ADDENDUM TO CEQA DOCUMENTATION
ALTERNATIVES ANALYSIS

1. Project Purpose

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) proposes an amendment to the *Water Quality Control Plan for the Los Angeles Region* (Basin Plan) to incorporate a Total Maximum Daily Load (TMDL) to reduce metals in the Los Angeles River.

As further set forth herein, this project's purpose is twofold:

- To adopt a regulation that will guide Regional Board permitting, enforcement, and other actions to require responsible parties to take appropriate measures to restore and maintain applicable Water Quality Standards pertaining to metals throughout the Los Angeles River; and

- To establish a TMDL for the Los Angeles River in compliance with the requirements of section 303(d) of the federal Clean Water Act (CWA) in a manner timely enough to avert federal intervention in state water quality planning, which would occur as a result of United States Environmental Protection Agency's obligations under section 303(d) and under a federal consent decree that would require USEPA to establish these TMDLs if the State does not do so.

Section 303(d) of the CWA requires the states to identify waters that do not meet state water quality standards, and establish TMDLs for those waters at levels necessary to resolve the impairments and maintain water quality standards. The purpose of this project is to both comply with the requirements of section 303(d) and to resolve the impairments and maintain compliance with water quality standards in the relevant water bodies.

2. Legal Background

The TMDL for metals in the Los Angeles River Watershed is designed to attain the water quality standards for metals in waterbodies of the watershed. The TMDL is prepared pursuant to state and federal requirements to preserve and enhance water quality in the Los Angeles River. The adoption of a TMDL is not discretionary and is compelled both by section 303(d) of the federal Clean Water Act (33 USC 1313(d)) and by a federal consent decree, Heal the Bay Inc., et al. v. Browner, et al. C 98-4825 SBA (United States District Court, Northern District of California, 1999) approved on March 22, 1999. While the Regional Board is not party to the consent decree, the consent decree sets a deadline by which USEPA must act to establish a TMDL if California has not. Thus California's time to act without federal intervention is as a practical matter circumscribed by the consent decree.

The Basin Plan sets water quality standards for surface waters and ground waters in the region. These standards are comprised of designated beneficial uses (both existing and potential) for surface and ground water, and numeric and narrative objectives or criteria necessary to support beneficial uses, and the state's antidegradation policy. Water quality standards are mandated for all waterbodies within the state under the Porter-Cologne Water Quality Act, and for waters of the United States, under the federal Clean Water Act (CWA). In addition, the Basin Plan describes implementation programs to protect all waters in the region. The Basin Plan guides implementation of the Porter-Cologne Water Quality Control Act (commencing at Section 13000 of the "California Water Code") and serves as the State Water Quality Control Plan applicable to the Los Angeles River.

Section 305(b) of the CWA mandates biennial assessments of the nation's water resources. These water quality assessments are used, with any other available data and information, to identify and prioritize waters not attaining water quality standards. Waters identified as impaired are compiled and submitted biennially to USEPA as the state's "303(d) List," also known as the "Impaired Waters List". CWA section 303(d)(1)(C) and (d)(1)(D) require that the state establish TMDLs for each identified water, whether "listed" or not. Those TMDLs, the waters identified as impaired, and the 303(d) List, must be submitted to United States Environmental Protection Agency (USEPA) for approval under section 303(d)(2). Under the plain language of the CWA and as confirmed in *Cities of Arcadia v. SWRCB* (2006) 135 Cal. App.4th 1392, 1418, the CWA neither prohibits a Regional Board from identifying a water body as impaired and establishing a TMDL for it at essentially the same time, nor indicates that formal listing is a prerequisite to establishing a TMDL. In any event, the CWA requires TMDLs be established for all waters, impaired or not. While section 303(d)(1)(C) and (d)(1)(D) together require TMDLs for all waters identified as impaired, section 303(d)(3) requires TMDLs for all other waters, that is, those that have not been identified as impaired. Section 303(d)(3) TMDLs, however, are not subject to approval by USEPA. From California's perspective, no practical distinction exists between (d)(1) and (d)(3) TMDLs except the requirement for USEPA approval of the former under subdivision (d)(2). All TMDLs are ultimately memorialized in the basin plan, and are subject to implementation pursuant to California Water Code (CWC) section 13242.

Section 303(d)(1)(C) requires TMDLs to be established at a level necessary to attain the applicable water quality standards, considering seasonal variations and a margin of safety. The TMDL must also include an allocation of parts of the total allowable load (or loading capacity) to all point sources and to nonpoint sources and natural background, in the form of waste load and load allocations, accordingly. Waste load and load allocations must be assigned for all sources of the impairing pollutant, irrespective of whether they are discharged to an impaired reach or to an unimpaired upstream tributary.

