it is not achieved, Permittee's should then intensify existing BMPs or add new ones to reach this and other targets contained in the implementation schedule. Further, Permittees will need time to budget for the implementation of trash reducing BMPs to achieve the numeric targets. It is recommended, therefore, that the implementation schedule for the first compliance point be pushed back by one year to September of 2008. | See response to comment 4.14 |
| 20.5 | City of South Pasadena | 8/22/06 | **Piloting Structural Controls**<br>The Regional Board should also revise the LAR-TTMDL staff report to include a period (e.g. 5 years) to try out various structural controls, including vortex separation systems, catch basin inserts, screens, nets, etc. This would give affected Permittees the opportunity to evaluate the performance and cost-effectiveness of each structural control. Compliance points would be determined by a plan to install the controls on a small scale and to collect performance data on each. This information would then able to give affected Permittees the opportunity to make a fully informed decision about which structural control(s) could qualify as cost-effective full capture devices. One of the problems with the 2001 trash TMDL is that it assumes that | See response to comment 4.15 |

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| | | | vortex separation systems are the only full capture systems - even though data shows that they are only capable of removing 80-85% of trash. | |
| 21.1 | City of Temple City | 8/22/06 | Our specific comments will be limited to concerns regarding the Daily Generation Rate (DGR) aspects of the TMDL. However, we do concur with other permittees regarding the need for a full Environmental Impact Report, allowances for trash in runoff beyond the control of the City, the need for an extended implementation schedule, the inattainability of a "zero" trash discharge goal and the financial impact of this TMDL. | Comment noted. |
| 21.2 | City of Temple City | 8/22/06 | The methodology that was used generally followed the DGR criteria contained in the previous Trash TMDL. While these criteria may be scientifically elegant, in the field, they have turned out to be exceedingly cumbersome and costly. Therefore we urge the Regional Board to more strongly emphasize alternative methodology which can include:<br>1. The use of surveys such as the "Keep America Beautiful" Litter Index,<br>2. The certification of catch basin inserts as "full capture", and<br>3. Catch basin surveys to determine "hotspots" of significant litter accumulation; and by capturing a significant percentage of trash and litter from these hotspots, that should be deemed compliance. | The TMDL clearly states that alternative compliance monitoring programs may be approved by the Executive Officer if the program provides a scientifically-based estimate of the amount of trash discharged from the storm drain system. |
| 21.3 | City of Temple City | 8/22/06 | Under the proposed TMDL, the Executive Officer of the Board is given authorization to approve alternate plans. This should specifically include the above items as well as the authority to deem goals in any approved alternate plan as compliance. | See response to 21.2 |