

Comment Summary and Responses

Prohibition of On-Site Wastewater Disposal Systems in the Malibu Civic Center Area

No.	Company	Representative
1	California State Assembly	Assembly member Jean Fuller
	California State Assembly	Assembly member Tom Berryhill
	California State Assembly	Assembly member Van Tran
	California State Senate	Senator Jenny Oropeza
	Merit Shop Roundtable	Gared Larson
2	Malibu Knolls Property Owner's Association	Sally Benjamin
	Malibu Township Council Inc.	Lucile Keller
	General Public	Sally Benjamin
	General Public	Christian Benjamin
	General Public	Cynthia Taylor
	General Public	Donna Schumacher for Madalene M. Fobert
	General Public	Jay Metzger for Madalene Fobert
	General Public	James W. May
	General Public	Kenneth R. Duzy Kathleen L. Scott
	General Public	Kurt Kamm
	General Public	Mike Barsocchini
	General Public	Nadene LaCock Marshall
	General Public	Richard Scott
	General Public	Sharon Talovic
	General Public	Steve Uhring
	General Public	Gayle Pritchett-MacLeod
	General Public	Louis Baumeister
General Public	Janet L. MacPherson	
General Public	Bob & Shelley Schuster	
3	Heal the Ocean	Hillary Hauser
	Malibu Surfing Association	Michael Blum
	Santa Monica Baykeeper	Liz Crosson

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	Surfrider Foundation West Los Angeles/Malibu Chapter	Michael Blum
	General Public	Ken Seino
	General Public	Paul Jay Diamond
	MalibuHD & MalibuFreeAds.com	M. Cary ONeal
	General Public	Bob Purvey
	Heal the Bay	Mark Gold
4	Malibu Chamber of Commerce	Rebekah Evans
	Malibu Retail Acquisition Co., LLC	Pouya Abdi
	General Public	Margaret & George Hauptman
	General Public	Paul J. Grisanti
	General Public	Gail Copley
	General Public	Sandra L. Peltola
	General Public	Lily Pingatore
	General Public	Steven Ravaglioli
	General Public	William R. Bloom
	General Public	Soon Yi Yang
	Malibu Glass & Mirror	Gerald Lemonnier
	General Public	Richard Lawrence
	Koss Real Estate Investments	Michael Koss
	General Public	Judy Kunisaki
5	Coldwell Banker Malibu West Office	Jay Rubenstein
	General Public	Meril May
6	General Public	Al Ehringer
7	General Public	Jonathan Kaye
8	General Public	Valerie Schwarz
9	General Public	Judy Fogel
10	General Public	Walter F. Keller
11	General Public	Alessandra DeClario
12	General Public	E. Barry Haldeman

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13	General Public	Rick Wallace
14	Alpine Realty, Inc.	Gila Michael
15	EPD Consultants, Inc.	Kevin Poffenbarger
16	General Public	Isabel Miller
	General Public	Lee LaPlante
	General Public	Joe Geus
	Malibu Association of Realtors	Jan Thompson
17	Busch Associates Realty	Louis T. Busch
18	Mariposa Land Company, Ltd.	Grant Adamson
19	Big Rock Partners LLC on behalf of AZ Winter Mesa, LLC	Robert Gold
20	Vista Pacifica Townhomes Association	Matt Ingebrigtsen
		Edward Gonzalez
21	County of Los Angeles	William T. Fujioka
22	Somach Simmons & Dunn on behalf of Malibu Colony Plaza, Malibu Petroleum, the U.S. Postal Service (Malibu), and Malibu Urgent Care	Cassie N. Aw-yang
23	Our Lady of Malibu Church	William F. Kerze
		John V. Sheridan
24	Pepperdine University	Rhiannon L. Bailard
25	HRL Laboratories	Daniel R. Allemeier
26	Las Virgenes – Triunfo Joint Powers Authority on behalf of Las Virgenes Municipal Water District and Triunfo Sanitation District	John Mundy
27	Latham & Watkins LLP on behalf of Malibu Realty, LLC	Gene A. Lucero
28	General Public	Joan C. Lavine
29	General Public	R.L. Embree
30	Jenkins & Hogin, LLP on behalf of the City of Malibu (Exhibits)	Christi Hogin
31	Santa Monica Malibu Schools	Janece L. Maez
32	Malibu Bay Company	David Reznick

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No.	Author	Comment	Response
0.1	Multiple	<p>Many of the comments submitted in opposition to the State Board's approval of this BPA were previously submitted to the Regional Water Board and submitted verbatim to the State Board, without further explanation.</p>	<p>Many of the individual comments submitted to the State Water Resources Control Board (State Water Board) on this matter are identical to a comment submitted to the Los Angeles Los Angeles Water Quality Control Board (Los Angeles Water Board) at the time the draft version of this BPA was under consideration. As part of its consideration process, the Los Angeles Water Board provided written responses to all of the significant comments it received. The Los Angeles Water Board's responses either indicated that changes would be made to the regulatory provisions or to the related documentation in response to the comment (in which case corresponding changes were made), or the Los Angeles Water Board's written responses indicated that that changes would not be made, and the response included the reason.</p> <p>Where a commenter merely repeats a comment that was originally tendered to the Los Angeles Water Board on a prior version of a BPA, but fails to disclose what quarrel, if any, the commenter has with the response provided or the action taken by the Los Angeles Water Board in response to the comment, the State Water Board is unable to address the comment. Specifically, in those cases where the Los Angeles Water Board made changes in response to a comment, the commenter has failed to explain how the changes were allegedly inadequate. Likewise, where the Los Angeles Water Board did not make changes, the commenter has failed to explain how the response or explanation that the Los Angeles Water Board provided was allegedly inadequate, or even whether the commenter believes that the response was inadequate.</p> <p>Where a commenter has merely repeated a comment submitted</p>

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			<p>below, the State Water Board cannot divine what the commenter believes has been adequately satisfied and what has not, nor can it determine the reason for any remaining dissatisfaction. State Water Board staff will review the Los Angeles Water Board's responses to ensure that they are thorough and address the specific question presented.</p>
1.1	Multiple See list above	<p>"The purpose of this correspondence is to request that the State Board revise Resolution R4-2009-007 (Malibu Septic Prohibition) to exempt all recycled water projects from said prohibition that propose to recycle and re-use 100% of the tertiary treated wastewater generated from such projects consistent with established water quality objectives and the recently adopted State Water Recycling Policy and General Permit requirements (a.k.a. "No Net Discharge" Projects as these projects have come to be known)."</p>	<p>The State Board has only the authority to remand or approve resolutions brought before them, we do not have the authority to revise any resolution unless it is for clarification purposes and it is deemed to be unsubstantative. Unfortunately, exempting recycled water projects is beyond the scope of what the State Water Board is legally able to do.</p> <p>Furthermore, every recycled water permit granted by the Regional Water Quality Control Board (Regional Water Board) includes restrictions on subsurface disposal because failure of the system has the potential to impact the subsurface groundwater. Further, the California Department of Public Health (CDPH) acknowledges the likelihood of such failures by requiring every recycled system to have an option for discharge during system malfunction, which may include subsurface disposal.</p> <p>Because all permits in the Prohibition area that recycle water are also Onsite Wastewater Disposal Systems, exclusion from the Prohibition would remove the Los Angeles Water Board's best tool to protect the subsurface against additional disposal through operations problems in recycled water systems. If the systems function correctly, there is no need for subsurface disposal or exclusion from the prohibition</p>

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1.2	Multiple See list above	<p>“Exempting recycled water projects from the proposed resolution will encourage and provide incentive for public and private projects to design projects that will both further the purposes of the recently adopted CA Water Recycling Policy and also, as required by the provisions of said policy, avoid deleterious impacts to Waters of the State and established beneficial uses (Consistent with Anti-Degradation Policy)</p> <p>Such an exemption for appropriate water recycling projects will also encourage the formation of public-private partnerships in the area of water recycling. It will allow for more flexibility in environmental engineering and encourage entities both public and private to be “proactive” in pursuing State of the Art wastewater technology. As currently drafted, the Malibu prohibition conflicts with the State’s Water Recycling Policy and fails to advance consensus building and immediate and innovative solutions to existing water quality problems.”</p>	<p>The State Board agrees that recycled water projects are important and encourages public and private coordination to foster innovative and cooperative projects, as proven by the recent adoption of the State Water Recycling Policy. However, an exemption for recycled water projects from the Malibu Civic Center On-site Wastewater Disposal Systems Prohibition would be inappropriate and, contrary to the comment, would in fact not be consistent with the State’s Anti-degradation Policy or Recycled Water Policy. All systems have some form of discharge, even tertiary treated recycled water projects. The impacts from any and all discharges to impaired water bodies must be considered by the Water Boards as required by the federal Clean Water Act.</p>
1.3	Multiple See list above	<p>“Additionally, I/we would be remiss if I failed to note that such a decentralized “No Net Discharge” systems are in many aspects superior to conventional POTW’s that traditionally treat wastewater only to dispose of that resource directly into our Rivers and oceans (not a sustainable or environmentally sound practice).</p> <p>Similarly, providing incentive for decentralized water recycling activities with proposed water reuse on the site that the wastewater was generated reduces the energy required to transmit and transport recycled water lowering the carbon foot print (consistent with AB32).”</p>	<p>See Response to Comment 1.2.</p>
1.4	Multiple See list above	<p>“California is, as is the nation, facing the worst economic period since the great depression. Unemployment in out State has reached and appalling 12%. However, in the building trades that number has reached as high as</p>	<p>While the State Board understands the burden of unemployment and the poor economy, it cannot legally compromise its legal obligation to protect and improve the waters of the state.</p> <p>In response to the issue of job creation, any compliance measure the</p>

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		<p>50%! The construction industry is a major component of our State's economy and no reversal of our current state will be sustainable without growth in this sector. This is why it is incumbent upon all agencies of government to promote construction. If a project in the impacted area does meet the standards of being a no net discharge it should be allowed to move forward so that the jobs the project would create will come to fruition. If a project is a no net discharge project then it should certainly fall under the guidelines of the prohibition. However, if it does not is should not be held up thus holding up thousands of much needed jobs and the boost to the economy they will provide."</p>	<p>City implements will undoubtedly create jobs in the area.</p>
2.1	Multiple see list above	<p>"One needs to understand the location and make-up of Malibu Knolls (The Knolls). The Knolls is a residential area of 60 single family homes. It is on the ridgeline about 200-260 feet above the Civic Center Valley floor and located about ¼ - ½ mile from the impaired water bodies."</p>	<p>Comment noted.</p>
2.2	Multiple see list above	<p>"Malibu Knolls Property owners oppose the ban for the following reasons: The water code 13280 has not been met for The Knolls to be included in the ban. The LARWQCB is required by law to provide "substantial evidence in the record to support such a ban."</p>	<p>State Water Board Staff Disagrees. Los Angeles Water Board staff provides ample support for the addition of the Malibu Knolls area in the Technical Memos, specifically Technical Memos 2 and 4.</p>
2.3	Multiple see list above	<p>"Proof has not been provided that The Knolls septic systems are the cause of bacteria in the impaired water bodies (the Lagoon, Malibu Creek and Surf rider beach). The travel time of dispersants from The Knolls OWDS takes 50 years to reach the ocean (Stone Report 2004). In that time, bacteria are removed from the OWDS dispersants. The LARWQCB didn't take this fact into consideration nor mention this fact in their report."</p>	<p>State Water Board Staff disagrees. Wells with total bacteria above the groundwater limit of 1.1 MPN/100mL are seen in Tech Memo #2 (groundwater) maps above Malibu Administrative Center and below Malibu Knolls. These wells demonstrate that the septic systems at Malibu Knolls contribute both bacteria and flow to Malibu Valley Basin. The flow increases the elevation of groundwater in Malibu Valley, which staff found could contribute to the bacteria discharge observed at failing downstream septic systems with insufficient dry</p>

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			vadose zones and less separation from the Lagoon and ocean receiving waters.
2.4	Multiple see list above	“At a meeting two Knolls property owners were told by an Executive Officer at LARWQCB, that The Knolls was included in the ban to provide enough homes in the assessment area to pay for a sewer system. This is not evidence of pollution to an impaired water body.”	The number of residents used to calculate the nutrient loading to Malibu Lagoon in Tech Memo #4 includes the homes in Malibu Knolls and Serra Retreat. Because few nutrients are removed in the subsurface, these resident's OWDS require nutrient removal beyond what primary septic system treatment can provide. Also see Response to Comment 2.3.
2.5	Multiple see list above	“The Knolls elevation of 200 – 260 ft. provides enough separation from ground water and travel distance to the impaired water bodies. LARWQCB requires a 5 – 10 ft. vertical separation between the OWDS dispersal and the groundwater. The Knolls with its elevation meets the LARWQCB vertical separation requirements and are not contributing to impaired water bodies.”	While the vertical separation may be met, the material provided by the Los Angeles Water Board (Technical Memos #2 and #4) demonstrates that the OWDSs, can and do to contribute to groundwater impairment of the water bodies, which is inconsistent with the State Anti-degradation policy and the Federal Clean Water Act. See Response to Comment 2.3.
2.6	Multiple see list above	“The Knolls area is generally ¼ - ½ miles from the impaired water bodies. Given the distance, elevation and length of time to reach the water bodies, The Knolls is not contributing bacterial pollutants to the impaired water bodies. The LARWQCB report does not discuss the above issue and unjustifiably included The Knolls in the ban.”	Staff disagrees. See Response to Comment 2.3.
2.7	Multiple see list above	“The LARWQCB hasn't proven The Knolls dispersal is identifiable in the impaired water bodies. Data submitted hasn't been consistent or verifiable and calculations are made on erroneous assumptions. Counting roof tops, assuming the number of residence per household and that Coliform Bacteria come only from septic provides misleading conclusions which on of the peer reviewers mentioned. No proof has been submitted that The Knolls OWDS are the cause of bacterial pollution found in the impaired water bodies or well.”	It is not the burden of the Los Angeles Water Board staff to prove that the Malibu Knolls septic dispersal is identifiable in the impaired water bodies, but rather that the discharges from The Knolls OWDS contribute to the overall impairment. Staff finds that the Los Angeles Water Boards data and analysis is both scientifically consistent and verifiable see responses to comments 2.3 and 2.4.

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2.8	Multiple see list above	<p>“The Knolls area doesn’t contribute to the water table (groundwater) in the Civic Center flowing to the Lagoon. The LARWQCB proposed ban boundaries were set based on the surface topography of the area and that The Knolls contributes to groundwater and pollution in the Lagoon. The LARWQCB boundaries and the 2004 Stone Report are the same. The 2004 Stone Report provides a drawing of the underground water table in the Civic Center area and its relationship with the surrounding topography. The Stone Report adjusted their assumptions of the boundaries because the surface topography didn’t match their findings on what affected the ground water. The Malibu Knolls has no impact on the water table in the Civic Center area from their OWDS. Again, there is no discussion of these facts in the LARWQCB documents. LARWQCB made an assumption and didn’t validate it, an important step in conducting research.”</p>	<p>The Los Angeles Water Board staff considered numerous studies, including recent well monitoring data from studies performed after the Stone Report was published in 2004. The boundaries were determined and set by the Los Angeles Water Board based on the most accurate scientific data available which addresses the impaired water bodies in order to protect human health. The Los Angeles Water Board staff discussed every decision for the design of this prohibition in depth in the Technical Memos 1 – 5. See also response to comments 2.3 and 2.4.</p>
2.9	Multiple see list above	<p>“The proposed ban places an unnecessary financial burden on The Knoll residents when they are unable to obtain the market value for their property for an extended, unknown period of time. The ban places a cloud of uncertainty resulting in diminishing property values for an undetermined period of time. In some cases, residents need to sell their home to provide the necessary finances for care facilities, and/or nursing care for the duration of their life. This ban diminishes a financial resource for the resident which many of them are depending on, later on in life. At a meeting with an Executive Officer at LARWQCB, two Knoll property</p>	<p>The City of Malibu has had over 20 years to implement an effective wastewater management strategy. Financing community services, including collection and treatment of wastewaters are typically achieved by a community, and not at the state or federal level. Similarly, finding a fair way to allocate the costs within a community is typically achieved by community leaders with input from affected homeowners. Nevertheless, the Los Angeles Water Board has been advocating on behalf of the community, to obtain financial assistance from the state. Los Angeles Water Board staff has already encouraged the City of Malibu to apply for a subsidized loan from the Clean Water State Revolving Fund. Also, the Los Angeles Water Board may encourage community leaders to make allowances or set</p>

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		owners were told it didn't matter if the residents couldn't financially afford a sewer assessment, the assessment district could put a lean on their properties."	more flexible payment terms for users facing financial hard ship, such as seniors on fixed incomes and low income homeowners. This is the responsibility of the community, not the Los Angeles Water Board.
2.10	Multiple see list above	"Banning septic systems in the Civic Center will not make the ground water (well water) potable. The ground water was used prior to 1965, as a source of drinking water with restrictions for children to not ingest it due to the high fluoride and salt content. Since 1965 water has been brought in by the LA Water District 29 to residences and businesses in the proposed septic system ban area. The ground water wasn't potable in 1965; banning septic systems in the Civic Center won't make it potable either."	The Los Angeles Water Board has designated groundwater in the Malibu Valley Groundwater Basin as a potential supply of municipal and domestic water (see Basin Plan, 1994 page 5-7). Accordingly staff is required to apply this designation until the Los Angeles Water Board changes it through a Basin Plan Amendment, in accordance with the State Board and Los Angeles Water Board Sources of Drinking Water Policies (State Board Resolution 88-63). Groundwater resources, while not sufficient to meet demands of the entire community, may nonetheless meet partial demand or meet emergency demand. The fact that the groundwater was once used as a source of municipal drinking water even pre 1965, makes it a potential source that must be protected as required by the Federal Clean Water Act.
2.11	Multiple see list above	"The water code 13823 [sic] has not been met with a review of other solutions. The LARQCB or the State Board reports never discusses what alternatives are available to correct problems in the impaired water bodies. The above water code requires "the state Board to include a preliminary review of possible alternatives". By proposing a ban on new existing septic systems, the State Boars implies there is only one solution; a waste water treatment facility. Some areas might benefit from bacteria and viral system upgrades to a septic system. Some areas should be excluded from this ban, like the Knolls. None of these alternatives are presented and with this proposed ban, the above solutions cannot be acted upon. Neither the State Board nor LARWQCB have reviewed, presented or discussed alternative solutions."	Staff assumes that the commenter meant to reference the California Water Code, Section 13283. Staff disagrees with the commenter's assertion. In the Technical memoranda, Los Angeles Water Board staff reviewed the data from commercial and residential OWDSs upgraded to advanced systems and found that the majority of those systems continue to fail and accumulate discharge violations. Staff determined that a prohibition was the only timely solution to prevent further degradation of ground and surface waters in the area (see technical memos 1 and 5). Staff did analyze an alternative of no action and found that due to the cities lack of timely action over the last 20 years, it was apparent that such an alternative was infeasible. In addition the staff reports provide several compliance strategies including an integrated water resources management facility, installation of an interceptor sewer, and decentralized waste management. Los Angeles Water Board staff in their technical and scientific reports reviewed, presented and discussed adequately that