As referenced above, TMDLs are generally established in California through the basin planning process, i.e., an amendment to the basin plan to incorporate a new or revised program of implementation of the water quality standards, pursuant to CWC section 13242. The process that the Regional Board uses for establishing TMDLs is the same whether under section 303(d)(1) or 303(d)(3). USEPA's authority over the 303(d) program includes the obligation to approve or disapprove the identification of impaired

waters and TMDLs for such waters. If any identification or TMDL is disapproved, USEPA must establish its own TMDL or conduct its own identification.

The consent decree requires that all TMDLs for the Los Angeles Region, for 1998 303(d) listed waters, be adopted within 13 years. The consent decree also prescribed schedules for certain TMDLs. According to this schedule, a Metals TMDL for the Los Angeles River watershed had to be approved by USEPA before March 22, 2005. USEPA and the consent decree plaintiffs agreed to extend the completion deadline to December 22, 2005, to enable the State to complete its adoption process and USEPA to approve the State-adopted TMDLs for this water body.

The California Resources Agency has approved the Regional Water Boards' basin planning process as a "certified regulatory program" (Public Resources Code section 21080.5) that adequately satisfies the California Environmental Quality Act (CEQA) (Public Resources Code, Section 21000 et seq) requirements for preparing environmental documents. (14 Cal. Code Regs. § 15251(g); 23 Cal. Code Regs. § 3782.) As such, the Regional Water Board's basin planning documents together with an Environmental Checklist are the "substitute documents" that contain the required environmental documentation under CEQA. (23 Cal Code Regs. § 3777.)

On June 2, 2005, the Regional Board adopted a Metals TMDL for the Los Angeles River, Resolution No. 2005-006. The TMDL was subsequently approved by the State Water Resources Control Board (State Board) in Resolution 2005-0077 on October 20, 2005 and by the Office of Administrative Law on December 9, 2005. The USEPA approved the Los Angeles River Metals TMDL on December 22, 2005. On February 16, 2006, the Cities of Bellflower, Carson, Cerritos, Downey, Paramount, Santa Fe Springs, Signal Hill, and Whittier (Cities), of whom only Carson, Downey, Paramount, and Signal Hill are in the Los Angeles River watershed and not one is in the Ballona Creek watershed, filed a petition for a writ of mandate challenging many aspects of the Los Angeles River Metals TMDLs and the Ballona Creek Metals TMDLs. The cities of Bellflower, Cerritos, Santa Fe Springs, and Whittier are not located in either watershed and are thus not subject to the requirements of either TMDL.

On May 24, 2007, the Los Angeles County Superior Court adopted the third of three rulings that collectively adjudicate all controverted issues in the writ petition. Collectively, all of the Cities' challenges to the TMDLs were denied, except for one CEQA claim. Specifically, the Court ruled that the State and Regional Boards (Water Boards) should have adopted and circulated an alternatives analysis that analyzed alternatives to the project, pursuant to Public Resources Code section 21080.5 and section 3777 of Title 23 of the California Code of Regulations. Collectively, those authorities, which are applicable to the Water Boards' certified regulatory program, require that a project not be approved if there are feasible alternatives to the project that would substantially lessen a significant adverse effect that the activity would otherwise have on the environment. (Pub. Res. C. Section 21080.5(d)(2)(A).)

The State and Regional Boards alleged that no feasible alternatives to the project exist that would result in less significant impacts to the environment, but the Court ruled that the Water Boards have the burden of formulating alternatives, and that since the Cities had identified in their briefs two "potentially feasible alternatives", the Water Boards' approval of the TMDL project was deficient because the environmental documentation

did not conduct an adequate alternatives analysis. Accordingly, the Court issued its writ of mandate on July 13, 2007, directing the Water Boards to reconsider the TMDLs and to comply with those authorities before readopting the TMDLs. The writ was limited to that issue, and the TMDLs were affirmed in all other respects.

Accordingly, this alternatives analysis has been prepared to comply with the writ of mandate, and to explain the Regional Board's conclusion that no feasible alternatives actually exist that would result in less significant impacts, and that would achieve the project's purposes. This addendum to the CEQA substitute documents and accompanying tentative resolution and basin plan amendment for adoption by the Regional Board are being released for public comment. These documents along with the CEQA checklist dated March 25, 2005; the Los Angeles River Metals TMDL staff report dated June 2, 2005; response to comments on the June 12, 2004 and March 28, 2005 drafts; and any subsequent responses to comments, fulfill the requirements of Public Resources Code section 21080.5 and 23 Cal Code Regulations §3777.

3. Water Quality Standards Applicable to the Waters Subject to the TMDLs

CWA section 303(d)(1)(C) requires TMDLs to be established at a level necessary to implement the "applicable water quality standards". In this case, the applicable water quality standards include numerous designated beneficial uses and California Toxics Rule (CTR) criteria. The CTR is a federally promulgated regulation that contains criteria applicable to all California waters with designated uses associated with aquatic life. The Basin Plan designates both existing and potential beneficial uses for the Los Angeles River that are associated with aquatic life. These designated beneficial uses include:

Table 3.1. Designated Beneficial Uses of Los Angeles River

Waterbody	Existing Uses	Potential Uses
Aliso Canyon Wash	WILD, WARM	
Dry Canyon Creek	WILD, WARM	
McCoy Canyon Creek	WILD, WARM	
Monrovia Canyon Creek	WILD, WARM, WET	
Los Angeles River Reach 6	WILD, WARM, WET	
Los Angeles River Reach 5	WILD, WARM, WET	
Los Angeles River Reach 4	WILD, WARM, WET	
Tujunga Wash		WILD, WARM
Burbank Western Channel		WILD, WARM
Los Angeles River Reach 3	WILD, WARM, WET	
Los Angeles River Reach 2	WARM	WILD
Rio Hondo Reach 1	WILD	WARM
Compton Creek	WILD, WARM, WET	
Los Angeles River Reach 1	WILD, WARM, WET, RARE, MAR	MIGR, SPWN

WARM: Warm freshwater habitat
WILD: Wildlife habitat
WET: Wetland habitat
RARE: Rare, threatened, or endangered species
MAR: Marine habitat
MIGR: Migration of aquatic organisms

SPWN: Spawning, reproduction, and/or early development

CWC section 13241, the statute dictating the process to establish water quality objectives, includes among factors to consider in setting the level of any objective "the probable future beneficial uses of water". Over the objections of the Regional Board, the trial court ruled that the term "probable future beneficial uses" is not concurrent with the term "potential uses", as the Regional Board had argued. Instead, the court ruled that probable future uses are a subset of all potential uses. Whether or not the Regional Board had legal authority (as per the court's ruling) to designate only the subset "probable future uses" instead of the universe of "potential uses", the Regional Board has not done so. The only uses in the basin plan that are deemed attainable though not presently existing are designated as potential uses. These potential uses, having been approved by USEPA under CWA section 303(c), are the applicable state water quality standards.

The following pollutant-waterbody combinations were identified as impaired for failing to attain CTR criteria, and placed on the 303(d) List:

Table 3.2. Identification of Impaired Pollutant-Waterbody Combinations

Waterbody	Pollutants	Date Impairment Identified
Aliso Canyon Wash	Selenium	1998/2002 303(d) List
Dry Canyon Creek	Selenium	2002 303(d) List
McCoy Canyon Creek	Selenium	2002 303(d) List
Monrovia Canyon Creek	Lead	1998/2002 303(d) List
Los Angeles River Reach 4	Lead	1998/2002 303(d) List
Tujunga Wash	Copper	1998/2002 303(d) List
Burbank Western Channel	Cadmium	1998/2002 303(d) List
Los Angeles River Reach 2	Lead	1998/2002 303(d) List
Rio Hondo Reach 1	Copper, lead, zinc	1998/2002 303(d) List
Compton Creek	Copper, zinc	1998/2002 303(d) List
Los Angeles River Reach 1	Lead	1998/2002 303(d) List
Los Angeles River Reach 1	Copper, cadmium, zinc aluminum	2002 303(d) List

Additionally, during the TMDL development process, the following additional pollutant-waterbody combinations were identified as impaired:

3.3. Identification of Additional Impaired Pollutant-Waterbody Combinations

Waterbody	Pollutants	Date Impairment Identified
Los Angeles River Reach 6	Selenium	December 22, 2005
Los Angeles River Reach 5	Copper, lead	December 22, 2005
Los Angeles River Reach 4	Copper	December 22, 2005
Los Angeles River Reach 3	Copper, lead	December 22, 2005
Los Angeles River Reach 2	Copper	December 22, 2005

USEPA approved of these identifications on December 22, 2005, and agreed TMDLs were required for them as well.

4. Alternatives Analysis

According to CEQA Guidelines section 15126.6:

> "An EIR shall describe a range of reasonable alternatives to the proposed project, or to the location of the project, that could feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation."

Under the regulation, the alternatives to be analyzed are limited to those that are feasible, would accomplish most of the basic objectives of the project, and would avoid or substantially lessen any of the significant effects of the project. "'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." (14 Cal. Code Regs. §15364.)