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			the preferred solution to the septic problem is a prohibition with no other adequate alternative available at this time.
2.12	Multiple see list above	“Malibu has committed to spend in excess of \$50 million dollars to improve water quality in our beaches. To this end the City of Malibu has undertaken several studies, at taxpayers’ expense, to identify the specific cause of pollution. Many of these studies are being carried out at the request of LA Regional Water Control Board. While it is important to move forward on this issue, it is also important to make sure when we are done, we will see a significant improvement in water quality. The results from the studies underway in Malibu will provide us with information necessary to arrive at the proper solutions. LARQWCB and the City of Malibu should wait for the results and make their decisions according to the findings.”	<p>The City has had almost 20 years to implement an effective wastewater management strategy. Many stakeholders, over the past decade, have expressed frustration with the City’s slow progress and failure to meet past commitments.</p> <p>CEQA does not require that the Los Angeles Water Board wait for additional studies. Staff believes there is substantial evidence from the myriad of studies that have already been published which demonstrate the causes of the impairment as well as the potential solutions.</p>
2.13	Multiple see list above	“The State Board should remand the LARWQCB’s resolution as some of the findings, as discussed above are incorrect. The City of Malibu should be allowed to present study boundaries, evaluate the effectiveness of Legacy Park for dry weather and storm water runoff on bacteria levels, and conclude studies that are in the process. Gathering scientific data will allow all parties involved to provide the best, most comprehensive solution for elimination of pollution to impaired water bodies. Without thoughtful progress, the impaired water bodies might end up in stagnation. The Knolls desires an outcome which will provide a significant improvement to water quality.”	State Water Board staff disagrees; see Responses to Comments 2.1 thru 2.12.
3.1	Multiple See List Above	The “cluster use” of septic systems in coastal areas pollutes the ocean.	State Water Board staff agrees.
3.2	Multiple See List above	“Funding help is available for converting Malibu Civic Center septic systems to a Wastewater Recycling	Comment noted.

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		Facility. Grants are available including Prop 84 funds and public-private partnerships.”	
3.3	Multiple See List above	“Surfrider foundation has been advocating for improved water quality at Surfrider Beach for over two decades, and was one of the first environmental organizations that gave voice to the issue. We continue to be concerned that this important coastal resource suffers from chronic poor water quality. The poor water quality continues: since the beginning of this years dry weather season (April 1, 2010) there have been 4 testing period out of 11 (36%) on Heal the Bay’s Report Card where Surfrider Beach has received an “F” rating.”	Comment noted.
3.4	Multiple See List above	“We believe that Resolution No R4-2009-007 is the only way to move forward towards meeting water quality objectives in the central Malibu area.”	State Water Board staff agrees.
3.5	Multiple See List above	“This amendment is long overdue. In recognition of the impact of OWDS on the water quality of Malibu Creek, Malibu Lagoon and Malibu beaches, the Regional Board directed staff in December 1998 to develop a prohibition of OWDS for the Civic Center area. This idea was later abandoned and in the next decade the water quality degradation of these waters persisted unabated resulting in ever-increasing violations of water quality objectives and unsafe levels of pollution.”	Comment noted.
3.6	Multiple See List above	“The OWDS Prohibition should be expanded to include the Carbon Beach area beyond sweetwater canyon drive.”	State Water Board staff acknowledges that there is relatively dense commercial development on the Pacific Coast Highway east of the boundary, and that many OWDSs have problems. However, staff limited the scope of this proposed prohibition to priority areas in the Civic Center area, focusing on the hydrology affecting polluted groundwater and hydraulically connected surface waters. Additional areas, such as the stretch of Pacific Coast Highway east of the proposed prohibition and Carbon Beach, may be addressed through enforcement strategy or future regulatory actions.

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3.7	Multiple See List above	“The Basin Plan amendment should prohibit new development until the Malibu Civic Center groundwater is cleaned.”	State Water Board staff believes that development can continue to occur as long as newly developed property they follow the prohibition as written. Once a wastewater management strategy is implemented effluent that is dispersed to the subsurface and groundwater will be of higher quality.
3.8	Multiple See List above	“The Basin Plan amendment should provide a compliance schedule with milestones to establish progress toward water quality improvement is made.”	The Los Angeles Water Board staff adopted a compliance schedule in Resolution R4-2009-007 that the State Board staff considers adequate with several milestones listed to meet the compliance dates.
3.9	Multiple See List above	“Please prohibit septic tanks from being used in Malibu. I do not want to have anyone else have to suffer the results of bacterial infections like I have.”	Comment noted. The State Water Board can only approve or disapprove this amendment; requests for other prohibitions should be directed to the Los Angeles Water Board.
3.10	Multiple See List above	“Septic systems used by the commercial developments in the lower floodplain of Malibu's heart should be eliminated immediately and the contaminated ground that is deleterious to the high water table and tidal influence of the adjacent Malibu Creek must be cleaned up immediately. The health risk to the average 1.5 million visitors (source: LA County Lifeguards) that annually recreate at the connected world famous Malibu Surfrider Beach and catch food from the Malibu Fishing Pier has been well documented for well over 20 years. The Los Angeles Regional Water Board (LARWQCB) has been doing a good job of evaluating the numerous monitoring wells in the lower Malibu Creek Floodplain where the Malibu Mart's 1, 2 and 3 reside, as well as the Malibu Cross Creek Shopping Village resides and these property owners have ignored numerous LARWQCB Notices of Violations since 2005 for septic tank failures and heightened risks due to contamination levels continually exceeding Total Maximum Daily Load (TMDL) standards.”	Comment noted. The State Water Board can only approve or disapprove this amendment; requests for other prohibitions should be directed to the Los Angeles Water Board.

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3.11	Multiple See List above	<p>“Additionally, a myriad of studies costing millions of dollars over the past two decades have clearly stated, with redundancy throughout the accredited scientific community, that these properties have rendered the historical Malibu wetland as dysfunctional and pose a serious health risk. The Malibu historical wetland, which, in its natural state, would be home to an area of high bio-diversity and is considered throughout the scientific community an important ecologically sensitive habitat area.”</p>	Comment noted.
3.12	Multiple See List above	<p>“Furthermore, adding to the health risk in this highly popular area are well documented, failing septic systems in the Malibu Colony, which should also be eliminated, immediately. However, some upgraded septic systems in the Colony have proven to work. So, I would caution that this particular residential area be addressed in a different manner than those commercial properties in the lower floodplain.”</p>	Comment noted. State Water Board staff disagrees regarding the treatment of Malibu Colony. Monitoring well data has shown that even upgraded septic systems continue to fail to meet groundwater standards as illustrated in Technical memos 2 and 3. Malibu Colony should be subject to the same prohibition outlines as every area within the prohibition boundaries.
3.13	Multiple See List above	<p>“An example of how problematic the lower floodplain is for septic systems is the newest commercial development in the lower floodplain called the Malibu Lumber Yard Mall, which has a so-called state-of-the-art septic system. This septic system is also failing and is currently augmented by trucking out effluent instead of introducing the volume of water to make the system function according to it's designers. Furthermore, it has been very difficult to find out if this system has a sand filter, which all septic systems should have in this area. Nonetheless, because of the lower floodplain situation, septic systems, or any kind of waist treatment system connected to these commercial developments in this area will and have caused</p>	Comment noted.

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		pollutants to enter recreational waters, which are also used for food sources and increase the risk to public health and safety.”	
3.14	Multiple See List above	<p>“By not immediately eliminating these sources of known contaminations is a violation of the Clean Water Act and exposes the Water Board to major liability lawsuits. Therefore, I urge the State Water Board to act swiftly and aggressively to protect the health and safety of the average 1.5 million annual visitors to this beach area in Malibu's heart. Secondly, I strongly suggest that the State Water Board should also clean up the Malibu Colony Beach residential area that have failing septic systems proven to contaminate the shoreline, which directly affects the average 1.5 million visitors to Malibu's Surfrider Beach and Malibu's fishing Pier. The increased health risk by these polluters must also stop immediately. It has been proven that the cookie cutter septic systems installed in most of the Colony residents in the early half of the 20th century are used excessively and exceed their capacity. The immediate connection to the ocean and visitors to Surfrider and the pier is obvious and must be addressed aggressively. The plethora of evidence is now overwhelming and requires immediate and aggressive solutions in order to protect public health and safety as well as prevent any further lawsuits due to violations of the Clean Water Act. Thank you for your kind and immediate attention to this very serious matter.”</p>	Comments noted.
3.15	Multiple See List above	“I am concerned that the City of Malibu is trying to escape from the responsibility of complying with what the Board mandated. They are trying to come up with	Comment noted.

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		cheaper and less-effective means for satisfying the Board. They are trying to defer the whole process. And the City of Malibu, the richest city in L.A., is trying to tell you that they can't afford to clean up water that is sickening the citizens of Los Angeles as they swim and surf here. Yet, the pollution of Malibu continues."	
3.16	Multiple See List above	"The ban on septic tanks is a good decision and they should have been banned 30 years ago. I grew up in the Malibu Colony and have been in Malibu 54 years. Not only should the tanks be banned but something should be done about the Malibu shopping centers near Malibu Creek because during the summer, it stinks like the worst third world city you can imagine with raw sewage frequently overflowing into the parking lots."	Comment noted.
3.17	Multiple See List above	"There is great urgency in solving the water quality issues in the Malibu Civic Center area. World-class Surfrider Beach continues to get Ds and Fs on Heal the Bay's Beach Report Card, as wastewater from commercial and residential septic systems in the area leaches into Malibu Creek and Lagoon and then flows into the ocean, and its poor water quality places public health at risk. Malibu Creek and Lagoon are listed on the State's 2006 303(d) List as impaired by numerous pollutants, and TMDLs were adopted five years ago for bacteria and nutrients. Surfrider Beach and Malibu Lagoon's legacy of polluted water has continued unabated for decades. For years, we've participated and commented on the development and implementation of plans and studies, from the 1992 Warshall study to the present. Clearly, Malibu's voluntary efforts to clean up Malibu Lagoon and Surfrider Beach have met with limited success. Yes, there have been improvements in	Comment noted

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		<p>on-site wastewater treatment systems and stormwater ordinances, the Local Coastal Plan, and dry weather runoff treatment. The bottom line is that Malibu Lagoon and Surfrider Beach are still two of the most polluted receiving waters in the region, if not the state. The public and aquatic life should not have to wait much longer for the promise of clean water. The Regional Board's adopted prohibition of Onsite Wastewater Disposal Systems ("OWDS") in the Civic Center is a long overdue, legally enforceable action that should fulfill the promise of clean water in Malibu."</p>	
3.18	Multiple See List above	<p>"In general, Heal the Bay strongly supports the <i>Amendment to the Water Quality Control Plan for the Coastal Watersheds of Ventura and Los Angeles Counties to Prohibit On-site Wastewater Disposal Systems in the Malibu Civic Center</i>, Resolution No. R4-2009-007 ("prohibition"). It has long been assumed and established that existing OWDS in the Civic Center area are a significant source of nutrients and pathogens to the Creek and Lagoon. The technical memos have provided the information to demonstrate that there are numerous violations of WDRs at OWDS in the civic center. Also, groundwater monitoring data frequently exceeds both drinking water standards and receiving water standards for total coliforms and total nitrogen (nitrate + nitrite, and ammonia). Studies have demonstrated that groundwater is connected to Malibu Creek and Lagoon, and that people who swim at Surfrider Beach when water quality standards are exceeded are far more likely to get sick than those that swim in clean water nearby. Moreover, the addition of discharge to the already over-taxed waste disposal systems and leach fields will lead to further water quality</p>	Comment noted.

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		<p>degradation and contribute to violations of water quality standards and TMDL requirements at a time when the City is legally obligated to reduce its nutrient and fecal bacteria contributions. Board staff's technical memos, which we reviewed and commented on, have definitely exceeded the burden to demonstrate that OWDS cause or contribute to water quality standards exceedances and beneficial use impairment in Malibu Lagoon and at Surfrider Beach."</p>	
3.19	Multiple See List above	<p>"The prohibition outlines a reasonable schedule, including interim and final deadlines, for developing and implementing a project to allow for a cease in discharge from existing commercial and residential OWDS in the Civic Center area within 5 years and 9 years, respectively. The proposed State Water Board draft resolution needs to be amended to reflect the Regional Board action. The current resolution only includes a 2019 deadline in the findings (finding #8) rather than the commercial deadline of 2015 and residential by 2019. Due to the pressing nature of the water pollution problems in this area, the prohibition appropriately calls for an immediate prohibition on new OWDS. However, the prohibition provides exemptions for those properties in the midst of a project at the time of the Regional Board's hearing. The prohibition also appropriately excludes from the prohibition any publicly-owned, community-based wastewater solution. The final State Board resolution must make it clear that there are no exceptions or additions to the exemption list. All other new development must meet the prohibition requirements.</p> <p>Heal the Bay has long maintained that the city can comprehensively address the bacteria and nutrient</p>	Comment noted.

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		<p>problems and meet TMDL requirements by constructing and operating a centralized wastewater treatment plant. Although the city has promised that this is the route they plan to take in the Civic Center area, there has been no legally binding commitment or major progress towards this “goal”. The prohibition places the city on track for developing such a project and moving forward on water recycling and watershed protection.”</p>	
3.20	Multiple See List above	<p>“Please provide clarifications that a centralized wastewater treatment plant can dispose highly treated wastewater in Winter Canyon, not the Malibu Creek drainage area. The groundwater from the Winter Canyon area does not drain into the nutrient impaired waters of Malibu Creek and Lagoon. The prohibition as written may eliminate subsurface disposal of highly treated effluent from the new Civic Center water recycling facility in Winter Canyon.”</p>	<p>The centralized wastewater treatment plant proposed by the City after the adoption of the prohibition includes very limited disposal in Winter Canyon, where the existing subsurface capacity is already used by the Malibu Colony treatment Plant. Instead the facility would move recycled water throughout Malibu Valley and the surrounding area. Disposal of treated and disinfected water in Malibu Valley would have to take place in areas away from existing OWTs, where an increase in the groundwater would result in system failure. The system recently proposed by the City does not include disinfection to Title 22 requirements and so could not be used for irrigation. This limits its utility in using existing disposal options.</p> <p>The subsurface groundwater flows vary by season and pumping and are complicated, as documented by the City's work with a USGS scientist. 'Winter Canyon' is not necessarily a hydrologic area, so the question is not sufficiently accurate.</p> <p>The Questa study (2003) included a map showing ground water flow directions, based on surface topography and well information, which indicated that subsurface flows from portions of Winter Canyon move parallel to the ocean toward Malibu Colony. The Stone study (2004) modeled a bedrock high blocking flow from some parts of Winter Canyon to Malibu Valley, but relied on well information, which is largely absent in the 'bedrock area" between Winter Canyon and Malibu Valley. [These documents are included in the administrative</p>

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			<p>record for the prohibition: Questa 2003b and Stone 2004 5g.]</p> <p>In addition, the surface topography of the Civic Center area has been heavily modified for road and business construction. Pacific Coast Highway was constructed across Winter Canyon and obscures the original topography. The presence of a wetland adjacent to the Winter Canyon crossing and uphill from the highway might reasonably contain flows obstructed from moving past the Highway to the Ocean and ponding in Malibu Valley.</p> <p>At the Los Angeles Water Board’s hearing on the adoption of the basin plan amendment, the Los Angeles Water Board directed that the prohibition include language allowing the construction of the City’s centralized system anywhere within the prohibition area. Any discharge from the system will be permitted, and will need to meet applicable water quality objectives.</p>
3.21	Multiple See List above	<p>“Substantiation is needed for the inclusion of so many of the residents in the area from Malibu Colony to Marine Canyon. We are unaware of any beach monitoring data from the Colony to Marie Canyon (all of Amarillo Beach). Malibu’s previous groundwater studies demonstrated that about 6 to 10 houses near the western edge of Surfrider Beach can drain into the nutrient and fecal bacteria impaired lagoon. Perhaps the houses in the Malibu Colony that do not drain to the lagoon could meet requirements by installing disinfection systems instead of tying into a new sewer in the area. A requirement to either tie into the sewer or install a disinfection system (individual or centralized) by a date certain (no more than 5 to 8 years) would be acceptable to Heal the Bay.”</p>	<p>Disinfection at Malibu Colony through OWDSs might address the bacteria impairment documented at the adjacent beaches. The prohibition does not state that the only solution is a centralized system. If the City or residents were to implement disinfection at clusters of homes in Malibu Colony (2 or 3 together might be cost-efficient for the residents), and nutrient removal and disinfection in Malibu Knolls, the dischargers could demonstrate compliance with the requirements of the prohibition through numerous and very small treatment systems.</p> <p>The City of Malibu's 2004 Memorandum of Understanding with the Los Angeles Water Board specifically required the City to prohibit primary waste treatment (septic systems) in Malibu Colony, and such action was never taken. Disinfection at each Malibu Colony residence would need to include additional system oversight, which is not currently required. More rigorous oversight is a tool</p>

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			recommended by the United States Environmental Protection Agency (U.S. EPA) for individual OWDS systems where receiving water problems have been identified (2002 EPA OWTS manual). However, the City did not provide an inventory of the Malibu Colony systems, as required by the MOU in 2004, and has not demonstrated that it has permitted each facility there, as it reported to the Los Angeles Water Board in 2008. In the absence of the City's management of OWTSs, individual permitting of the approximately 200 homes must be required to ensure appropriate implementation and oversight.
3.22	Multiple See List above	"Further, the project geographic scope should include commercial properties (especially hotels and restaurants) south from the Civic Center on Pacific Coast Highway to at least 21237 Pacific Coast Highway, Malibu. At a minimum, within 5 to 8 years, commercial property OWDSs south of the proposed boundary on PCH should be required to disinfect their wastewater prior to leach field disposal to ensure no bacteria contribution to groundwater and surface water. This is a more cost effective approach to meeting Santa Monica Bay beach bacteria TMDL requirements. The project geographic scope should be modified accordingly."	See Response to Comment 3.6.
3.23	Multiple See List above	"Substantiation for the inclusion of the Malibu Knolls area in the prohibition was not provided by the Regional Water Board. This residential area has a large depth to groundwater and should not be included in the prohibition area."	See Response to Comment 2.3.
3.24	Multiple See List above	"The scientific and regulatory facts are clear: dischargers of wastewater in the Civic Center area often fail to meet	Comment noted.