Notably, the purpose of the alternatives analysis is to ascertain whether alternatives exist that offer substantial environmental advantages over the project proposal….; and (2) may be 'feasibly accomplished in a successful manner' considering the economic, environmental, social and technological factors involved. (Guide to CEQA, Remy, Thomas, Moose, & Manley, 10th Ed. (1999), p. 432, citing, *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 566.)

4.1 Description of Alternatives

In this alternatives analysis, the Regional Board has evaluated six potential program-level alternatives, set forth individually below. These alternatives include those identified in the Cities' trial briefs. This analysis concludes that Alternatives 2 through 6 are not feasible, would not achieve the project's purposes, or would not result in less significant impacts than the project as proposed. The program alternatives include:

1) The TMDL as it is proposed for Regional Board adoption, including metals and reaches not identified on the 1998/2002 303(d) List;
2) A TMDL for only those metals and reaches identified on the 1998/2002 303(d) List;
3) A TMDL for only those reaches with beneficial uses designated as probable, not potential;
4) A TMDL implemented through an Memorandum of Understanding (MOU);
5) A TMDL established by the USEPA; and
6) A no program alternative in which a TMDL is not implemented.

While a no-program alternative is unlawful, because a TMDL is required by Section 303(d) of the Clean Water Act and a federal consent decree, this alternative is analyzed to allow decision makers to compare the impacts of approving a proposed alternative and its components with the impacts of not approving a proposed alternative.

The Regional Board also considered but declines to further analyze several alternatives where the Superior Court already denied challenges to the Water Boards' conclusion that they were either infeasible or would not achieve the project's purpose. These include (1) developing a "super TMDL" that would address all pollutants at the same time; (2) allowing third parties to develop the TMDL; (3) deferring to other federal or state programs in lieu of a TMDL.

The substitute documents do not analyze a "partial" TMDL; for example, a TMDL which would achieve only 70% or only an 80% of the required reduction in metals. This sort of alternative was considered and rejected because, to the extent that significant adverse environmental impacts would be created by compliance with this proposed TMDL, and to the extent that a "partial" TMDL may, in fact, have fewer of those environmental impacts associated with compliance (although, also, less environmental benefits of the TMDL), the specific legal requirements of section 303(d) of the Clean Water Act require a level necessary to achieve water quality standards. Thus, a "partial" TMDL is unlawful because a partial reduction in metals would not be established at a level necessary to implement the applicable water quality standards.

The components assessed at a program level generally are program elements that would be implemented as part of the metals TMDL, but these elements do not have specific locations or design details identified. The components assessed at a project level have specific locations which will be determined by implementing municipalities and agencies. The specifics of the many projects which would make up a program alternative are discussed in the substitute environmental documents and include structural and non structural Best Management Practices (BMPs) that are reasonably foreseeable to be implemented under the metals TMDL program alternatives. The project-level components will be subject to additional future environmental review, including review by cities and municipalities implementing metals TMDL projects. The court already upheld the Regional Board's analysis of the impacts associated with the means of compliance and alternative means of compliance, required by Public Resources Code section 21159. That analysis is not repeated in this document.

4.2 Program Alternatives

Alternative 1 - Regional Board TMDL for All Reaches Impaired by Metals

Description of Alternative 1

This program alternative is based on the TMDL that is presently proposed for Regional Board reconsideration. The proposed TMDL applies to metals and reaches on the 1998/2002 303(d) List, as well as metals and reaches identified as impaired at the time the TMDL was originally adopted, but not yet listed on the state's 303(d) List (see Tables 3.2 and 3.3).

The TMDL waste load allocations (WLAs) are established through an amendment to Basin Plan and implemented through NPDES permits. WLAs are assigned to municipal storm water discharges, general industrial and construction storm water discharges, three POTWs, and other NPDES permittees located in impaired reaches and reaches upstream of impaired reaches. This alternative provides a program for addressing the adverse impacts of metals through a progressive reduction in metals discharges to the Los Angeles River through an 18-year schedule for dry weather and a 22-year schedule for wet weather. This schedule is both reasonable and as short as practicable. The WLAs and the implementation schedule, once they are incorporated into the Basin Plan, will be considered by NPDES permit writers when developing permit limits that are adopted in separate subsequent actions by the Regional Board.

Potential Environmental Impacts of Alternative 1

Potential environmental impacts associated with this alternative are related to the implementation of WLAs assigned to storm water dischargers. Storm water WLAs will be implemented through the Los Angeles County and Long Beach Municipal Separate Storm Sewer System (MS4) permits and the Caltrans MS4 permit. Although the Regional Board cannot mandate the manner of compliance (CWC section 13360), foreseeable environmental impacts from methods of compliance for storm water dischargers are well known.

During the development of the TMDL, the reasonably forseeable means of compliance were examined. They included structural BMPs such as infiltration devices and non-structural alternatives such as increased street sweeping and source reduction. The metals removal efficiencies of these treatment options as reported by USEPA, the Federal Highway Administration (FHWA), and Caltrans, further support their use as reasonable means of compliance as reference in the staff report. In addition, when the TMDL was initially released for public comment and adopted by the Regional Board on June 2, 2005, the Staff Report, CEQA documentation and tentative Basin Plan Amendment included extensive discussion of these methods and their foreseeable environmental impacts. As noted above, the court rejected the challenges to the alternatives analysis related to the foreseeable means of compliance.

This TMDL program alternative anticipates compliance through a combination of non-structural and structural BMPs. Non-structural BMPs may include increased storm drain catch basin cleanings, improved street cleaning and educating industries of good housekeeping practices. Structural BMPs may include the installation of storm water treatment devices specifically designed to reduce metals loadings, such as infiltration trenches and sand or organic filters, at critical points in the storm water conveyance system. Such devices may also incorporate surge control, such as underground storage vaults or detention basins.

Potential adverse impacts to the environment stem principally from the installation, operation, and maintenance of the structural BMPs and from the infiltration of storm water into the ground, as compliance options. The installation of implementation projects are of relatively short duration and typical of “baseline” construction and maintenance projects that occur presently in the Los Angeles River Watershed. The infiltration of storm water to the ground is a positive impact and any associated negative impacts can be avoided or mitigated by proper design, siting, and maintenance. In

addition, the Regional Board determined, and the court affirmed the Board's determination that any significant impacts can be mitigated or that there are alternative means of compliance available.

Analysis of Alternative 1

This alternative is reasonable and feasible. It accomplishes the project's purposes, as described in Section 1, Project Purpose. It complies with state and federal law and the consent decree by establishing a TMDL as required by section 303(d). It also achieves the Regional Board's goal of removing metals impairments from the Los Angeles River over a reasonable implementation schedule.

Alternative 2 - Regional Board TMDL for Metals on 303(d) List Only

Description of Alternative 2

This alternative would involve adopting a TMDL only for waterbody-pollutant combinations on the 1998/2002 section 303(d) List (Table 3.2). This alternative would not include regulations at this time to address the additional metals impaired waterbody-pollutant combinations identified under Alternative 1.

Potential Environmental Impacts of Alternative 2

The potential environmental impacts due to this alternative are the same as for Alternative 1 for two reasons. First, most of the additional metals impaired reaches are already on the 1998/2002 303(d) List for another metal (e.g., Reach 2 is listed for lead, while an additional impairment is found for copper – see the following Table 4.1). Storm water dischargers would implement the same structural and nonstructural BMPs to treat copper (for which the water was listed) as they would to treat lead (for which it was not listed) or any other metal. Second, most of these newly identified reaches are upstream of reaches on the 1998/2002 303(d) List. These upstream reaches must be assigned WLAs to meet the TMDLs in downstream reaches anyway – it would be infeasible and would not accomplish the project's purposes to do otherwise. Federal law requires that waste load and load allocations be assigned to all sources of the impairing constituents, irrespective of whether they are discharged upstream or into the impaired reach. Storm water dischargers would implement the same BMPs to achieve compliance with WLAs in upstream reaches as they would if these upstream reaches were themselves subject to TMDLs. Therefore, this alternative would have the same potential environmental impacts as Alternative 1.

Table 4.1 Date of Identification of Impaired Pollutant-Waterbody Combinations

Waterbody	Cadmium	Copper	Lead	Zinc	Selenium
Aliso Canyon Wash					1998/2002 List
Dry Canyon Creek					1998/2002 List
McCoy Canyon Creek					1998/2002 List
Monrovia Canyon Creek			1998/2002 List		
Los Angeles River Reach 6					2005
Los Angeles River Reach 5		2005	2005		
Los Angeles River Reach 4		2005	1998/2002 List		
Tujunga Wash		1998/2002 List			
Burbank Western Channel	1998/2002 List				
Los Angeles River Reach 3		2005	2005		
Los Angeles River Reach 2		2005	1998/2002 List		
Rio Hondo Reach 1		1998/2002 List	1998/2002 List	1998/2002 List	
Compton Creek		1998/2002 List		1998/2002 List	
Los Angeles River Reach 1	1998/2002 List	1998/2002 List	1998/2002 List	1998/2002 List	

Analysis of Alternative 2

This alternative does not accomplish the project's purposes of restoring and maintaining water quality standards in all reaches of the watershed. It will not remove all metals impairments in the watershed.