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		<p>water quality objectives and they have the reasonable potential to cause or contribute to impairments of existing or potential beneficial uses. Thus we urge the State Board to approve this legally-binding prohibition with the considerations of geographic scope discussed above. It is critical that the State Board move forward with this prohibition as soon as possible, as we already see developers in the Civic Center area trying to rush large projects through the cracks before State Board adoption.</p> <p>A prohibition is needed to finally clean up Malibu Lagoon and Surfrider Beach to protect human health and aquatic life. Malibu has the potential to move forward with an integrated watershed management approach that utilizes recycled water and filtered stormwater instead of relying on potable water for all City needs.”</p>	
4.1	Multiple See list above	<p>“We are writing to express our support for the City of Malibu’s Community-Based Wastewater Treatment Solution because it is a more targeted, technically feasible and politically achievable plan. It has measurable and enforceable milestones to avoid stagnation and inaction. The Community-Based Wastewater Treatment Solution also would be quicker to implement because it would avoid the lengthy legal and political battles that have stalled similar projects in other cities, and would inevitably happen here.”</p>	<p>Comment noted. The prohibition CEQA documentation and alternative development assumed a Waste Water Treatment Plant (WWTP) of 610,000 gpd (based on documentation provided by the City) to treat existing commercial and residential sewage within the prohibition area. About half of this (310,000 gpd) was residential. The City’s proposal to the Los Angeles Water Board was to treat 190,000-240,000 gpd. City presentations after the Board meeting revealed that 50,000 gpd of this would be residential (Serra retreat) and that of the remaining 140,000-190,000 gpd, half would be from currently undeveloped parcels such as Loki and La Paz. The City’s new WWTP treats only one sixth of the residential flows included in the prohibition, but includes new flows from future development. While the details of the City’s proposal have not been released, it is unclear if the existing commercial facilities in the Civic Center area will be required to use a centralized system without a prohibition. The comparatively small size of the proposed treatment plant suggests that the City may exclude some existing properties and</p>

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			<p data-bbox="1144 365 1990 394">fund the plant largely with money coming from new development.</p> <p data-bbox="1144 430 2043 695">The City's Phase One Boundary includes all flat-land parcels and parcels seaward of Pacific Coast Highway in the Civic Center. This is approximately one-half of the undeveloped private commercially and industrially zoned lands in Prohibition area. Under the City's plan, it appears that future development in these areas would have to use an OWTS with discharge to the Malibu Valley and coastal area due to the lack of a prohibition and the small planned size of the centralized system.</p> <p data-bbox="1144 730 2043 1027">The City's plan does not include a 'phase 3' connection to residential properties or construction/management of multiple small residential advanced systems. Half of the water and nutrients and much of the bacteria (especially below Malibu Knolls) come from residences, based on Tech memo #4, this plan is expected to result in incomplete elimination of the impairments with significant investment. Further, the lack of such a plan discourages residents from seeking to connect to phase 1 and 2 which will have a lower per-resident cost.</p> <p data-bbox="1144 1063 2043 1328">The City's WWTP design includes treatment and collection, but not a disposal plan. The City reported to LARWQCB staff this spring that there is insufficient disposal capacity through subsurface disposal or irrigation. They have recently explored other options such as piping outside Malibu Valley, changing beneficial use requirements, and deep injection. Further, the recommended plant design was not to achieve full Title 22, thereby precluding surface irrigation, which is the largest disposal option.</p> <p data-bbox="1144 1364 2011 1461">The City's failure (1) to implement 3 previous WWTP designs, including one in Legacy Park (a land accusation which was heavily funded by the State); (2) their failure to comply with the</p>

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			<p>Memorandum of Understanding with Los Angeles Water Board directing (3) the enumeration of the OWDS, (4) Ordinance adoption controlling systems in Malibu Colony, and (5) the preparation of a long term water management plan; and (6) their re-fund to citizens of assessments collected for the Los Angeles County WWTP design, as well as (7) their representative's statements that septic systems are sufficiently protective, all suggest that the City's ability to build the proposed plant may be limited. The prohibition remains the Los Angeles Water Boards best tool to ensure the construction of an alternative and to identify the responsible parties for the upgrade of existing insufficient system.</p> <p>Los Angeles Water Board staff has compiled data from several sources indicating that both areas need to be included in the wastewater strategy that removes reliance on OWDS. The Los Angeles Water Boards plan and timeline also include measureable and enforceable milestones.</p>
4.2	Multiple see list above	<p>“The Regional Board’s resolution encompasses an expansive zone of nearly 550 residences and businesses, making it technically unfeasible because the infiltration area is not available for dispersing large quantities of treated wastewater into a small, concentrated aquifer. The Regional Board’s resolution would require the City to install an ocean outfall or discharge into the Malibu Creek aquifer to disperse the treated wastewater. Either approach would face staunch opposition from environmental groups and others, which would delay or block progress on improving water quality.”</p>	<p>See Response to Comment 4.1.</p> <p>Replacing the existing leach fields with centralized disposal does not decrease the overall assimilative capacity; it is actually a technical improvement as the quality of the water going to the subsurface will be significantly improved.</p> <p>The Los Angeles Water Board plan, contrary to the commenter’s statements, were strongly supported by all of the environmental groups and several residents. See Comments 3.1 – 3.24).</p>

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4.3	Multiple see list above	<p>“In contrast, the City’s Community-Based Wastewater Treatment Solution would target users with the highest potential impact to groundwater by focusing on the homes and businesses closest to Malibu Creek. It would allow construction of a smaller wastewater treatment plant for which there is adequate percolation area. The City’s plan already has won widespread support from the community, businesses and other stakeholders, making it more politically achievable and quicker to implement.”</p>	<p>See Response to Comments 4.1 and 4.2. Furthermore, none of the City of Malibu’s 1992, 2004 and 2007 wastewater treatment plant plans were implemented, despite state funding, the current plan not precluded. If the plan does not protect the beneficial uses of the ground and surface waters, it is not a viable plan.</p>
4.4	Multiple see list above	<p>“The City is moving aggressively to improve ocean water quality with construction to be completed later this year of Legacy Park, an innovative plan to clean up to 2.6 million gallons of storm water and urban runoff, and the launch of the Paradise Cove Clean Ocean Project on June 28. Both are important milestones in the City’s more than \$50 million commitment to clean water. The City also is spending nearly \$3 million on engineering and environmental reports for a Civic Center centralized wastewater treatment facility.”</p>	<p>The State and Regional Board applauds the advances the city has made. However, it has had more than 20 years to address the wastewater disposal problems, and there has been little to no progress. See response to comment 4.1.</p>
5.1	Jay Rubenstien	<p>“The City of Malibu continuously tries to improve water quality and our environment for its residents and visitors. City Manager, James Thorsen, is working very diligently with citizens, consultants, and organizations to reach an implementable solution regarding the Prohibitions motivation. Please empower him and our community to solve this issue and not become entangled in a quagmire of uncertainty and fear. The real estate business and property values have suffered greatly in our current economic slowdown. We need a positive solution and not a burdensome unachievable concept.”</p>	<p>State Water Board staff disagrees. See response to comment 2.12. In addition the City of Malibu may comply with the prohibition in any manner consistent with the requirements of the prohibition. The Los Angeles Water Board staff examined the costs for three potential strategies, but it is ultimately up to the city to choose a system that meets the requirements of the prohibition.</p>

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5.2	Jay Rubenstein and Meril May	<p>“Much is going on in Malibu to work with the City's plan which has widespread community support and will lead to a successful water quality protection plan with solutions which are achievable. In contrast to this progress is the overhanging devastating uncertainty of the "Resoultion".</p> <p>The uncertainty of a "Prohibition", lack of clarity, lack of timely feasible solution, property owner's fears and concerns of their property's salability and value, legal repercussions, and actual property negative value impact, are collectively very unfair and economically devastating.</p> <p>I have 45 agents which I am responsible for. The overhanging uncertainty relating to "Resolution" is detrimental to our Realtor members, associates, residents, visitors, and economy.”</p>	<p>See responses to Comments 5.1 and 4.1. The commenter fails to point out what parts of the Resolution lacks clarity and why he or she feel it is not feasible. The economic consequences, while important, do not, relieve the State or Regional Water Boards from their legal obligations to protect and improve the waters of the state.</p>
5.3	Meril May	<p>“I am a Realtor and a member of the Malibu Board of Realtors. I have helped with the local City of Malibu septic ordinance 321 that was enacted several years ago as one of the many actions done to improve water quality. (Following the body of this request is “Septic Suggestions” which I helped construct with city departments and local contractors to help homeowners, and which is posted on the Malibu Board of Realtors site, and has appeared in the local newspaper).</p> <p>In the interest of clean water, other accomplishments our community has done include: The constructed runoff treatment building by Civic Center and Cross Creek, completed. The Paradise Cove water improvement facility, recently completed. Legacy Park, an approximate \$50,000,000 city core project, which as a major component of its design includes a storm water</p>	<p>See Response to Comment 4.4. Septic systems have continued to fail even after ordinance 321 was enacted as shown in Technical memo # 1.</p>

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		runoff basin, estimated completion 2010 Fall. The Malibu area reduced water consumption approximately 18% last year. Less water consumed, less discharged into the ground.”	
6.1	Al Ehringer	“Please re review your findings; this is a perfect example of big government overreaching using outdated science. And really financially damaging modest income taxpayers.”	The findings of the Los Angeles Water Board were independently peer-reviewed. The peer reviewer(s) found that the findings were supported by current scientific data.
7.1	Jonathan Kaye	“Please allow all testing to proceed to find the real cause of the pollution in Malibu Creek. All testing data must be analyzed before a decision or ban can be made on the septic issue. There are many other ways to mitigate the septic issue than an outright ban. We must seek all options and alternatives.”	See Response to Comment 2.12.
8.1	Valeria Schwarz	“With the research I have read it sounds like septic systems are the cleaner way to go. Everyone who lives in Malibu knows the pollution of our Ocean Waters near the pier comes from Cross Creek. If we have a sewer system it does not mean we have clean water. Also many of us paid for sewers which we never received. After being taxed thousands of dollars we got back \$500. Where did all the money go? I hope this is not another money making scheme at our expense.”	The Los Angeles Water Board staff’s technical memos provide ample evidence showing that the current methods of wastewater disposal are not working, but instead are contributing to the water bodies impairment. The City and community of Malibu is responsible for complying with the prohibition. The prohibition does not state that the only solution is a centralized system. Neither the State nor Los Angeles Water Boards receive revenue from construction or operation of a wastewater treatment plant. See also Response to Comment 2.9.
9.1	Judy Fogel	“Please permit the Regional Water Quality Control Board's request for studies to determine the influence of waste water on ground water in Malibu's civic center, as well as the City of Malibu's studies, to be completed before putting a ban on Malibu's civic center waste water discharges. Don't put the cart before the horse. Let's	See Response to Comment 2.12.

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		allow the experts to gather scientific data and determine what is causing the problem before spending millions of tax payers' dollars on a "fix" that may not work. State employees are being furloughed and asked to take dramatic wage reductions. Please don't harm the state's budget further by spending millions of dollars on what many believe is an unlikely solution, particularly when the experts' studies have not yet been completed."	
10.1	Walt Keller	"Based on results of recent studies, which do not show any connection between existing residential septic systems and the Lagoon water contamination, I am opposed to the LA Reg. Water Control Board's prohibition of on-site wastewater systems in the Malibu Civic Center."	Los Angeles Water Board staff has analyzed and collected data that fully supports the prohibition and illustrates residential systems to in fact contribute to the impaired water bodies. See Staff Technical Memos 1-5. Also see Response to Comment 2.3.
10.2	Walt Keller	"The City is continuing additional studies and the State Board's hearing should not be held until all the scientific evidence is available for consideration. I attended the Regional hearing and reviewed their technical memos which were used as a basis for the prohibition. There was no data that showed that the residential septic systems were contaminating the lagoon. Water code 13280 requires that if such systems are to be prohibited, there must be substantial evidence in the record supporting that decision. There is none. There is evidence that the water is polluted – but there is no evidence as to the cause. First the cause must be identified before action is taken and money spent."	See Responses to comments 2.2, 2.3 and 2.12.
11.1	Alessandra DeClario	"I am concerned about the proposed amendment to the water quality control plan for the Los Angeles region. This amendment prohibits discharge of wastewater from all on-site wastewater systems in an arbitrarily determined area of the Malibu Civic Center."	State Water Board staff disagrees that the prohibition area was determined arbitrarily. See response comment 6.1. The prohibition area was determined using well data, previous scientific data, and hydrological data, all of which can be found in the Los Angeles Water Board staff reports and technical memos.
11.2	Alessandra	"This ban is being placed to solve a problem when we	See responses to comments 2.2, 2.3 and 2.12.

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	DeClario	don't have a complete understanding of the cause. Since this ban is based on information which has not been validated, am asking that the question of what and where the pollution is coming from be answered first before large amounts of dollars are spent. We all want the final outcome to be pollution free waters NOT spending millions of dollars when it's not known if it will achieve the correct results."	
11.3	Alessandra DeClario	"The City of Malibu has been conducting research along with several other studies to comply with The Regional Water Quality Control Board request that studies be done to determine the influence of wastewater on ground water within the Civic Center. The results of <u>all</u> the studies must be taken into consideration to obtain a solution to pollution free waters."	See Response to Comment 2.12.
12.1	E. Barry Halderman	"There is no question that we must be concerned about the quality of water in Malibu and the water that empties into the ocean. Believe it or not, most of us are. There is no doubt that the community would support enforcement and even inspections of septic systems to make sure they comply with current law. But the Board's approval of a regulation that would lead to a treatment plant with, no doubt, an ocean outfall, leads us down a dangerous path."	See responses to comments 4.1 and 4.2.
12.2	E. Barry Halderman	"Malibu is a unique place that entertains millions of visitors a year. But part of its uniqueness comes from the fact that it has not allowed itself to be developed to the point where it becomes just another Miami Beach. The introduction of a treatment plant would encourage additional development (since there would be increased capacity for wastewater)--something the residents do not want. In addition, with no place to put the treated water,	See Response to comment 12.1. Water quality enforcement cannot be used as an alternative method to control growth. If the majority of citizens prefer slow or no growth, there are political mechanisms that can achieve that goal without sacrificing water quality. Also the current system is not functioning. Wastewater treatment plants must be designed to be effective, and to prevent spills, and they must be designed to accommodate projected flows. The Regional Water Board will review the design once the City has established its

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		there will no doubt have to be an ocean outfall. As you know, there are frequent cases where a treatment plant is either defective or overtaxed to the point where raw or poorly treated sewage is sent into the ocean through an outfall. It requires the closure of beaches and is a severe blow to local business.”	compliance strategy to ensure that the strategy will achieve compliance with the prohibition, and will ensure that the affected waters meet the designated water quality objectives.
12.3	E. Barry Halderman	“To be clear, Malibu residents are not against making sure septic systems are operating at peak efficiency and that there be fines levied if they are not. But to ban systems entirely, even efficient ones, can not only cause extreme financial hardships, but can also cause unintended consequences that we have been fighting for years. Please, please help us find another way to solve this problem.”	Well data has shown that even upgraded septic systems with disinfection, continue to fail, and not comply with groundwater quality standards. Fines and other enforcement tools levied against individual homeowners do not address the impaired water bodies as required by the Clean Water Act. See response to comment 2.9.
13.1	Rick Wallace	“The Local Water Board is threatening to mandate a huge sewer system in our Civic Center area that will cause many of us to have to sell our places. WE CANNOT AFFORD IT.”	See Response to Comment 2.9.
13.2	Rick Wallace	<p>“Please note: I am a CONDO homeowner near the Civic Center. There are 4 CONDO COMPLEXES that have our OWN TREATMENT PLANT. We dispose of our sewage cleanly and efficiently!!!! We have had no problems and not harmed the environment in the least!</p> <p>The Water Board wants us to hook up to ANOTHER system, at a cost of possibly \$1000/month - AND IT IS UNNECESSARY. At the very least, WE SHOULD NOT BE IN THE ASSESSMENT ZONE.”</p>	State Water Board staff is aware that some of the condominiums in the area have been upgraded to a better performance level than typical OWDSs. However, these package treatment plants cannot meet the nutrient requirements and do not have sufficient treatment to completely meet disinfection requirements. The prohibition does not state that the only solution is a centralized system. If the package systems do provide complete treatment that meets the water quality objectives, the system may be included as part of a multi-plant treatment solution. Alternately, the effluent from the package system could be directed into the centralized disposal system. In any case, the OWTS must meet the water quality requirements and is not compliant simply because it is new.
13.3	Rick Wallace	“The water Board has badly misidentified the problems.	See Response to Comment 4.1.