While this approach may comply with the consent decree, it does not comply with section 303(d) of the CWA. All waterbodies identified as impaired whether or not they are listed on the 303(d) List require a TMDL pursuant to the CWA under section 303(d)(1)(C). Furthermore, Alternative 2 amounts to the unlawful segmenting or piecemealing of the project to ostensibly lessen environmental impacts. Indeed, were Alternative 2 adopted, and a smaller project occurred as a result, the remainder of the project would eventually be required when TMDLs are established to implement standards related to the newly identified impaired reaches. Piecemealing a project to contend it will result in fewer impacts is unlawful under CEQA, and is therefore not a

legal or feasible alternative. Since section 303(d) will require the state to establish TMDLs for the impaired but not yet listed reaches, the impacts delayed by focusing only upon the listed reaches will still occur when TMDLs for them are subsequently implemented. Accordingly, this alternative will not result in any less significant impacts as compared to Alternative 1.

Finally, even if this alternative was feasible in 2005, it is currently moot. All the not-yet listed waters were identified as impaired when the TMDL was submitted to USEPA. USEPA approved the identification of those pollutant-waterbody combinations on December 22, 2005. Accordingly, those pollutant-waterbody combinations presently require TMDLs even though they were not previously identified as impaired at the time the Regional Board commenced the original project in 2004. They are presently identified as impaired, and under every relevant interpretation of section 303(d), they require TMDLs.

Alternative 3 – Regional Board TMDL for Only Reaches With Beneficial Uses Designated as Probable, Not Potential

Description of Alternative 3

This alternative is based upon the court's interpretation that the term "probable future beneficial uses" is a subset of the term "potential uses". The alternative would involve establishing a TMDL for the waterbodies that have probable future aquatic life beneficial uses, but not for the remainder of the potential uses.

Potential Environmental Impacts of Alternative 3

The CTR criteria applies equally to all of the aquatic life uses, irrespective of whether they are existing, potential, or even some subset of potential uses. 40 CFR section 131.38 dictates:

> "[A]ll waters assigned any aquatic life or human health use classifications in the Water Quality Control Plans for the various basins of the State ("Basin Plans") adopted by the California State Water Resources Control Board ("SWRCB") … are subject to the criteria in paragraph (d)(2) [the CTR criteria] of this section, without exception."

As shown in Table 3.1, most of the water bodies with designated potential uses also have designated existing uses. Accordingly, as to those waters, this alternative is irrelevant—the CTR applies anyway, and the TMDL must still attain the CTR criteria. Of the various reaches, only two reaches do not have existing uses associated with them. These are Tujunga Wash and Burbank Western Channel. All other reaches are independently subject to the CTR by virtue of their existing use designations. Furthermore, Tujunga Wash and Burbank Western Channel are tributaries to Los Angeles River reaches 3 and 4. Accordingly, WLAs are required to protect the downstream reaches even if all the potential uses from Tujunga Wash and Burbank Western Channel were eliminated from consideration.

Nevertheless, as quoted above, a subset of a potential aquatic life use, specifically, a probable future aquatic life use, is still an aquatic life use, and the CTR would apply in any event. To the extent parts of the uses might not need to be protected had the waters been designated with a subset of potential uses, the CTR would still apply to virtually all of the water bodies subject to the TMDL. Accordingly, the impacts would be virtually identical. In any event, there is no evidence that such a TMDL would "substantially lessen" the significant effects of the project, as described in section 15126.6 of the CEQA Guidelines.

Analysis of Alternative 3

Section 303(d)(1)(C) requires that TMDLs be established to implement the applicable water quality standards. The applicable water quality standards are set forth in the Basin Plan. They include existing and potential uses. They do not include any subset of potential uses designated "probable future uses". In other words, there are no designated probable future uses. It is therefore not be possible to establish a TMDL limited to such uses. Even if it were, as with Alternative 2, above, adopting a TMDL for only a subset of the standards at a time would amount to unlawful piecemealing of the project, which is not an authorized approach under CEQA.

Moreover, since the applicable water quality standards include all of the designated potential uses, a TMDL that hypothetically was limited to only a subset of waterbodies with those uses would not comply with section 303(d), and would thus be unlawful. Furthermore, the consent decree makes no distinction between probable future uses and the alleged entirety of the potential uses. So failure to establish a TMDL that relates to the entire potential use would be inconsistent with consent decree, and would result in USEPA establishing a complete TMDL that complies with the court order (See Alternative 5, below). Since this alternative is neither lawful nor possible, it is plainly infeasible.

Alternative 4 – TMDL Implemented Through Memorandum of Understanding

Description of Alternative 4

This alternative involves the adoption of voluntary efforts to achieve compliance with the TMDL, through a memorandum of understanding or other mechanism, rather than through NPDES permit limits. This alternative is included because it has been suggested by commenters to a number of other TMDLs.