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		<p>THE CITY OF MALIBU PLAN IS SO MUCH MORE FAIR AND DOES A BETTER JOB OF ADDRESSING THE PROBLEM.</p> <p>The zone is way too big – affecting those of us that should not be involved and cannot afford to be.”</p>	
14.1	Gila Michael	<p>“I LIVE IN MALIBU, I AM ALREADY IN FINANCIAL TROUBLE AND DO LIKE ANY CHANGES, FROM EXISTING CONDITION. THERE IS NO MONEY, AND I AM FINE. AND I AM HAPPY THE WAY THINGS ARE.”</p>	<p>See Response to Comment 2.9. This prohibition is required to address well documented water quality impairments. The Los Angeles Water Board is required by both State and Federal laws to address these impairments.</p>
15.1	Kevin Poffenbarger	<p>“I am President of a civil and environmental engineering firm that is actively engaged in the design of septic systems in the proposed prohibition area as well as throughout California. Whenever a potential new client is geographically situated close to a sewer, our firm always recommends that they invest the additional capital in abandoning their septic system and tying into the sewer. We recommend this not because a sewer is more effective at protecting public or environmental health, rather out of the long-term convenience of not having to be responsible for water use. In reality, given the water issues that face this state, properly managed decentralized wastewater systems are not only more environmentally conscientious but also impose water conservation upon the homeowner. Whereby I agree with the intent of the prohibition, I also firmly believe that should you approve the prohibition as currently proposed you will ensure 30-years or more of litigation, lack of agreement, lack of funding, and ongoing pollution in the Malibu watershed. This is unacceptable.</p> <p>Prohibiting new discharge is an ineffective tool to accomplish change, which has been demonstrated across the state.”</p>	<p>One of the compliance strategies presented by the Los Angeles Water Board in its staff report is decentralized waste management (see page 19 of the staff report.) The threat of extended litigation cannot deter the accomplishment of the Water Boards’ mandate to protect water quality. If this prohibition is approved and amended into the Basin Plan, it will be enforceable by law.</p>
15.2	Kevin	<p>“Significant advanced wastewater treatment</p>	<p>See responses to comments 4.1 and 12.3. The State Water Board</p>

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	Poffenbarger	<p>infrastructure already exists in the proposed prohibition area, which was constructed at considerable expense. This existing infrastructure improves water quality today rather than in 30-years. The opportunity exists to encourage additional advanced treatment systems to improve water quality today while developing a long-term solution that will ensure water quality in the future. The failure is not in the alternative, advanced treatment systems, rather in the responsible public entities to cooperate and work efficiently to manage the systems already in place. Rather than voting to approve the prohibition and ensuring taxpayer dollars will be wasted on litigation, I encourage you to consider allocating a fraction of these resources towards contracting an independent, qualified private entity to produce a solution that can be implemented in the near future.”</p>	has no role in contracting work for compliance with the prohibition.
16.1	Multiple see list above	<p>“I Support the City of Malibu’s targeted and scientifically sound solution to maintaining water quality in the Civic Center Area. I Oppose the LARWQCB’s Resolution and Prohibition. I respectfully Request the State Water Resource Control Board remand the issue to the LARWQCB.</p> <p>The City’s plan has widespread community support and will lead to a successful water quality protection plan. I wholeheartedly support the improvement of our community and clean water for our members, residents, businesses, and visitors. Improving water quality strengthens real estate values and offers stability in this challenging market. Uncertainty relating to the LARWQCB "Resolution" is detrimental residents, visitors, and economy.”</p>	See Response to Comment 4.1.
16.2	Multiple see	“The "Resolution," as it currently reads, will inevitably	The Los Osos case is a negative example of what can happen after

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	list above	lead to a flawed plan which cannot be implemented and the result will be another decades-old, unresolved situation, as has been the case in Los Osos. This would be an undesirable result and would be detrimental for all who strive to achieve clean water.”	<p>prohibitions when there is less public participation and outreach. On the other hand there are several examples of positive cases involving septic prohibitions including:</p> <p>1) Los Angeles Water Board’s El Rio Septic Prohibition : The town of El Rio in the Oxnard Forebay received a septic prohibition in 2001. Phase-out the use of septic systems in East El Rio, which was a major source of NPS pollution and groundwater contamination in a farming area, and construction of a lateral main sewer was accomplished largely through public/grant funding supported by the Los Angeles Water Board, in spite of public opposition. The project is nearly complete.</p> <p>2) Los Angeles Water Board’s Replacement of State-wide Septic Waiver: In 2000 a statewide waiver of WDRs for all septic systems was rescinded and the Los Angeles Water Board responded by permitting all septic systems in the Region, either directly or by delegating permitting authority to cities or counties through agreement. The Counties of Los Angeles and Ventura, and the Cities of Palos Verdes Estates, Rolling Hills Estates, Calabasas, Walnut, Rolling Hills, Agoura Hills, La Habra Heights, Bradbury, Duarte, and Hawthorne all accepted modification of septic system permitting and moved toward reduced septic system use. The method has been highly successful and received public and municipal support.</p> <p>(The City of Malibu is unique in the continued public reliance of septic systems in the presence of continuing water quality violations)</p> <p>3) Los Angeles Water Board’s MOU with La Canada: A Memorandum of Understanding between the City of La Canada/Filntridge and Los Angeles Water Board in 2003 resulted in the replacement of septic systems in that City with a sewer connection. The construction of the collection system was staged</p>

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			because of resistance by residents. Commercial facilities were connected first with a gravity line, followed by residential connections. New assessment districts and more education and cost analysis by the City helped to achieve the result. Only the most expensive residences, which are furthest from the main collection lines, are not yet sewered, and their owners continue to reject an assessment.
16.3	Multiple see list above	<p>“The City of Malibu has implemented several plans to improve water quality. Ordinance 321 has become very effective with regard to inspections, certifications, and monitoring of septic systems. A storm water facility to provide initial treatment was constructed in the core area. The Paradise Cove Clean Ocean Project is underway. Legacy Park, an approximately 50 million dollar project, was initiated and is under construction to help reduce storm water runoff into the ocean, while providing a central park for residents and visitors. In addition the city is spending nearly 3 million dollars related to engineering and environmental reports for a centralized wastewater treatment facility.”</p> <p>“The City of Malibu’s community based solution involves many people and entities committed to improving water quality through a solution that is effective, and more importantly, feasible to become operational within a reasonable amount of time.”</p>	See Response to Comment 4.1 and 5.3.
17.1	Louis Busch	“The residential areas that have their septic systems in the Serra Retreat area are functioning properly. Many are over an acre or more and have ample space and proper drainage; my own system has been functioning properly for almost half a century.”	Well data gathered by the Los Angeles Water Board staff shows otherwise see Technical Memo #2.
17.2	Louis Busch	“The problem lies in the commercial properties in the lower plain area where the water table has risen due to	State Water Board staff agrees that commercial properties and discharges from Las Virgenes Water Treatment Facility are

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		millions of gallons of treated effluent that the Las Virgenes Water Treatment Facility dumps into the Malibu Creek daily. It has been known for a long time that “tertiary treatment does not eliminate all viruses.” As state by the world renowned Dr. Newcomer who was my neighbor for many years.”	significant contributors to the impairments. However, it has also been shown that residential systems are contributing to both bacteria and flow. While Dr. Newcomer may be correct, this prohibition is based on indicator bacteria and not viruses.
18.1	Grant Adamson	“We are the owner of four parcels of commercial property totaling approximately 12 acres in the Malibu Civic Center. This property has been owned by our family for over 115 years. We have supported every effort towards putting a wastewater collection system in this area. Too many septic systems need regular pumping. There is too much septic odor. There are issues with ground and surface water quality in this community.”	Comment noted.
18.2	Grant Adamson	“The Regional Board's prohibition covers an area of many residences. Many of these owners are a significant distance from Malibu Creek and Lagoon. Many of these residential owners honestly believe there is no way that their effluent in their septic systems could possibly reach Malibu Creek and Lagoon. The installation of a wastewater collection system will necessitate an assessment district. If the proposed district is the area mandated by the Regional Board, we believe the voters in this area being primarily residential; will probably oppose the formation of the district. Conversely, if the proposed district is the area proposed by the City of Malibu's plan, there will be fewer residences included in the proposed assessment district and therefore, the proposed assessment district will have a better chance of being approved by the voters.”	State Water Board staff cannot predict nor mandate the City's strategy for compliance, nor can it predict the reaction of the residents to whatever strategy it decides. See also response to comment 4.1.
19.1	Robert Gold	“AZWM unequivocally supports the State Board's objective to improve the water quality for both existing	Comment noted.

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		<p>and potential beneficial uses in the State of California and specifically in the Malibu Civic Center area. To this end we have delivered to the City of Malibu a willing seller letter with respect to an approximately 1 acre parcel of land owned by AZWM immediately adjacent to the Colony Plaza wastewater treatment plant in Winter Canyon- a site which the City is considering for the location of the compliance project. If the City determines to locate a wastewater treatment plant at the site of the existing Colony Plaza treatment plant, this parcel could provide the City with additional area for such a plant, if needed.”</p>	
19.2	Robert Gold	<p>“We also strongly believe that the Basin Plan Amendment will not progress improved the water quality for both existing and potential beneficial uses in the Malibu Civic Center area. Rather if approved in its current form, we believe that the Basin Plan Amendment will have the unintended consequence of delaying the realization of this objective for the following two reasons. First, we believe the boundary of the proposed prohibition area is too large, making it technically unfeasible because there is not sufficient infiltration area available to disperse the large quantities of treated wastewater that would be produced from the proposed prohibition area, into a small, concentrated aquifer. In order to disperse the clean effluent, the City would need to install an ocean outfall or discharge into the Malibu Creak aquifer. Either of these approaches would most likely face opposition, from various groups and regulatory bodies, thus delaying or preventing the achievement of our shared goal of improved water quality. Second, history has demonstrated, i.e., Los Osos, that unless there is strong community support for</p>	See Response to Comments 4.1, 4.2 and 16.2.

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		a wastewater management plan, the implementation of such plan and the achievement of its objects can be delayed significantly.”	
19.3	Robert Gold	“The boundaries of the Prohibition area have been expanded significantly since the publication of the Staff Report. The Staff Report fails to analyze the environmental impacts of the Prohibition and compliance projects subsequent to the expansion of the Prohibition area.”	The final environmental staff report and environmental checklist were updated and signed on November 4, 2009. This is the same date that the Los Angeles Water Board adopted Resolution R4-2009-007. All boundaries were analyzed and current upon adoption.
19.4	Robert Gold	“The Staff Report fails to analyze other potential causative factors to the degradation of the groundwater quality in the Prohibition area. State Water Resources Control Board Resolution No. 88-63 (as revised by Resolution No. 2006-0008) provides that "all surface and ground waters of the State are considered to be suitable, or potentially suitable, for municipal or domestic water supply and should be so designated by the Regional Boards with the exception of' where "there is contamination either by natural process or by human activity (unrelated to the specific pollution incident) that cannot reasonably be treated for domestic use using either Best Management Practices or best economically achievable practices..." The Staff Report further fails to analyze whether the groundwater in the Prohibition area could be reasonably treated for domestic use using either Best Management Practices or best economically achievable treatment practices after the enactment of the Prohibition.”	See Response to Comment 2.10.
19.5	Robert Gold	“The staff report does not contain any analysis of potential cumulative environmental impacts from future LARWQCB action in the City of Malibu.”	Starting on page 43, the final staff report, which is a part of the Water Boards’ certified regulatory program substitute environmental documentation, analyzes cumulative impacts associated with the prohibition and related TMDLs. This Basin Plan Amendment process is not the appropriate manner to consider a change in

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			beneficial uses or the appropriateness of a beneficial use. The commenter states the Los Angeles Water Board did not consider “environmental impacts from future LARWQCB actions in the City of Malibu.” The Los Angeles Water Board did not have any “reasonably foreseeable probable future projects” in the City of Malibu to evaluate at the time the prohibition was being considered, and did consider past and present projects.
19.6	Robert Gold	“Winter Canyon and (Malibu Creek watershed) have from a hydrologic perspective been consistently viewed as separate and distinct watersheds and basins. There is no scientific basis to conclude that Winter Canyon and the Malibu (Creek) Civic Center Area watersheds are hydraulically connected. These two areas are very different with respect to aquifers, water levels and flow gradient. In fact in 2003 the DWR delineated the boundaries of the (Malibu Civic Center Area), termed "Malibu Valley Groundwater Basin and in 2004 defined it as "a small alluvial basin located along the Los Angeles County coastline. The basin is bounded by the Pacific Ocean on the south, and by non-water bearing, Tertiary-age bedrock on all remaining sides. The valley is drained by Malibu Creek into the Pacific Ocean." The map delineating the DWR limits of the Malibu Valley Groundwater Basin (DWR Basin Number 4-22) does not include Winter Canyon.”	Concerning the groundwater flow direction from Winter canyon: The 76 station Number 6267 (Geotracker ID number T0603799278) has a groundwater well with east and southeast movement of a gasoline/MTBE plume. The well data documents flows from the Winter Canyon area east toward Malibu Lagoon.
19.7	Robert Gold	“Technical Memorandum #4 (page T4-9) states that "the greatest volume of wastewater from Sector I is discharged into the Winter Canyon drainage, but the Winter Canyon flow is estimated to have a relatively low contribution (1 %) to Malibu Lagoon." This Memorandum then states that "(m)ost of the wastewater discharged in Winter Canyon is assumed to discharge into Malibu Beach." (Emphasis added). However, no support is	See Response to Comment 19.6. In addition, the environmental and technical Staff reports were based on informed best professional judgment and an equivalent or greater data base. Staff selects monitoring stations above and below beaches with equivalent hydrological conditions and uses standard methods to extrapolate the results to a specific location between the sampled locations.

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		<p>given for the assumption that most wastewater from Winter Canyon is discharged to Malibu Beach. Neither Technical Memorandums #3 or #4 contain any information on the water quality at Amarillo Beach or an analysis of the possible impacts of the mixing of waters that might occur south of Malibu Road, at the ocean/groundwater interface on Surf rider Beach, the Malibu Lagoon or Creek. In the event groundwater coming from Winter Canyon contained pathogens, water cannot be transported by long-shore currents from the ocean off Winter Canyon into the Lagoon because the Lagoon is topographically higher than the ocean and except in breach conditions is prevented from entry by a sand bar.”</p> <p>“On page T4-12 of Technical Memorandum #4, a discussion of the 180 homes located in Sector iv indicates that "Wastewater, from the five commercial properties and most (107) of the homes, discharges directly to the ocean and the beaches north of Malibu Lagoon. A portion of the nutrient and bacteria load discharged to the beach can be transported with sediments toward the Lagoon by the prevailing long-shore movement of northwest to southeast. Once transported toward the lagoon, it can enter the Lagoon through tidal inflow. The U.S. Environmental Protection Agency estimated that tidal inflows contribute only 1 % of the nutrient load in the Malibu Lagoon. Staff estimates that 1 % of the 42,040 gpd of wastewater discharged in the main area of Section iv could reach the Lagoon, but acknowledges the proportion could be much smaller." After acknowledging that potentially none of, but at most 1 % of wastewater discharge from the main area of</p>	

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		<p>Section iv, the majority of which is being discharge from systems that do not have advanced treatment systems, the inclusion of Winter Canyon in the Prohibition area simply cannot be justified. In fact, the information contained in Technical Memorandum #4 negates the purported technical justification for including Winter Canyon in the Prohibition area.”</p> <p>“In view of the complete lack data On the quality of the ground water in Winter Canyon, on October 1, 2009 AZWM (in conjunction with Malibu Bay Company which owns the property immediately to the east of the Towing) had Earth Consultants International ("ECI") collect groundwater samples from four monitoring wells: TY-MW-I, TY-MW-5, MBCWC-MW-2 and 5MBRP-II and tested the samples for the following: Fecal Coliform, Total Coliform, Born, Chloride, Nitrate, Nitrite, Sulfates and TDS. It should be noted that TY-MW-I is located at the northern portion of the Towing Site. The results of these tests are contained in ECI Reported dated October 7, 2009 (See copy annexed hereto as Exhibit "5"). The Report states: "The analytical results suggest that the aquifer waters do not meet Secondary drinking water standards due to elevated concentrations (above MCL) of chloride, sulfate and TDS. Additionally Total Coliform was detected in the groundwater samples collected from the northern-most and southern-most monitoring wells in the study area. The absence of Total Coliform in the groundwater samples collected from the two wells between the northern-most and southern-most monitoring wells suggest that Coliform entering the system from up gradient sources (north of Pacific Coast Highway) are removed before the groundwater reaches</p>	

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		<p>Malibu Road. The source of Coliform in the groundwater sample collected from Well 5MBRP-II appears to be the septic systems of homes directly south of Malibu Road." These tests results further confirm that Winter Canyon, including AZWM's properties are not contributing pathogens in wastewater to the beaches and ocean, including Amarilo Beach, Surf rider Beach, the Malibu Lagoon or Malibu Creek."</p>	
19.8	Robert Gold	<p>"The failure to include a revised Summary of Economics reflecting the expanded Prohibition area, future development within the Prohibition area, and possible future compliance efforts required outside the Prohibition area, also renders the Staff Report noncompliant with the California Water Code. Water Code section 13241 requires the Regional Board to consider, when exercising its discretion, a list of nonexclusive factors, including beneficial uses, environmental characteristics, realistic outcomes, economics, the need for housing, and the need to recycle water. California law further requires the Regional Board to provide a record of the required analysis which is sufficient to demonstrate that it has meaningfully weighed and considered each of the prescribed non-exclusive factors. See Topanga Assn. for a Scenic Community v. County of Los Angeles (1974) 11 Ca1.3d 506, 515 ("the agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. . . . (and) the relationships between evidence and findings and between findings and ultimate action. . . .")."</p>	<p>As set forth in the Final Environmental Staff Report (FESR) on page 6, the Water Code section 13241 factors were addressed by the Los Angeles Water Board in the technical memorandum and in the FESR itself.</p>
20.1	Edward Gonzalez	<p>"Most of us are middle class residents comprising retired seniors, working single moms, self-employed entrepreneurs, small business owners, and</p>	<p>Staff does not believe that the prohibition will necessarily lead to prolonged court and political battles; there have been numerous examples or positive outcomes from previous prohibitions in the</p>

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		professionals. And because much of our future financial security is tied-up with our homes, we fear that prolonged court and political battles over the Regional Board’s sewer plan would not only delay its implementation, but also cause great uncertainty if not a precipitous drop in the housing market since our homes are within the Regional Board’s prohibition zone.”	region. The prospect of prolonged litigation may not deter the Water Boards from their responsibility to protect water quality. See response to comment 16.2.
20.2	Edward Gonzalez	“The 191 units in the four complexes do not rely on septic systems, but are connected to a wastewater treatment plant that is operated and maintained by Los Angeles County; we pay for its operating costs and for a state loan that enabled LAC to expand and upgrade the facility a few years ago. Meantime, for decades we’ve had to suffer the stench emanating from the Malibu Bay Company’s seepage pits across the street on Civic Center Way, which are used for the effluent from the Malibu Colony Shopping Center. Therefore, we welcome the prospect of a state-of-the art sewer system that will relieve us of the odors and unsightliness of the present system.”	Comment noted.
20.3	Edward Gonzalez	“The Regional Board’s proposed septic prohibition and sewer recommendation is <i>not</i> the solution, however. It’s too expansive with its sledgehammer approach toward nearly 550 homes and businesses, probably too costly for most residents and business owners, and apparently technically unfeasible due to the necessity of dispersing huge quantities of treated wastewater into unavailable or unsuitable tracts of land. If so, the effluent would have to be discharged into Malibu Creek or the ocean, both of which are certain to be strenuously opposed by Malibu residents, environmental groups and the general public, thereby increasing the probability of prolonged litigation which will lead to several years of deadlock and	See response comment 4.2

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20.4	Edward Gonzalez	<p>stagnation over the sewer issue.”</p> <p>“In contrast, the City of Malibu’s Community-Based Wastewater Treatment Solution offers a more targeted, technically feasible, and politically achievable plan. It would be implemented in phases, beginning first with those homes and businesses closest to Malibu Creek and the Civic Center. It would rely on a smaller centralized wastewater treatment facility for which there already appears to be a site for a high-tech plant and an ample percolation area, both of which will allow the future hook-ups of our condo/townhomes complexes. And because it is a community-based plan that already has broad support among residents and business owners, there is much less likelihood that the plan will be tied-up in litigation and political challenges.”</p>	See Response to Comment 4.1.
20.5	Edward Gonzalez	<p>“We understand that the City of Malibu is spending nearly \$3 million on engineering and environmental studies for its proposed Civic Center wastewater treatment facility.</p> <p>Hence, we urge that you and the other members of the State Water Resources Control Board allow the City to go forward with its proposed plan, and that you instruct the Regional Board to work closely with the City in implementing a final plan that is backed not only by state agencies, but also by Malibu’s own city government and residents.”</p>	See Response to Comment 2.12.
21.1	William Fujioka	<p>“The County of Los Angeles ("County") owns four public facilities in the area affected by the On-site Wastewater Treatment System ("OWTS") prohibition adopted in the Basin Plan amendment. The facilities are: County Fire Station 88, Road Maintenance Yard 336, a public restroom facility located at Surfrider Beach, and the Malibu Civic Center (which houses the County library,</p>	<p>The State Board cannot make changes to the Basin Plan Amendment adopted by the Los Angeles Water Board. See also Response to Comment 1.1.</p> <p>The technical memoranda have shown that OWDSs serving the county are contributing the impairment of both ground water and surface water in the Civic Center Area. Therefore the county</p>

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		<p>Superior Court, and field office of Waterworks District 29). These County facilities provide critical public services. Fire Station 88 is an essential public safety facility as defined by the State of California Building Code.</p> <p>The U.S. Environmental Protection Agency and both State and local health departments have all confirmed that OWTS are a safe and effective means of private sewage disposal. The OWTSs serving the County facilities within the proposed prohibition area have been approved by the local building official, health officer and the Los Angeles Water Board ("Regional Board").</p> <p>Additionally, the County believes it can produce evidence that these systems do not cause or contribute to exceedances of groundwater and/or surface water standards.</p> <p>The County therefore requests that the State Board either amend the Basin Plan Amendment or return the Amendment to the Regional Board with directions to include a provision allowing the continued use of OWTSs at the above-identified County facilities."</p>	<p>facilities should be included in the prohibition.</p>
21.2	William Fujioka	<p>"As an additional comment directed to the State Board, if the Board elects not to exempt these critical County facilities and approves the Basin Plan amendment, the County would request that it be afforded a safe harbor (i.e., continued operation of the OWLS beyond the deadlines set forth in the Basin Plan amendment) if the alternative to individual OWTSs is not operational by the dates called for in the Basin Plan amendment.</p> <p>Obviously, shutdown of such critical facilities as a fire station and a court operation would be drastic and create potential health and safety concerns for the residents of the Malibu area."</p>	<p>The timelines afforded in Resolution No. R4-2009-007 allows ample time for compliance. Title 14, California Code of Regulations, section 15364 defines "feasible" as capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors. The Los Angeles Water Board determined that compliance with the prohibition within the timelines it adopted was feasible, relying in part on the testimony of the City of Malibu, stating that it could achieve its proposed plan by 2015 (see Transcript, pages 284-288).</p>

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21.3	William Fujioka	“The State Board's notice does not include evidence of any of the review required by Water Code section 13283. Moreover, the amended notice proposes to cut off the right of interested parties to comment with the submission of the comments due on July 12, 2010, even though the Section 13283 review has not been released to the public. State Board staff must conduct the review required by Section 13283 and provide that review to interested parties for comment prior to the State Board taking action on the Basin Plan amendment.”	It is not the State Board’s responsibility to include a review under section 13283, the State Board reviews the Los Angeles Water Board’s analysis and either deems them in compliance or not in compliance. The Los Angeles Water Board staff report includes adequate review to meet the requirements of section 13283. See Response to Comment 2.11. In addition, the notice provided a reasonable period and cut-off for written comments; comments may still be provided to the State Water Board at the approval hearing within the time constraints provided.
21.4	William Fujioka	“The Regional Board has indicated that it has conducted the Section 13283 review, stating in paragraph 9 of the final Regional Board resolution that "the Regional Board has conducted a preliminary review of possible alternatives, as documented in the staff report." A review of the Final Environmental Staff Report does not, however, reveal any discussion of the required alternatives of "community collection and waste disposal systems which utilize subsurface disposal" or a combination of such systems, individual disposal systems and conventional treatment systems, as is specifically required by Water Code section 13283.”	The Los Angeles Water Board examined these ideas in the technical memoranda by illustrating that current systems and strategies are failing, including those implemented by the Malibu Creek Watershed Nutrient TMDL and the Malibu Creek and Lagoon Bacteria TMDL, which, taken together complies with Water Code section 13283.
21.5	William Fujioka	“As this comment concerns either actions by the State Board taken following the Regional Board's action in adopting the Basin Plan amendment, or the Final Environmental Staff Report, prepared after the deadline for comments, it could not have been raised by the County before the Regional Board.”	State Water Board staff disagrees. The County could have raised these concerns during the Los Angeles Water Board’s comment period when the Draft Environmental Staff Report was available for review. The final staff report is, among other things, an updated version of the draft report in Response to Comments received during the public comment period.
21.6	William Fujioka	“Notice of the proposed prohibition was provided via publication, via e-mail and to persons who had requested notice. However, notice was not provided to individual property owners or business owners who would be affected by the OWIS prohibition. Also, the	State Water Board staff disagrees. The Los Angeles Water Board complied with the noticing requirements outlined in Water Code section 13244 and gave the public ample notice to provide written comment. In addition, the Los Angeles Water Board met the requirements set forth under the Federal Water Pollution Control Act

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		hearing notice provided only that interested persons could file written comments, and would be given an opportunity to speak at the Regional Board meeting on November 5, 2009. Such a failure to provide adequate notice and opportunity to be heard violated statutory and regulatory protections. See, e.g., Govt. Code section 11410.10 et seq.; Title 23 Code Reg. sections 648-648.8.”	(33 U.S.C. Sec 1251 et seq.).
21.7	William Fujioka	“The Regional Board’s Hearing on November 5, 2009 was an adjudicative hearing requiring compliance with applicable section of the California Water Code and Administrative Procedures Act.”	The Los Angeles Water Board’s Hearing was not an adjudicative hearing but rather a quasi-legislative hearing and therefore does not need to comply with the processes outlined for and adjudicative hearing.
21.8	William Fujioka	“The Final Environmental Staff Report ("ESR") prepared for the project does not fully define the project. According to the ESR, the project consists of the prohibition of OWTSs. The alternatives discussed include: (1) an initiative by local government to cease discharges through OWTS by providing community services to collect and dispose/reuse wastewater; and (2) a "no action" alternative. However, since it is directly foreseeable that the community will necessarily require an alternative to owts, and since the Regional Board's proposed Resolution directs the City to plan and construct a project to comply with the prohibition, Alternative 1 should be considered as part of the project and its effects on the environment should be analyzed along with the prohibition.”	State Water Board staff disagrees. Program alternative 1 relies on an existing or newly formed government entity to voluntarily plan, design, construct, and operate a project that would provide dischargers in the Malibu Civic Center area with community wastewater collection, treatment, and disposal services. Such a voluntary, or discretionary, effort is not currently available. Or, if such an initiative does form, it may not be able to act in a timely manner to complete projects to achieve water quality goals and restore beneficial uses. Therefore, program alternative 1 is not a preferred alternative and different from the proposed prohibition. In addition, the Los Angeles Water Board was not required to include alternatives in its analysis that would not meet the project’s legal requirements.
21.9	William Fujioka	“Additionally, the ESR does not separately analyze the project and each of the three "possible projects" that are suggested under Alternative 1 in order to provide a meaningful ability to compare the impacts from each. Further, the ESR does not analyze any alternatives involving a partial ban (for example directed toward	The Los Angeles Water Board was not required to review alternatives that would not meet the legal requirements of protecting the waters for their beneficial uses. Analysis of the 3 possible compliance projects can be found in the final staff report on pages 15-20. The environmental staff report did not analyze alternatives involving a partial ban because it was deemed that such an

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		<p>dischargers for whom a direct link has been established with the impairments cited). The environmental impacts anticipated from a targeted prohibition would likely be less than the proposed total prohibition. A discussion of reasonably foreseeable alternative means of compliance with the prohibition is required by Public Resources Code section 21159(a). A review of possible alternatives to achieve protection of water quality is also required by the State Board, pursuant to Section 13283 of the Water Code (see discussion in Section 2, above)."</p>	<p>alternative would not be in compliance with the objectives of the prohibition and the TMDLs already in place. See Response to Comment 21.8. Further staff could not examine possible impacts to projects that were not presented, which is the reason the environmental checklist indicates that compliance projects will be subject to environmental subsequent review on a project level basis. Review of a basin plan amendment is akin to a programmatic environmental review, and can only achieve review on a programmatic level.</p>
21.10	William Fujioka	<p>"The section entitled "Discussion of Environmental Evaluation" concludes that there are mitigation measures available to reduce potentially significant environmental impacts to less than significant levels without describing the measures necessary or the manner in which they will reduce the impacts.</p> <p>The Regional Board's response to these comments 1 was inadequate, as it used the excuse that since "details of these projects do not exist," a more detailed analysis was not possible. Certainly, the options outlined in the ESR for addressing the volume of wastewater suggest immediately identifiable impacts as well as mitigation measures. And, it was not the job of the commenter's to perform this analysis, as suggested by the Regional Board in citing the CEQA guidelines, title 14 Code Reg. section 15086(d). This section applies to comments made by "responsible agencies" and "trustee agencies" in response to a draft EIR, and not to the comments of public agencies on a substitute environmental document. Citation of this section is inapposite and did not excuse the Regional Board's failure."</p>	<p>State Water Board staff concurs with the Los Angeles Water Board's staff responses.</p>
21.11	William	<p>"The unavoidable significant adverse impacts section</p>	<p>State Water Board staff believes that the Regional Board staff's</p>

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	Fujioka	does not specify which impacts would be significant and unavoidable, as required by Section 15126.2 of the CEQA Guidelines. The Regional Board responded to this comment by indicating that it had supplemented the discussion of unavoidable significant adverse impacts in the final ESR. That discussion, however, is still not adequate. Instead of grappling with the impacts, the ESR only notes that to "the extent that there are unavoidable significant adverse impacts, those impacts are temporary in nature, predominately arising from construction of compliance projects, and temporary nuisance impacts associated with abatement of the use of OWTs." This "discussion" does not describe these impacts, even though the ESR appears to acknowledge that they exist."	analysis was sufficient given the information that was available. The analysis states that any compliance measure will have temporary unavoidable impacts associated with nuisance dealing with construction. Because the Los Angeles Water Board can only suggest a method of compliance, and because it is the responsibility of the parties to determine a compliance project, a more detailed environmental review under CEQA will be preformed once a project proposal is submitted.
21.12	William Fujioka	"The ESR does not contain information to demonstrate that a project could be completed within the periods required in the Basin Plan Amendment. In the event that these timeframes are insufficient to allow for completion of an alternative system for wastewater discharge, the ESR should identify the impact of a prohibition in the absence of another means of addressing wastewater disposal for the area subject to the prohibition. A similar comment was made by the County to the Regional Board. Regional Board staff responded by stating that "(s)taff does not believe that it is a reasonably foreseeable conclusion that no action will be taken by the prohibition deadline date, and thus did not evaluate the impacts from the losing of the entire Malibu Civic Center area." With respect, this response was inapposite to the issue raised by the County. The issue concerned the problem, also raised earlier in these comments, of what would occur if the alternative system	State Water Board staff agrees with the Los Angeles Water Board. It is not a foreseeable action to conclude that no compliance will be completed in the timeframe outlined by Resolution No. R4-2009-007; CEQA does not require analysis of an illegal alternative. The community and City of Malibu has already had over 20 years to deal with its wastewater problems; steps should already be in place to comply with the prohibition.

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		<p>to individual OWTS was not completed by the deadlines set forth in the Basin Plan amendment. Because the amendment does not have any "safe harbor" for the property owners affected by the OWTS ban, presumably, those property owners will be required to find other wastewater disposal alternatives. Such alternatives clearly would have environmental consequences. For example, were the County not able to operate Fire Station No. 88, fire protection in the Malibu area would be adversely affected. Given the significant steps required even to fund a central wastewater treatment plant (which will also require the formation of a special assessment district, a step requiring an election and potential additional delay), the potential for environmental consequences arising from the ceasing of operation of individual OWTS is "reasonably foreseeable."</p>	
21.13	William Fujioka	<p>"The County noted in comments to the Regional Board that the ESR does not address the impacts to global climate change from the project or from any of the alternatives, including construction related impacts and impacts from removal of existing equipment. The Regional Board's response indicates that greenhouse gases were not quantified due to a lack of agency guidance on how to determine the significance of greenhouse gases. However, as of the date the ESR was completed, methodologies are available to perform a quantitative and/or qualitative analysis of global climate change effects of the project. This type of analysis is not considered speculative. Some sections of the ESR have been revised to mention climate change. However, there is no analysis provided and no support for the simple conclusion that there will be no change in</p>	<p>Los Angeles Water Board staff cannot quantify green house gas emissions resulting from construction, absent a compliance project. It is beyond the scope of the environmental staff report, and will be addressed on a project level basis.</p> <p>The Los Angeles Water Board, in its response to comments, stated that "because the potential compliance projects were hypothetical and not at all subject to specific characterization, any analysis done would be somewhat speculative." The Los Angeles Water Board exercised its best judgment and tried in good faith to determine the potential climate change impacts. The Los Angeles Water Board stated that the mitigation measures for climate change impacts are evolving and cited the California Air Resources Board's Climate Change Scoping Plan, dated December 2008, which sets forth several potential mitigation measures that should be considered by the lead agency reviewing the compliance projects. These</p>

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		<p>climate under the Air Quality Section. The ESR did not identify the direct and indirect GHG impacts from construction and operation of the project on either a project or cumulative impacts level, which is required due to the global nature of this type of impact.”</p>	<p>measures include use of energy efficient technologies or equipment, low carbon fuels, energy efficient building design and construction materials, and water system and water conservation measures. The Los Angeles Water Board concluded that determining the significance of the potential impacts of the project, or determining whether the mitigation measures can reduce that contribution to a level that is less than cumulatively considerable and thus less than significant, is uncertain and thus speculative at this time. The Los Angeles Water Board also adopted a statement of overriding considerations.</p>
21.14	William Fujioka	<p>“Given that the Malibu Civic Center area is located in close proximity to the ocean, the OWTS prohibition could have serious consequences on the underlying groundwater aquifer due to potential seawater intrusion in the long-term. The impact from possible intrusion has not been analyzed. Regional Board staff did not address the issue of seawater intrusion in the final ESR or in the responses to comments. However, in responding to a comment from the City of Malibu, staff acknowledged that "seawater intrusion may have contributed to degradation of water quality." In light of that acknowledgement, staff should have responded to the County's comment, which suggested that eliminating the discharges from OWTS (which form a freshwater barrier) would encourage additional seawater intrusion.”</p>	<p>The Los Angeles Water Board staff did consider sea water intrusion.</p> <p>First, the choice not to study sea water intrusion extensively is liberal. Including sea water intrusion would result in a smaller fresh groundwater basin to dilute nutrient and bacteria flows which would worsen the impact of additional septic discharge on the freshwater system.</p> <p>Second, it is known that groundwater quality impacts bacteria survival, so Los Angeles Water Board staff considered a very large beach population and looked for statistical relationships related to physical factors on those many beaches. Based on enterococcus concentrations at more than 50 beaches in Los Angeles County, with varying degrees of sea level intrusion, the most prominent statistical difference over 5 years between beaches was sewer versus non-sewered. If sea water intrusion, or the lack thereof, was the dominant factor in bacteria beach pollution, there would have been other correlations, like bacteria related to beach shape or size of watershed draining to the beach. Instead, enterococcus concentrations correlated to the disposal practices, which are independent of the sea water intrusion.</p> <p>An understanding of sea water intrusion could cause the Los</p>