Potential Environmental Impacts of Alternative 4

Neither voluntary measures, nor a memorandum of understanding, as opposed to a NPDES permit or other Regional Board order, would alter the manner in which compliance could be achieved. Those implementing the TMDL would still be required to implement the same types of structural and non-structural BMPs as discussed under Alternative 1.

Analysis of Alternative 4

This alternative is not recommended because it is not likely to attain standards, and if it did, it would not lessen any environmental impacts from implementation of the TMDL. The suggestion that the Regional Board rely upon an MOU instead of a regulation is directed to the form of the regulation as opposed to the environmental impacts from the regulation. CEQA is not concerned with an examination of alternatives that might obviate Regional Board regulatory action relating to waters under another agency's concurrent jurisdiction, unless, that is, such alternatives are likely to result in less significant environmental impacts than the proposed project. This alternative would not result in any less significant impacts, unless of course, those subject to the MOU continue to fail to implement controls to abate the metals impairments. In that event, no impacts would occur from the project, but only because the project would not be implemented. That would not achieve the project purposes of restoring the water bodies, eliminating the impairments, and attaining water quality standards.

All potential impacts emanating from Alternative 1 result from the implementation actions selected to comply with the TMDL. Neither voluntary measures, nor a memorandum of understanding, as opposed to a Regional Board's regulation, permit, or order would in any way alter the manner in which compliance could be achieved. Those implementing the TMDL would still be required to implement the same types of structural and non-structural BMPs, including filters and infiltration devices, improved street sweeping, and source reduction, that were discussed in CEQA substitute documents, whether they are required by an MOU or other voluntarily undertaken or non-regulatory efforts. Indeed the TMDL as proposed preserves broad discretion on the manner of compliance, which of course, is mandated by CWC section 13360.

This alternative is also not legal and therefore not feasible. Federal regulations require that NPDES permits be consistent with the assumptions and requirements of available waste load allocations. Accordingly, the Regional Board may not forgo implementing WLAs in NPDES permits.

Furthermore, it is not reasonable to assume that responsible entities would voluntarily comply with the TMDL through a memorandum of understanding. The TMDL project is only necessary because permittees have failed to adequately engage their own regulatory or voluntary efforts to attain water quality standards. The Los Angeles River has been identified on the 303(d) List as impaired by metals since 1998, yet the River remains impaired. During the nine years that this water has been identified as impaired, no stakeholders, third parties, or local regulatory bodies have come forward to propose any mechanisms to the Regional Board to resolve the impairment. With a federal consent decree deadline that passed in December 2005, staff believe it neither feasible nor reasonable to defer regulatory action further in hopes that these stakeholders may be willing to do that which they have not for the last decade.

Alternative 5 – USEPA TMDL

Description of Alternative 5

This program alternative is based on a TMDL that would be established by the United States Environmental Protection Agency, pursuant to the consent decree. This would occur if the Regional Board fails to adopt a Metals TMDL. Because the TMDL technical analysis would be similar to the Regional Board analysis, and because the same laws and regulations apply, it is assumed that the technical portions and WLAs of this TMDL Program Alternative will be essentially the same as Program Alternative 1. In other words, any TMDL must implement the CTR criteria irrespective of which agency establishes it. However, because such a TMDL would not be implemented through a Basin Plan amendment, the WLAs will be implemented directly through NPDES permit limits as the permits are renewed without consideration of a compliance schedule. Because NPDES permits are renewed every five years, all responsible parties, municipalities and Caltrans, could be required to be in full compliance immediately following the TMDL adoption by USEPA, or within five years.

Potential Environmental Impacts of Alternative 5

Like Alternative 1, this TMDL program alternative also anticipates compliance through installation of structural devices (infiltration devices, filters) and non-structural methods (increased street sweeping, source control). Potential adverse impacts to the environment likewise stem principally from the installation, operation, and maintenance of the structural BMPs and from the infiltration of storm water into the ground. The installation of implementation projects are of relatively short duration and typical of "baseline" construction and maintenance projects that occur presently in the Los Angeles River Watershed. The infiltration of storm water to the ground is a positive impact and any associated negative impacts can be avoided or mitigated by proper design, siting, and maintenance. In addition, any significant impacts can be mitigated or there are alternative means of compliance available that would have less impacts.

Analysis of Alternative 5

Alternative 5 assumes the Regional Board would abdicate its responsibility under section CWA section 303(d), as delegated to it by CWC section 13160. This alternative does not achieve the project's purpose that the Regional Board comply with 303(d) to prevent federal assumption of water quality planning in California.

Further, if USEPA established the TMDL, any adverse impacts would be more significant, not less. The same WLAs will need to be met and the same technological choices will be available under both this alternative, and Alternative 1. Alternative 1 will allow a measured implementation plan, resulting in full compliance in 22 years. Alternative 5, in contrast, will require compliance at the time of permit renewal, in all permit cases, in less than five years. The environmental impacts due to Alternative 5 may be of greater severity however, as the intensity of implementation actions will be greater to comply with the shorter time frame. The longer schedule of Alternative 1 allows for prioritization and planning, more thoroughly mitigated impacts, temporal distribution of compliance measures resulting in less concentration of impacts, more appropriately designed, sited and sized structural devices and, therefore, less

environmental impact, in general. In addition, prioritization and planning will likely result in more efficient use of funds and lower overall costs.

Alternative 6 – No Program Alternative

Description of Alternative 6

This program alternative assumes that neither the USEPA nor the Regional Board implements a metals TMDL. While cities and municipalities could implement BMPs on a discretionary basis, this CEQA analysis is based on the assumption that no additional metals reduction BMPs would be implemented in addition to those that are presently in place. However, the No Project TMDL is contrary to federal and state law and a court ordered Consent Decree between citizen plaintiffs and the US Environmental Protection Agency. Therefore, the failure to implement a metals TMDL is unlawful. Further, the no-program alternative does not achieve any of the projects purposes, and is inconsistent with the Regional Board's mission.

Potential Environmental Impacts of Alternative 6

To the extent that significant adverse environmental impacts would be created by compliance with the TMDL as proposed, a no program alternative may avoid those environmental impacts associated with compliance. However, a no program alternative would have none of the environmental benefits of the TMDL as proposed, and would not achieve the goals of the CWA or the Porter-Cologne Act.

Analysis of Alternative 6

This alternative is inconsistent with (a) CWA section 303(d), which requires the "state" to establish the TMDLs; (b) CWC section 13160, which delegates to the Water Board the responsibility to implement the Clean Water Act; (c) state policy for water quality control; (d) the mission of the Water Boards; and (e) the purposes of the CWA and Porter-Cologne Act which require restoration and attainment of water quality standards. Nothing in section 303(d) authorizes an alternative to a state established TMDL (except an EPA established TMDL), and nothing in CWC section 13160 authorizes the Regional Board to delegate the authority therein to stakeholders. Section 303(d) does not authorize a section 102 planning process as an alternative to a TMDL either. It says "each *state* shall establish…." Accordingly, an alternative that would involve no TMDL is not legal, and therefore not feasible.

In addition, while impact to the environment from construction or maintenance of structural BMPs would be avoided in this No Program alternative, No Program would *not* restore beneficial uses to the Los Angeles River or attain water quality standards and represents a continued metals impairment of the environment. The ongoing impairment of this waterbody is far more significant that the nominal impacts that the cities discharging metals will be forced to endure from construction and implementation of compliance measures because the Los Angeles River provides habitat for numerous species of aquatic, bird, and other wildlife and provides recreational opportunities for the community such as biking, boating, and bird watching. In addition, water from the Los Angeles River is used to recharge groundwater basins that provide an important local

drinking water supply. Furthermore, the river allows nature to exist in the urban environment, where parks and open space are scarce. The no-program alternative would allow continued impairment of these uses and continued degradation of water quality to the detriment of public health, property values, flood control capacity, cleaner streets, green spaces, groundwater recharge, and beach tourism.

Alternative 6 is not a feasible alternative because, while it avoids impacts due to discrete installation projects, it is illegal, and it does not achieve any of the project purposes to restore and maintain water quality standards and avert federal intervention in state water quality planning.

Recommended Program Alternative

This environmental analysis finds that Program Alternative 1 is the most environmentally advantageous alternative, has the least associated significant adverse impacts, and is the only alternative that would achieve all the major project purposes.

Either Alternative 1 or 5 will restore beneficial uses in the Los Angeles River watershed and attain water quality standards by removing metals from the Los Angeles River and its tributaries. As such, either metals TMDL Alternative 1 or 5 represents a benefit to the environment. The key environmental difference between program Alternatives 1 and 5 is the establishment of an implementation schedule. Alternative 1 contains an implementation schedule that allows compliance projects to be spread out over time to lessen potential environmental impacts. Alternative 5, therefore would foreseeably result in more significant impacts, not less. The key programmatic difference between Alternatives 1 and 5 is that Alternative 1 maintains state responsibility and control over water quality planning in California; Alternative 5 abdicates that responsibility to USEPA. Alternative 1, therefore meets all project purposes. Alternative 1 is therefore the recommended alternative.