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			<p>Angeles Water Board to review the MUN designation, but existing domestic use as late as 1967, demonstrates that the MUN beneficial use was achievable even when intrusion was present. Also, coastal basins within the Los Angeles Region all have been assigned MUN designations based on potential future use despite even high levels of sea water intrusion.</p> <p>Finally, from an anti-degradation position, the OWTS prohibition will not deleteriously affect sea water intrusion. Because all drinking water is imported, no freshwater is extracted for drinking and all disposal of waste is within the basin, the level of sea water intrusion would be expected to remain below or return to pre-development levels. And, additional development is planned for inclusion in the City's waste water treatment plant.</p>
21.15	William Fujioka	<p>"In the final ESR, Regional Board staff concludes that the proposed project (defined solely as the prohibition) constitutes the most environmentally advantageous program. As noted above, the proposed project should include the design of a project to provide an alternative means of discharging wastewater. Notwithstanding this argument, no comparison between the impacts from the project as defined and proposed Alternative 1 is provided. Further, there is no discussion of an alternative consisting of a targeted prohibition or a possible hybrid approach which could both meet the stated goals of the project and address the discharges which may be linked to the cited water quality impairments."</p>	<p>The amendment is the prohibition, as noted in previous responses to comments; the Los Angeles Water Board cannot choose the method of compliance. In the absence of a viable proposed project by the responsible parties the Los Angeles Water Board has no ability to design alternatives or other means of compliance. Since many different iterations of a compliance project have been proposed, and all involved the same manner of disposal, it was reasonable to assume that the water will be disposed in that manner. The Los Angeles Water Board simply presented three projects that could comply with the objectives of the prohibition; this was a reasonable range of alternatives. It is up to the responsible parties to design a project proposal, not the Regional Board</p>
21.16	William Fujioka	<p>"The ESR finds that the proposed prohibition is not expected to induce growth in the Civic Center area since it will not lead to additional immigration and "would not remove an obstacle to land use...". This statement has not been adequately supported.</p>	<p>The Final Environmental Staff Report addresses growth inducing impacts from page 44 through 46. The discussion addresses the physical constraints on development in the Malibu area, including hillsides and steep slopes, seismic characteristics, flood plains, etc. The Los Angeles Water Board's conclusion is supported by the</p>

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		<p>The final ESR continues to find a less than significant impact with mitigation. The language in Section 12 of the ESR concludes that "the proposed project will not create an additional demand for housing, nor will the development of any compliance project" which has not been supported. The mitigation proposed appears to be the City of Malibu's update of its General Plan to develop a growth reduction strategy. This type of measure is speculative and is not binding mitigation. Section 15126.4 of the CEQA Guidelines requires that mitigation measures be fully enforceable. Project that would remove obstacles to population growth, including the example provided in this section of the Guidelines, of a major expansion of a wastewater treatment plant, must be analyzed."</p>	<p>evidence in the record.</p>
21.17	William Fujioka	<p>"There were significant changes in the project after CEQA comments had been submitted. In particular, the removal of the zero discharge exemption option and amendments to the Basin Plan amendment that changed project boundaries and compliance schedules were not subject to CEQA analysis."</p>	<p>The removal of the "zero-discharge" projects from the prohibition was a logical outgrowth of timely public written comments received at the Los Angeles Water Board. Because the written comments indicated disagreement about how a zero-discharge project would be defined, the Los Angeles Water Board staff decided to withdraw that exemption from the prohibition. Because an undefined zero-discharge project had the potential for impacts to the environment, removing it from the prohibition had no effect on the FESR's conclusions. The exemption for several residential projects in the permitting "pipeline" merely declared those projects to be "existing" for the purpose of the prohibition and not an exemption from the prohibition itself. There is no allegation that the amendments to the prohibition contributed new substantial environmental impacts resulting from the prohibition, or that there are substantial increases in the severity of an environmental impact unless mitigation measures are adopted. If there were, recirculation of the FESR with the new information might be necessary. But the changes did not</p>

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21.18	William Fujioka	<p>“In making the determination whether to ban discharges from OWTS in a given area, the Regional Board is required to consider "all relevant evidence" related to the discharge, including "those factors set forth in Section 13241" Water Code section 13281 (a). Nowhere in the final ESR is accompanying the Basin Plan Amendment there an adequate discussion of these factors, which are: (a) Past, present, and probable future beneficial uses of water (b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto. (c) 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.”</p> <p>While certain aspects of these factors are discussed in the ESR (which contains a discussion of the potential costs of alternatives to OWTS, a centralized treatment plant, sewer lines and decentralized treatment plants), that discussion is fragmented and incomplete. There also is no discussion on the need for developing housing within the region, and how a ban on OWTS might affect that need. While the ESR proposes that the treatment plants could generate recycled water, there is no discussion of how that recycled water might be used in the Malibu Civic Center area. The ESR acknowledges, for example, that some of the recycled water generated might have to be disposed of to the subsurface due to limited availability for use. This issue requires additional consideration. And, there is no discussion of the</p>	<p>result in new substantial environmental impacts.</p> <p>Evidence for determinations in accordance with the California Water Code and other codes is in both the Technical and Environmental Staff Reports. Also, staff has added a summary of this evidence, organized by code section, on pages 13 through 19 of the Overview for the Technical Staff Report.</p>

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		<p>"coordinated control of all factors which affect water quality in the area," given that no consideration is given to considering other factors that would affect water quality, including other potential sources of bacteria or using a hybrid approach (as suggested above) focusing on certain OWTS rather than a blanket prohibition on all OWTS in the Civic Center area.</p> <p>The County notes also that the final Regional Board resolution approving the Basin Plan amendment contained no specific findings on the Water Code section 13241 factors or on the other factual determinations required under Water Code section 13281 (a) to be made by the Regional Board before it acts to ban OWTS discharges.</p> <p>This comment was made before the Regional Board, which responded that it had made the requisite analysis in the final ESR and that it had made the requisite findings in the final resolution. However, as noted above, neither the ESR nor the resolution contains the analysis or findings required by the Water Code."</p>	
22.1	Cassu Aw-Yang	<p>"The Basin Plan amendment would prohibit on-site wastewater disposal systems (OWDS) in the Malibu Civic Center Area. We do not believe that the information in the record adequately demonstrates the need for an OWDS ban to protect water quality and beneficial uses, and respectfully request that you reject the Basin Plan amendment."</p>	<p>State Water Board staff disagrees that an OWDS ban is unnecessary.</p> <p>Groundwater: In Tech Memo #2, staff evaluates nitrogen and pathogen levels in groundwater against drinking water standards, and concludes that OWDSs impair groundwater that the Board has designated as a potential source of drinking water.</p> <p>Beaches: In Tech Memo #3, staff demonstrates that pathogens released from OWDSs in hydraulic connection with the ocean impair swimming, surfing, and other recreational activities (e.g. wading).</p> <p>Lagoon: In Tech Memo #4, staff evaluates nitrogen levels from OWDSs in groundwater that is in hydraulic connection with Malibu Lagoon, and concludes that discharges from OWDSs fail to meet a load allocation of 6 pounds per day, specified in the nutrient TMDL in</p>

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			<p>order to prevent accelerated eutrophication and restore aquatic and riparian habitat and wildlife.</p> <p>Furthermore, as described in Tech Memo #1, many dischargers under Orders specifying Waste Discharge Requirements (WDRs) and Time Schedule Orders (TSOs) from the Board have failed to meet effluent limits that the Board set at levels protective of beneficial uses.</p>
22.2	Cassu Aw-Yang	<p>“At a minimum, however, we request that you direct the Los Angeles Regional Water Quality Control Board to allow for the City of Malibu and its property owners to continue its effort to develop an alternative, viable, and community based wastewater treatment solution.”</p>	<p>See responses to comments 2.12 and 4.1.</p>
22.3	Cassu Aw-Yang	<p>“The economic consequences of the Basin Plan amendment as proposed by the Regional Water Board to the Shopping Center and other City businesses are substantial.”</p>	<p>The economic consequences, while no doubt important to those subject to the prohibition, do not supplant the responsibility of the Water Boards protect the beneficial uses of this water through the adoption of this amendment. It addresses the problems associated with the impaired water bodies and the risks posed to the public health of the area.</p>
22.4	Cassu Aw-Yang	<p>“In addition, the Shopping Center is concerned that the Regional Board’s OWDS prohibition is geographically over-reaching, technically infeasible, and environmentally unsound.’</p>	<p>See Response to Comment 4.2</p>
23.1	Rev. Willis Kerze	<p>“We are long time residents who have watched Malibu grow and our church has grown with it. We share the State and Regional Boards’ strong commitment to protecting public health and improving water quality. We also feel that this can be done by adopting the City of Malibu’s Watewater treatment solution for the Civic Center.</p> <p>Please take “Winter Canyon” out of the Regional Board’s plan and adopt Malibu’s Map of the Civic “Center” which targets the users with the highest potential impact of</p>	<p>See Response to Comments 4.1 and 4.2.</p>

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		groundwater by focusing on homes and businesses closest to Malibu Creek. The City's plan has widespread support from the community. We are sure that the City will continue to move aggressively forward to improve ocean water quality in Malibu. And, we would like to be here to see it happen."	
23.2	Rev. Willis Kerze	"If Malibu has to adopt the Regional Board plan, Our Lady of Malibu will have no choice but to close our doors and cease to exist. The cost to our parish, a non-profit existing on weekly donations, would be so prohibitive we could not stay. Our land and buildings would become worthless and the cost of relocating would be impossible."	See Response to Comment 2.9.
24.1	Rhiannon Ballard	"Should the SWRCB approve the Resolution adopted by the Regional Board on November 5, 2009, Pepperdine respectfully requests that the SWRCB's approval recognize the Regional Board's sound decision with respect to excluding the entirety of Pepperdine's Malibu campus from the prohibition area."	If approved the State Water Board would approve the basin plan amendment, which currently excludes Pepperdine from the prohibition boundaries. The State Water Board can not expand the resolution adopted by the Los Angeles Water Board, nor can it preclude the Los Angeles Water Board from expanding the prohibition area in the future if evidence requires it.
24.2	Rhiannon Ballard	"Pepperdine recommends that the SWRCB take appropriate effluent dispersal and reuse areas as well as adequate support for the necessary assessment district into careful consideration while reviewing the Resolution."	Comment noted.
24.3	Rhiannon Ballard	"Uncertainties regarding the ability of the City to properly reuse all treated wastewater in the Boundary area undermine the potential success of a centralized wastewater treatment facility. The Prohibition Boundary, as we understand it, is likely to result in a wastewater system that produces more reclaimed water than can properly be disposed of within the prohibition area; particularly during the winter months when precipitation is high and irrigation demands are consequently low."	See Response to Comment 4.1.

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		<p>One solution proposed by the City during the hearing was to reduce the size of the area subject to the OWDS ban under their Community-Based Treatment solution. This aspect of the City’s proposal was supported by Heal the Bay. Pepperdine agrees that a reduction in size of the prohibition area along with a phased implementation may provide greater likelihood that the City can develop a successful wastewater treatment and reuse system that appropriately accounts for effluent dispersal and reuse in the Civic Center.”</p>	
24.4	Rhiannon Ballard	<p>“As mentioned above, Pepperdine does own property that falls within the City’s proposed Community-Based Treatment Solution boundary and supports the transition from OWDS to a centralized wastewater treatment facility in the Civic Center. Pepperdine, at the City’s request, signed a letter agreeing to support an assessment district for the construction of a centralized facility. Pepperdine understands and appreciates the long term benefits of a centralized wastewater treatment system and is willing to contribute to its construction.”</p>	Comment noted.
25.1	Daniel Allemeier	<p>“The HRL Facility should be excluded from the prohibition boundary similar to Pepperdine. The HRL Facility does not contribute to the elevated levels of pathogens and nitrogen impairing surface and ground water. The HRL process streams are managed in a way to minimize pathogens and monitor nitrate. If any pathogens and/or nitrogen remained in the process waters the depth of the groundwater and distance to the beaches would effectively control migration in the subsurface.”</p>	<p>Malibu Knolls and HRL are adjacent and separated only by a highway which should not affect subsurface flows. The wells which are below HRL and the Malibu Knolls and above the administrative center show bacteria concentrations consistent with discharge of septic effluent into the subsurface. HRL should provide the Los Angeles Water Board with similar scientific evidence similar to Pepperdine’s at the November 5, 2009 hearing. The Los Angeles Water Board may amend the prohibition boundaries in the future based on such evidence.</p>
25.2	Daniel Allemeier	<p>“HRL supports the City of Malibu’s Plan. And the Los Angeles Water Board should have waited for the completion of the City’s scientific studies.</p>	See Response to Comments 2.12, 4.1 and 4.2.

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25.3	Daniel Allemeier	The original Regional Resolution provided and exemption for zero discharge systems, which they then removed after the comment period effectively removing this as a viable alternative. However, on July 8, 2010 The La Paz project in heart of the prohibition was given a wastewater disposal system permit."	The "No-net discharge" system WDR permit recently approved for the La Paz project included several stipulations including the construction of an 800,000 gallon storage tank to collect any discharge that can't meet the no-net discharge requirements of the permit. In addition finding 11 states: "On November 5, 2009, the Los Angeles Water Board adopted an Amendment to the Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura Counties to Prohibit On-site Wastewater Disposal Systems in the Malibu Civic Center Area. Although the amendment has not yet, been approved by the State Water Resource Control Board, it identifies a policy direction for this Los Angeles Water Board. Malibu La Paz is within the prohibition boundaries and, along with all users, would be required to cease subsurface discharge no later than November 5, 2015. After that date, La Paz will be required to send the effluent which does not comply with the WDWRR to a sewer, or other centralized facility, in the event that La Paz exceeds its storage, treatment or re-use capabilities. If HRL is willing to install a similar system it is welcome to apply to the Los Angeles Water Board for a WDR permit, regardless of the exemption language being removed from the resolution."
26.1	John R. Mundy	"In 1997 the Regional Board adopted a similar prohibition on summertime releases of highly treated recycled water form the JPA's Tapia Water Reclamation facility. This prohibition was put in place with the intention of reducing bacteria levels at local beaches. Unfortunately, 13 years later, and JPA expenditures of nearly \$10million in public funds to comply with the flow prohibition, no significant change in bacteria levels at local beaches has occurred. These findings and supporting analysis were communicated to the Regional Board in 2005 (attached) to date we have received no response."	The commenter fails to mention that the Los Angeles Water Board has reviewed the data. One response has been the adoption of a bacteria TMDL for Malibu Creek in December 2004 which quantified the impact of the facility and considered much of the data provided. This permit is under public review at this time and the flow prohibition is retained.
26.2	John R.	"We do not know how the Regional Board staff	The Los Angeles Water Boards responsibility under CEQA is to

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	Mundy	<p>generated its cost estimate for utilizing Tapia WRF as a potential alternative at \$80million, of which \$7.8million is the staff-estimated cost for local sewers plus\$72.5million for a sewer trunk lone that would need to be built along Malibu Canyon Road. Based on our experience, there is no guarantee the Coastal Commission would issue a permit for such a project.”</p> <p>“Furthermore, the staff cost estimates only dealt with the sewer infrastructure to bring sewage to the Tapia WRF and leaves the reader with an underestimate of the total cost impact. What is not addressed here is the cost to accommodate an increased flow at Tapia WRF via additional treatment and disposal facilities, solids handling at our compost facility and connection and annexation fees to provide service to Malibu. In addition, as referenced above, a flow prohibition established by the RWQCB for discharge to Malibu Creek for 7 months of the year has been in place at Tapia since 1997. Taking on the additional sewage flow generated within Malibu could seriously jeopardize the JPA’s ability to meet the flow prohibition requirements imposed by the LARWQCB.”</p> <p>“In closing, we ask the State Board to understand the RWQCB’s approach can be very costly, significantly beyond its projections, and not result, in the desired outcome. In addition, the elimination of potentially valid disposal opportunities could significantly narrow the available solutions for this community.”</p>	<p>analyze a reasonable range of foreseeable options which could resolve the problem. Los Angeles Water Board specifically did not want to preclude any options for solving the problem.</p> <p>CEQA and the Water Code only require and estimate of costs, not a precise evaluation. Since the Los Angeles Water Board doesn’t know what compliance project the City will choose as well as when and where they will build it, it would be impossible to come up with a precise evaluation of costs.</p> <p>The comment that the prohibition will not meet its objectives is not supported by technical evidence that beach quality will not be improved by the elimination of OWDS near the beaches. Los Angeles Water Board’s limit on flow from Las Virgenes eliminates one potential source, but does not appear to completely resolve the issue and provides no information about the necessity for additional steps to protect beach beneficial uses.</p>
26.3	John R. Mundy	“The JPA is willing to consult on how our facilities might be used by others but this approach must be a partnership not a “shotgun wedding” forced through a	The commenter’s offer to consult on the development and cost assessment for this remedy is appreciated and consistent with the idea that options for treatment alternatives exist.

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		regulatory approach. As a public agency that treats some 10 MGD of wastewater to very high levels each day, we fully appreciate some of the challenges the State and community of Malibu face.”	
27.1	Gene A. Lucero	“Should the SWRCB approve the Proposed Amendment adopted by the Regional Board on November 5, 2009, we respectfully request that the SWRCB’s approval recognize the LARWQCB’s sound decision with respect to existing residential development projects and that such SWRCB approval maintain the lost of “deemed existing” dischargers identified in Basin Plan Table 4-zz. The characterization of those residential properties in Table 4-zz as existing dischargers is supported by substantial evidence demonstrating that discharge from those properties would not be expected to have any adverse impacts on groundwater quality in the Civic Center area.”	Comment noted. If approved the State Water Board would approve the basin plan amendment as adopted by the Los Angeles Water Board under Resolution R4-2009-007, which currently includes Table 4-zz.
27.2	Gene A. Lucero	“We appreciate the opportunity to submit these comments for the SWRCB’s consideration. We respectfully request that all of our public comments, including those herein and those previously filed with the LARWQCB, be given appropriate consideration, be place in the administrative record for this rulemaking, and be maintained in the agency’s records. We also ask that our previous written comments that were either not addressed or inadequately addressed by the LARWQCB staff be incorporated into this comment letter by reference.”	Comment noted. The commenter did not detail which comments he felt we inadequately addressed. See Response to Comment 0.1.
28.1	Joan C. Lavine	“The Regional Board did not receive one scintilla of evidence to support a determination that discharge of waste should not be permitted by the Lavine Malibu Road property. It, in fact, did not expressly make a determination that discharge of waste from the Lavine	The technical evidence was found sufficient (via standard methods of technical discernment) and based on the preponderance, the breadth, and the historical persistence of a problem identified by multiple state and federal agencies as dangerous to human health. Further, the Regional Water Board has used standard practices and

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		<p>Malibu Road property disposal system will result in violation of water quality objectives, will impair present or future beneficial uses of water, will cause pollution, nuisance, or contamination, or will unreasonably degrade the quality of any waters of the state. And, as argued on below in argument section 3, no findings of fact to support such a determination were made by the Regional Board.”</p>	<p>progress enforcement, eliminated other possible sources and tried other possible remedies. The impact of OWDS is cumulative. The absence of evidence that bacteria or water from a single residence is responsible for the loss of beneficial uses does not prove that 400 residences and commercial systems, collectively, did not cause the loss of that use. Further, the condition of water impact is not present on every day of every year so recent technical work based on a week of sampling can not replace results derived from 5 years of weekly summer beach data sampling and hundreds of monitoring wells measurements between 2000 and 2010. Ms Lavine's property at 23900 Malibu Road is immediately upgradient of the impaired surfrider beach (which is contiguous with Amarillo Beach) and separated from the ocean by perhaps 1000 feet of sand and 50 feet of elevation. The City's 1993 report by Warshall examined and described systems like this one and states that they are not able to provide sufficient subsurface treatment of effluent. In the 2004 MOU between the Regional Water Board and the City of Malibu, the City agreed and was given the authority to collect and provide evidence that the septic system at her home had been upgraded to an advanced onsite waste water treatment system, or that it did not impact the beach water quality. The Los Angeles Water Board has received no evidence that either the sampling or the upgrade have taken place.</p>
28.2	Joan C. Lavine	<p>“This Board’s police power cannot be exercised to prohibit an activity where that activity can be regulated to eliminate the evil, harm or problem at issue, without entirely prohibiting it. <u>San Diego TB v. City of East San Diego</u>, 186 Cal. 252, 200 P. 393 (1921). The exercise of its police power to prohibit an activity, where regulation can reach the same goal and result, is arbitrary, capricious and unreasonable, and in violation of the guarantees of Due Process of Law under the 5th</p>	<p>Water Code sections 13243 and 13280 authorize the State and Los Angeles Water Boards to specify certain areas where the discharge of waste is not permitted. After appropriate and sufficient investigation, the Los Angeles Water Board adopted the basin plan amendment prohibiting discharge from OWDS.</p>

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		and 14th Amendments, U.S. Constitution, and California Constitution, Article I, Sections 7 and 19.”	
28.3	Joan C. Lavine	“As a consequence of there being no alternative waste management system planned, commenter will be deprived of all beneficial, viable economic and practical use of her home.”	The City of Malibu, in its July 9, 2010 letter to the State Board, has set forth its proposal for the Civic Center Wastewater Treatment Alternative. The commenter will be deprived of all beneficial, viable economic and the practical use of her home due to the prohibition, even if the prohibition goes into effect without a City solution. The prohibition does not effectuate a taking.
28.4	Joan C. Lavine	“No notice has been given commenter about violations, deficiencies or upgrade requirements regarding waste discharge systems at her home.”	The City of Malibu is the qualified local agency responsible for investigating violations of local regulations. Pursuant to the Memorandum of Understanding between the City and the Los Angeles Water Board, the City is responsible for inspections. The Los Angeles Water Board, in its investigation and analysis for the Basin Plan Amendment, looked at the potential aggregated impacts of the many individual OWDS in the Malibu Civic Center area, as defined in the prohibition. Neither the State Board nor the Los Angeles Water Board has any information about this commenter’s specific situation.
28.5	Joan C. Lavine	“The Ban does not comply with Water Code section 13280, not supported by evidence or findings.”	The Technical Memos, supported by peer review, provide the evidence supporting the findings required by Water Code section 13280 to specify those areas where subsurface disposal should not be permitted. While true that the Los Angeles Water Board did not investigate the commenter’s specific home site, the scientific evidence addressing the issues for the entire Civic Center area, as defined by this prohibition, supports the findings made by the Los Angeles Water Board.
28.6	Joan C. Lavine	“The Ban does not comply with Water Code section 13282, which states that discharges from individual disposal systems shall be permitted.”	As set forth in the Final Technical Staff Report, page 19, summarizing the conclusions in response to Water Code section 13282 considerations, the Los Angeles Water Board concluded that the City of Malibu (the “authorized local public agency”) had not given the Los Angeles Water Board adequate assurance the individual disposal systems would be appropriately constructed and maintained to protect water quality, protect the beneficial uses of the

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			water, and prevent nuisance, pollution and contamination. Therefore, the Los Angeles Water Board has complied with this section.
28.7	Joan C. Lavine	“Malibu property owners are denied equal protection of the law since areas in Riverside County are allowed to use septic systems.”	Water Code sections 13280 and 13281, subdivision (a) require the Los Angeles Water Board to make determinations about several factors prior to specifying where discharge of waste should not be permitted. Riverside County has different watershed characteristics than the Malibu Civic Center, which require different analyses, identification of water quality problems, and remedies.
28.8	Joan C. Lavine	“The State Board lacks direct condemnation or eminent domain authority, thus exceeding its authority if it bans septic systems in the Malibu Civic Center.”	The State Water Board has the authority to specify where discharges of waste should not be permitted. There is no evidence in the record to support the assertion that this action will deny the commenter all reasonable, viable, beneficial economic use of her property. The State Board is not asserting any eminent domain or condemnation authority.
28.9	Joan C. Lavine	“The Regional Board failed to give property owner notice of deficiencies pursuant to Water Code section 13399.2.”	Although Water Code section 13399 sets forth the concept of minor violations, section 13399.1 states the “notice to comply” should be given to the “facility owner or operator.” The Los Angeles Water Board has not used this enforcement mechanism to cite septic owners for operational deficiencies. Also, the Water Quality Enforcement Policy describes “minor” violations to include such things as inadvertent omissions in recordkeeping, records not being physically available at the time of inspection, inadvertent violations of administrative provisions, and violations that result in insignificant discharge of waste, provided there is no significant threat to human health, safety, welfare, or to the environment (Water Quality Enforcement Policy, November 17, 2009, page 33). Collectively, the evidence shows that discharges from OWDS pose a significant threat to human health and to the environment. Section 13399.2 is not applicable to the adoption of a discharge prohibition through a basin plan amendment.
28.10	Joan C. Lavine	“A proposed ban without fair notice to the property owner is a compensable “taking”	The Los Angeles Water Board provided reasonable notice to all affected persons in the region, pursuant to the statutory

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		under the Fifth and Fourteenth Amendments of the U.S. Constitution.”	requirements, for this quasi-legislative proceeding. Land use regulation does not affect a taking if it substantially advances legitimate state interests. Where the health, safety, morals or general welfare would be promoted by prohibiting particular contemplated uses of land, compensation need not accompany prohibition. There is no evidence that mere enactment of this prohibition will deprive the owner of economically viable use of her property.
28.11	Joan C. Lavine	“The Ban exceeds the authority expressly limiting enforcement under Water Code section 13399.2.”	Water Code section 13399.2 is one of several enforcement mechanisms available to the State and Los Angeles Water Boards, but it is inapplicable to the adoption of a prohibition through a Basin Plan Amendment. This section does not prevent the State Water Board from adopting a Basin Plan Amendment that prohibits discharges in specified locations.
28.12	Joan C. Lavine	“The Regional Board, contrary to section 13399.2, has failed to give the property owner any notice of deficiencies or a fair and reasonable opportunity to remediate any perceived deficiencies.”	Water Code section 13399.2 is not the exclusive enforcement mechanism available to the State and Los Angeles Water Boards. Pursuant to Water Code section 13243, the Los Angeles Water Board may specify where discharges should not be permitted. See also Response to Comment 28.10 and 28.11 above.
28.13	Joan C. Lavine	“The Ban violates Water Code section 13291.7 by interfering with the jurisdiction of municipalities over land use regulation.”	Water Code section 13291.7 states: “Nothing in this chapter shall be construed to limit the land use authority of any city, county, or city and county.” The prohibition does not violate this statute and is consistent with Water Code sections 13243 and 13280 which authorize the State and Los Angeles Water Boards to specify certain areas where the discharge of waste is not permitted. The prohibition does not limit the city’s land use authority; it limits the ability of those who use that property from discharging sewage in a certain manner.
28.14	Joan C. Lavine	“In the absence of uniform statewide standards and regulations required by Water Code section 13291(a), any regulatory action banning the use of septic systems is inoperative.”	Water Code section 13291, subdivision (c) state: “This chapter does not diminish or otherwise affect the authority of a local agency to carry out laws, other than this chapter, that relate to onsite sewage treatment systems.” Subdivision (d) states: “This chapter does not preempt any Los Angeles Water Board or local agency from adopting or retaining standards for the onsite sewage treatment

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			systems that are more protective of the public health or the environment than this chapter.” Therefore, the Los Angeles Water Board’s prohibition, which is more protective of the public health, is appropriate.
28.15	Joan C. Lavine	“Changes to the prohibition after the close of the public comment period denied those opposing it a reasonable opportunity to be heard violating due process of law.”	None of the testimony that was presented by public speakers was rejected. The public notice of hearing stated that written comments were due on October 8, 2009 and that failure to comply with the requirements was grounds for the Chair to refuse to accept documents into the administrative record. Although it is true that many speakers were allowed less time to speak than earlier speakers because of the time constraints of the Los Angeles Water Board meeting, the record does not indicate that anyone who remained at the meeting that wanted to speak was turned away.
29.1	R.L. Embree	“Staff’s Conclusion is not Supported by the Evidence or Testimony presented at the November 5, 2009 Los Angeles Regional Board’s Hearing. Staff’s Final report is based on a false premise of contamination at Amarillo Beach, which staff admits has not been tested or proved to be impaired. In all these dozens of years, staff could not, and did not present any evidence of contamination at Amarillo beach for this hearing.”	Amarillo Beach is located between Puerco Beach and Malibu Beach. It is true that there is no monitoring data on Amarillo Beach covering water quality at. This is largely because public access to Amarillo Beach is limited. The homes which line the coast from Puerco Beach to the mouth of Malibu Lagoon rely on standard septic systems with leach fields in porous sandy soils for all wastewater treatment. There is monitoring on Puerco Beach at station SMB 1-12 and at Malibu Beach at station MC-1. Puerco Beach had exceedances of single sample enterococcus limits 72.7 % of the time in 2006. Conservative professional judgment predicts, in the absence of sampling evidence, pollution seen on Puerco Beach or Malibu Beach will also be carried to Amarillo Beach via the ocean. Further, bacteria in the groundwater from Winter Canyon would be discharged onto Amarillo or Malibu beaches.
29.2	R.L.Embree	“Staff violates the scope and parameters of its own report. “...the intent of this proposed regulatory action is to encompass priority areas that affect groundwater and are hydraulically connected to impaired surface water resources, including Surfrider, Malibu, and Amarillo Beaches and Malibu Lagoon. Amarillo Beach is	See Response to Comments 3.20 and 29.1. The City of Malibu’s 2003 Questa and 2004 Stone ground water studies both found that Winter Canyon contributed flow to the Malibu Valley groundwater basin. In addition, the 2009 USGS study advanced by the City states that groundwater flow directions are more variable than previously thought, a finding which would indicate that Malibu Valley is more

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		<p>therefore falsely-declared impaired, and staff's data does not support inclusion of Winter Canyon.</p> <p>Staff incorrectly assumed storm water management systems and subsurface flows follow the same route, falsely assumed that wastewater enters the storm water system, and improperly concluded that evidence supported Winter Canyon area properties being in the proposed prohibition area. Staff over-emphasized unproven, hypothetical scenarios that could and should have been ruled-out by indisputable testing."</p>	<p>likely to include Winter Canyon flows.</p>
29.3	R.L. Embree	<p>"Confusion Between Storm water and Wastewater permeates the report and findings and conclusions to the extent that the data is unreliable. RWQCB does not provide evidence, and acknowledges not testing, Amarillo beach for any nexus other than a storm drain. In the Winter Canyon area, no existing dischargers are permitted to surface discharge treated sewage into the watershed, unlike the Malibu Mesa and its adjoining Marie Canyon discharge to the beach. Staff claims "Other factors drive staff's recommendation." but staff does not provide factual, current scientific data proving a basis for such recommendation. (see "Objections to Winter Canyon", page 56 of staff's presentation at the November 5, 2009 RWQCB Hearing.) Further, staff</p> <p>Staff's Recommendation Disregard Available Data the Proves Winter Canyon is Separated from the Civic Center by Natural Topography which proves that both Storm water and Subsurface Flows do not contaminate Malibu Lagoon, Malibu Creek, or Surfrider Beach.</p> <p>Staff's avoids empirical and scientific data to create a</p>	<p>See Response to Comments 0.1 and 29.2. State Water Board staff agrees that previous Total Maximum Daily Loads and Santa Monica Bay Restoration reports and many publications have correctly identified stormwater as the largest contributor of bacteria to the beaches. Many of these studies have failed to identify beach bacteria pollution which is present when storm and urban flows are absent. The prohibition's technical findings linked episodes of high beach bacteria in the Malibu Civic Center area to dry summer weather when stormwater flows were not present. As a result, the conclusions of the prohibition specifically relate to wastewater impacts and eliminate pre-existing confusion.</p> <p>Technical Memorandum #3 (Tech memo #3) discusses bacteria detected in groundwaters of the proposed Malibu prohibition area and reviews published documents with monitoring data on bacteria levels detected on Santa Monica Bay and Malibu Beaches. High levels of bacteria have been found in both the groundwater and surface waters of the proposed prohibition area. The commenter is correct that no attempt was made in Technical Memorandum #3 to evaluate the bacteria contribution from storm water drains versus groundwater discharges.</p>

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		<p>defacto finding that Amarillo Beach is an impaired water body; further, Staff's such unwritten designation falsely assumes MWWTP discharges into the storm water management infrastructure, and that such would be from MWWTP (as opposed to Malibu Bay Company sewage pits). No evidence supports contentions that either subsurface discharger is discharging into the storm water system."</p>	<p>Those areas with high bacteria counts were detected in groundwater, frequently had very high levels of nutrients such as is found in wastewater. Nutrient loads discharging to Malibu Lagoon and beaches in the proposed prohibition area were discussed in Technical Memorandum #4 , and the nutrient loads calculated in Technical Memorandum #4 were based strictly on wastewater discharged to the subsurface through onsite wastewater discharge systems located in the proposed prohibition area. Alternate pathways for the migration of nutrients to Malibu Lagoon and beaches are detailed in Technical Memorandum #4 and show that wastewater from Winter Canyon is moving in the groundwater toward the beaches and Malibu Creek and Lagoon</p> <p>Wastewater and bacteria also move along the beach via ocean transport. The prevalent direction of long-shore transport is Northwest to Southeast along Puerco, Amarillo and Malibu Beaches, which are located west of Malibu Lagoon. Any wastewater (with associated bacteria and nutrients) discharged to these beaches will be transported to the mouth of Malibu Lagoon and the Lagoon by tidal ebb and flow through the porous sand bar. From the late summer through October, long shore current directions may change from east to west whenever storms in the south cause a southern swell. For this reason, the addition of coastal strips to the east and west of Malibu Lagoon were included in the prohibition area</p>
29.4	R.L. Embree	<p>"MWWTP serves exclusively residential multi-unit dwellings. As such, excess grease (from restaurants), hydrocarbons and other petroleum products from gasoline stations, and chemicals from daily floor washing (markets, restaurant kitchens, wet-washing at commercial cleaners, retail shops) and potentially heavy-metals and hydrocarbon byproducts from unknown commercial laundry servicing, all potentially enter the effluent mixture service the commercial Civic</p>	<p>Pretreatment of co-mingled waste is a standard element of all large wastewater treatment plant designs and a practice which would be applied to this facility, should the City choose to construct a single centralized facility. Los Angeles Water Board staff did not propose that petroleum products and other toxic substances be sent to a centralized wastewater treatment facility; The Los Angeles Water Board does not prescribe the manner of compliance. While, the City of Malibu will be primarily responsible for making the decision about what advanced wastewater treatment plant(s) will be constructed,</p>

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		Center properties. MWWTP has a record devoid of such excesses and should remain separate from the aforementioned input sources as a best management practice to keep hazardous substances from entering the groundwater. Further, should groundwater ever suffer from spikes of the aforementioned problems, identification of source(s) would be naturally segmented, and supportable by testing distinctly isolated treatment facilities.”	the Los Angeles Water Board would consider any permit for a facility, ensuring the waste will be properly handled.
29.5	R.L. Embree	“Staff completely disregards the safer practice of separately managing disparate sources in an overall strategy for clean water. Further, staff’s proposal to co-mingle residential with commercially-generated restaurant and gas station wastewater follows the reckless notion that dilution is an accepted practice on the input side of the equation (prior to treatment). Dilution is no longer an accepted methodology of primarily dealing with disparate input sources when potential contamination is reasonably foreseeable. Dilution is not a best management practice, and clearly not a “state of the art” design parameter. Co-mingling appears to be an ideological strategy to design-in economies of scale for financing a de-facto sewer project. The existing multi-unit residential properties, which have an exclusive assessment district, should not be forced to subsidize the construction and operation of another sewage treatment plant. RWQCB has exceeded its role in this regard, as it has with estimating pollution and fuel usage, and traffic congestion of sewage pumping trucks’ operations. Irrespective of RWQCB’s transgression beyond such duties, the 192 multi-unit residential properties would have to electrically pump their sewage to any new sewage treatment plant in the	The treatment plant technology operating at the commenter’s facility cannot achieve the high levels of disinfection presently required for OWTS in the Malibu Civic Center for systems which may contribute to beach bacteria pollution. Furthermore, the system cannot remove the nutrients to meet the TMDL requirements for Malibu Creek and Lagoon.

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		Civic Center to get it over the crest of the hill, a constant drain on electrical resources and fossil fuels used to generate such electricity. Further, the electrical requirement would require large holding tanks and complicated designs to achieve safety factors not currently necessary or needed for MWWTP. Such safety factors are not absolute. In the actual case of the four existing, upgraded professionally-operated package treatment facility.”	
29.6	R.L. Embree	“In its upgraded and remodeled state, it has operated only approximately one-third of that proven cycle. Our units were assessed thousands of dollars for the \$1.2 million upgrade, and continue to be assessed thousands of dollars annually for operation of this facility, which is operating fine and disinfecting its discharge underground. (There is no surface discharge permit for our common sewage treatment facility, unlike the adjacent facility at John Tyler Drive/Pepperdine's approved dumping into Marie Canyon/beach.)”	See Response to Comment 13.2.
30.1	Christi Hogin	“The City of Malibu would like the amendment remanded to the Regional Board for further consideration.”	See Response to Comment 2.12.
30.2	Christi Hogin	“No potential source of drinking water exists in the Malibu Civic Center.”	See Response to Comment 2.10.
30.3	Christi Hogin	“The City’s Civic Center Wastewater Treatment Alternative warrants serious consideration and is the optimal option based on the presented scientific information.”	See Response to Comments 4.1 and 4.2.
30.4	Christi Hogin	“The Regional Boards technical memos and prohibition boundaries are based on old and out dated science; newer studies that have recently been completed or are currently underway by the City should be used.”	The technical memos were independently peer-reviewed and found to be accurate with no further data necessary: 1) Dr. Robert Arnold, University of Arizona “..I feel that the case is well made for construction of sewerage in the

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			<p>Malibu area...further studies are not required to justify Board action...The complexity of the hydrological conditions, microbiological transport mechanism and so forth are sufficiently plain. Staged construction would allow regulators to determine the effects of sewerage in areas that are the likeliest source of anthropogenic nitrogen, before extending sewer construction into other geographic sectors of the study area.”</p> <p>2) Dr. Joanna Silverstein. University of Colorado ‘Taken as a whole, the conclusions of Technical Memorandums #3 and #4 are based on sound scientific principles and reasoning. The conclusion in the memorandum that the 6 lb/day maximum loading rate for wastewater nitrogen will not be achieved using OWDS’s is reasonable and justified.’</p> <p>3) Dr. Jorge Drewes. Colorado School of Mines ‘The reviewer agrees with staff’s determination of impairment through pathogenic organisms; and the conclusion that groundwater in this area is a source of impairment to lagoon and beaches. ...there are not additional scientific issues that need to be addressed”</p>
30.5	Christi Hogin	“Adoption of the OWDS Ban was an adjudicative proceeding that was legally flawed and not fairly conducted.”	Under the Porter-Cologne Act, “[w]ater quality control’ means the regulation of any activity or factor which may affect the quality of the waters of the state ...” (§ 13050, subd. (i).) A water quality control plan “consists of a designation or establishment for the waters within a specified area of all of the following: (1) Beneficial uses to be protected, (2) Water quality objectives, and (3) A program of implementation needed for achieving water quality objectives.” (<i>Id.</i> , subd. (j).) “In formulating a water quality control plan, the Board is invested with wide authority ‘to attain the highest water quality which is reasonable, considering all demands being made and to be made

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			<p>on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.’ (§ 13000.) In fulfilling its statutory imperative, the Board is required to ‘establish such water quality objectives ... as in its judgment will ensure the reasonable protection of beneficial uses ...’ (§ 13241), a conceptual classification far-reaching in scope.¹ “Beneficial uses” of the waters of the state that may be protected against quality degradation include, but are not necessarily limited to, domestic, municipal, agricultural and industrial supply; power generation; recreation; aesthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves.’ (§ 13050, subd. (f).) Thus, in carrying out its water quality planning function, the Board possesses broad powers and responsibilities in setting water quality [objectives].” (United States v. State Water Resources Control Bd., supra, 182 Cal.App.3d at pp. 109-110, 227 Cal.Rptr. 161.) “In performing its regulatory function of ensuring water quality by establishing water quality objectives, the Board acts in a legislative capacity.” (United States v. State Water Resources Control Bd., supra, 182 Cal.App.3d at p. 112, 227 Cal.Rptr. 161.) “[W]ater quality control plans ... are quasi-legislative.” (State Water Resources Control Bd. v. Office of Admin. Law (1993) 12 Cal.App.4th 697, 701-702, 16 Cal.Rptr.2d 25.)</p> <p>In the exercise of quasi-legislative powers, agencies commonly resort to the hearing procedure to uncover the facts necessary to arrive at a sound and fair legislative decision. The presence of certain characteristics common to the judicial process, i.e. taking testimony, receiving evidence, making findings and conclusions, does not change the basically quasi-legislative nature of the Los Angeles Water Board hearing on Basin Plan amendments.</p> <p>Further, the definition of an adjudicative proceeding in Government Code section 11405.20 is “an evidentiary hearing for the</p>

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			<p>determination of facts pursuant to which an agency formulates and issues a decision.” Section 11405.50 defines “decision” as an agency action of specific application that determines a legal right of a particular person. That does not describe the Basin Plan Amendment because the determination to adopt the Basin Plan Amendment affected a whole area, not just a particular person.</p> <p>Therefore, the OWDS Ban is a Basin Plan Amendment that is a quasi-legislative act, not an adjudicative proceeding. The Regional Board employed the correct procedures.</p>
30.6	Christi Hogin	“Lack of due process in that individual property owners did not receive notice.”	The Los Angeles Water Board provided notice to the affected persons in the Malibu region by complying with the statutory notice requirements for quasi-legislative proceedings. See Response to Comment 1-3 below. Reasonable notice was given, and public comments were received both in writing and orally at community workshops and at the Los Angeles Water Board meeting.
30.7	Christi Hogin	“Inadequate notice to individual property owners.”	The proceeding was a quasi-legislative proceeding and not an adjudicative proceeding. The Los Angeles Water Board provided notice pursuant to Water Code section 13244 and Government Code section 6061.3. The administrative record contains the Declaration of Publication - Notice of Public Hearing and Board Meeting, published in the Malibu Times on September 3, 2009, September 10, 2009 and September 17, 2009. Further, the Los Angeles Water Board conducted two public workshops in the Malibu area on September 1 and October 1, 2009. The City of Malibu held its own meeting about the prohibition on September 22, 2009. Both the Malibu Times and the Los Angeles Times had articles regarding the proposed prohibition. There is no requirement for individual notice for this type of proceeding.
30.8	Christi Hogin	“Inadequate notice to public after the Regional Board staff removed exemption for zero-discharge systems after close of written comment period.”	The removal of the zero-discharge systems was a logical outgrowth of written public comments received by Los Angeles Water Board staff. Public comments were made about this change at the Board meeting.

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30.9	Christi Hogin	“Executive Officer Egoscue offered a substantial revision to the plan after the oral public comment period closed regarding the boundaries of the prohibition area, the exemption of certain residential systems that received local entitlements, and extending the residential compliance deadline to 2019.”	The changes to the boundaries resulted from the written and oral public comments and were a logical outgrowth of those comments. The extension of the schedule was also a logical outgrowth of the comments and discussion at the Board meeting. See Transcript, pages 218-222, 227-229.
30.10	Christi Hogin	“Inadequate opportunity for public participation.”	The Los Angeles Water Board may limit the length of a speaker’s comments in order to manage the meeting. In fact, 49 members of the public spoke at the Los Angeles Water Board hearing. The commenter’s statement that the Los Angeles Water Board refused to let anyone speak who did not fill out a speaker card is not supported by the record.
30.11	Christi Hogin	“Improper separation of duties.”	Because this was not an adjudicatory proceeding, staff counsel was not acting in any capacity other than in an advisory capacity to the Board and was in fact carrying out that role in making a recommendation to the Board. With respect to the assertion that staff counsel “improperly advised the Board that the City’s <i>oral</i> testimony at the hearing” be stricken from the record, the record clearly shows that staff counsel asked that the “documents” presented by the former mayor of Malibu be stricken, not her oral testimony (see Transcript, page 223, lines 16-18), because the documents were not presented during the prescribed written comment period.
30.12	Christi Hogin	“Violation of state open meeting laws because the details of what the Regional Board adopted was not provided in advance of the meeting.”	Several speakers addressed the issue of removal of the zero-discharge project exemption. See Transcript, pages 131-138, 215-217, and the Los Angeles Water Board deliberation about the zero-discharge exemption on pages 293, 296-297, and 308. The changes were a logical outgrowth of the written and oral comments received by the Los Angeles Water Board.
30.13	Christi Hogin	“The hearing was full of procedural errors and created confusion that was not resolved before the final vote.”	There was no confusion at the time of the vote. The motion was clear after discussion among the Board members. Staff counsel did not prevent the Board member from amending the motion but provided clarification as to the effect of her potential amendment,

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			which she then stated she did not want to do (Transcript, page 303-304).
30.14	Christi Hogin	“The CEQA analysis lacked sufficient analysis, failed to adequately analyze potential environmental impacts, identify mitigation measures, and analyze a reasonable range of project alternatives.”	<p>The Basin Planning process is exempt from certain requirements of CEQA but the Los Angeles Water Board prepared a programmatic environmental analysis that is the functional equivalent of an environmental impact report. This document must evaluate alternatives to the proposed project, reasonably foreseeable environmental impacts arising from those alternatives, an identification of mitigation measures to minimize any significant adverse environmental impacts, and methods of complying with the proposed prohibition. A CEQA review need not be exhaustive and need not be perfect. The review needs to be adequate, complete and a good faith effort at full disclosure.</p> <p>The Los Angeles Water Board performed a program level of analysis because there were no actual alternative projects available to analyze. Notably, the Los Angeles Water Board is prohibited from specifying the specific manner of compliance with the prohibition, and therefore the actual environmental impacts will necessarily depend upon the actual project(s) proposed by the local agency. The local agency will be responsible for a CEQA project review that identifies the actual impacts from the project, along with specific mitigation requirements.</p> <p>With respect to the project alternatives evaluated by the Los Angeles Water Board, CEQA does require a discussion of alternatives. The document should briefly describe the rationale for selecting the alternatives discussed and identify alternatives rejected as infeasible. Among the factors that may be used to eliminate alternatives are failure to meet most of the basic project objectives, infeasibility or inability to avoid significant environmental impacts. The Los Angeles Water Board’s Final Environmental Staff Report (FESR) set forth the two project alternatives and the rejected alternative.</p>

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		<p>“The removal of the zero-discharge exemption and the amendments adopted at the hearing were not subjected to environmental analysis.”</p>	<p>In discussing the reasonably foreseeable methods of compliance with the prohibition, the FESR set forth the possible environmental impacts. Through that analysis, the potential impacts of one of the project alternatives were discussed. The three potential compliance projects were analyzed for environmental impacts in the environmental checklist, incorporated into the FESR.</p> <p>In the environmental checklist, the significant impacts were identified and discussed. The Los Angeles Water Board then identified potential mitigation measures that could be used or incorporated into other CEQA reviews to reduce the level of significance. Contrary to the comment, specific mitigation measures were identified for all significant impacts. The Los Angeles Water Board also identified those areas which were subject to the jurisdiction of other local, regional or State agencies.</p> <p>The removal of the “zero-discharge” projects from the prohibition was a logical outgrowth of public written comments received timely at the Los Angeles Water Board. Because the written comments indicated disagreement about how a zero-discharge project would be defined, the Los Angeles Water Board staff decided to withdraw that exemption from the prohibition. Because an undefined zero-discharge project had the potential for impacts to the environment, removing it from the prohibition had no effect on the FESR’s conclusions. The exemption for several residential projects in the permitting “pipeline” merely declared those projects to be “existing” for the purpose of the prohibition and not an exemption from the prohibition itself. There is no allegation that the amendments to the prohibition contributed new substantial environmental impacts resulting from the prohibition, or that there are substantial increases in the severity of an environmental impact unless mitigation measures are adopted. If there were, recirculation of the FESR with</p>

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		<p>“We know nothing about the potential environmental effects of the publicly-owned, community based solution allowed by amendment.”</p>	<p>the new information might be necessary. But the changes did not result in new substantial environmental impacts.</p> <p>A review of the record indicates that the amendment referring to the “publicly-owned, community based solution” merely reflected the potential compliance projects analyzed in the FESR. The language clarified that a solution proposed by the Malibu community would be exempted by the terms of the prohibition.</p>
30.15	Christi Hogin	<p>“The OWDS Ban mandates the method of compliance in violation of Water Code section 13360. The Ban is inconsistent in that it prohibits owners from using existing systems but “inexplicably, 40 residential systems were exempted at the last minute and allowed to be installed until 2019.”</p>	<p>The record is clear that the Los Angeles Water Board did not mandate any particular method of compliance. With respect to the exemptions for the 40 residential projects, the transcript indicates that the proposal was made by the Executive Officer, based upon written and oral comments presented to the Los Angeles Water Board. The project were not exempted by the ban, but instead were included in the list of existing systems allowed to continue discharge until the final date the prohibition takes effect. The list of projects within the City of Malibu was provided by the City to the Regional Board. See Transcript, pages 219-221.</p>
30.16	Christi Hogin	<p>“The administrative record is incomplete (exhibits J, K, L, M) and was not provided for free or on-line to the public.”</p>	<p>The State Board will accept the commenter’s exhibits J, K and L into the Los Angeles Water Board’s administrative record since those documents were filed timely with the Los Angeles Water Board. However, exhibit M is not accepted into the Los Angeles Water Board’s administrative record because it was submitted to the Los Angeles Water Board after the comment period expired and after the additional time granted to the City of Malibu. Also, the documents related to the Request for Reconsideration of the prohibition submitted to the Los Angeles Water Board by the City of Malibu are not accepted into the Los Angeles Water Board’s administrative record since those documents were not relied upon by the Los Angeles Water Board in its adoption of the prohibition.</p>

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No.	Author	Comment	Response
			<p>Given the above, those documents are accepted into the State Board's administrative record as public comment submitted to the State Board. The administrative record is not required to be given free to any requestor. The relevant documents were available on the Los Angeles Water Board's website and could be reviewed at the Los Angeles Water Board office.</p> <p>The administrative record is not required to be given free to any requestor. The relevant documents were available on the Los Angeles Water Board's website and could be reviewed at the Los Angeles Water Board office. Copies are available as provided by the Public Record Act.</p>
31.1	Janece Maez	"A reasonable range of alternatives was not considered."	<p>With respect to the project alternatives evaluated by the Los Angeles Water Board, CEQA does require an exhaustive discussion of alternatives. The statute does not demand what is not realistically possible given the limitation of time, energy and funds. The document should briefly describe the rationale for selecting the alternatives discussed and identify alternatives rejected as infeasible. Among the factors that may be used to eliminate alternatives are failures to meet most of the basic project objectives, infeasibility or inability to avoid significant environmental impacts. The Los Angeles Water Board's Final Environmental Staff Report (FESR) set forth the two project alternatives and the rejected alternative.</p>
31.2	Janece Maez	"The LA Water Board has not considered more aggressive enforcement."	<p>The Los Angeles Water Board is using one of the strongest enforcement measures available by prohibiting discharges via a Basin Plan amendment. The Los Angeles Water Board had previously given the City of Malibu its enforcement authority via an MOU which the City violated. This prohibition is the last alternative to what has amounted to a 20 year process of failed action.</p>
32.1	David Reznick	"Since the adoption of the prohibition, the City of Malibu has continued to make progress towards significantly improving water quality in the Malibu Civic Center."	<p>See Response to Comment 4.1.</p>
32.2	David	"The prohibition adopted by the Los Angeles Regional	<p>The removal of the "zero-discharge" projects from the prohibition was</p>

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	Reznick	Board is the result of a defective public process. An exemption for “zero discharge” systems need to be included in the Prohibition.”	a logical outgrowth of public written comments received timely at the Los Angeles Water Board. Because the written comments indicated disagreement about how a zero-discharge project would be defined, the Los Angeles Water Board staff decided to withdraw that exemption from the prohibition.
32.3	David Reznick	“The administrative Record provided by the Regional Board is incomplete.”	
33.3	David Reznick	“There is a lack of substantial evidence that the Winter Canyon Drainage should be included within the boundaries of the prohibition.”	See Response to Comments 29.1 and 29.2.