

2008-2010 Triennial Review
Response to Comments on the Request for Input on the Triennial Review and update of the Water Quality Control
Plan for the Coastal Watersheds of Los Angeles and Ventura Counties
General Responses to Comments

General Response (GR) No.	Comment	Response
GR-1	<p>(a) The Basin Plan or broad categories of water quality standards should be revised in accordance with sections 13000 and/or 13241;</p> <p>(b) Existing, potential, or probable uses should be modified or eliminated;</p> <p>(c) Water quality standards should be reconsidered to comply with the writ of mandate in <i>Cities of Arcadia v. SWRCB (Arcadia II)</i>.</p> <p>(d) Standards previously adopted are not supported by their administrative records.</p>	<p>The Arcadia II case addresses the issue of whether the entire Basin Plan must be reconsidered to consider the section 13241 factors, as they apply to storm water dischargers, and the appropriateness of the uses in the Basin Plan that are designated as “potential” (versus “past present and probable future” uses), even in the absence of any evidence that any particular water quality objective is not currently set at an appropriate level of protection, or that any designated beneficial use is not properly being protected. The absence of such evidence caused the trial court to acknowledge that compliance with its writ may appropriately result in no actual changes to the water quality standards.</p> <p>The <i>Arcadia II</i> case also relates to claims that one of the several legislative findings in section 13000 (“activities and factors ...shall be regulated to attain the highest water quality that is reasonable”) constitutes a regulatory limitation based on costs of compliance. Commenters’ citation to this provision neglect companion legislative findings, such as the duty of the state to “exercise its full power and jurisdiction to protect the quality of water in the state from degradation”. Staff does not agree with the commenters that the “reasonableness” finding militates in favor of less stringent water quality protection, or for that matter, the commenters’ insinuation which elevates that particular legislative finding over others, especially where others would clearly militate in favor of more stringent water quality protection. In any event, staff does not believe that any of the legislative findings in section 13000 create substantive mandates, but rather their purpose is to explain the legislative intent of its enactments.</p> <p>Staff disagrees with the commenters that the Basin Plan (or its water quality standards) was not adopted in full accordance with law, or that its use to regulate storm water discharges requires additional analysis beyond that previously undertaken. The matter is currently on appeal, and therefore there</p>

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		<p>is presently no final judgment. Moreover, the writ is stayed during the appeal. As such, the Regional Board's obligations under the case are not yet finally determined, and the blanket review contemplated by the writ in that matter is beyond the scope of this triennial review.</p> <p>If the writ is affirmed by the Court of Appeal, the Regional Board will then determine how to comply with it, but the Board has not yet determined how to do so. Regional Board staff appreciates the commenters' suggestions about how to comply with the writ. If the writ becomes operative, staff will consider those suggestions as appropriate. It should be noted, though, that by definition, water quality standards apply to water bodies (not dischargers or types of discharges), and their purpose is to identify a specific in-stream quality so that regulations result in a consistent level of ambient water quality protection. Federal law in many cases restricts the Water Board's ability to to modify standards, and the analysis contemplated by the writ in many cases may not serve as a lawful basis to modify them.</p> <p>The purpose of this and all other triennial reviews is not to undertake a 13241 analysis. Section 13241 by its terms applies to the adoption (and by implication the revision) of water quality objectives. It does not apply to priority setting activities. If and when water quality objectives are actually under review for adoption or revision, a 13241 analysis will be performed for those activities, as required by law, and it has been performed in the past. Notably, section 13241 includes as its baseline, the obligation to ensure the reasonable protection of beneficial uses and prevention of nuisance. Accordingly, no 13241 analysis could result in relaxing water quality objectives to levels that are not protective of beneficial uses. The factors considerations, therefore, educate the Board and public about how much more stringent protection than necessary to protect beneficial uses the objectives should require. In that regard, each of the factors recognizes competing policies. For instance, while discharger commenters routinely cite to the economics consideration, that</p>

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		<p>factor does not merely relate to the costs of compliance of those responsible for controlling pollution, but costs of non-compliance, and costs averted through compliance. For example, enhanced tourism, reduced health care costs, and a more vibrant economy from properly functioning ecosystems and a healthy environment are all included within the ambit of “economic considerations” under section 13241. Likewise, the need to develop housing is often cited as a justification for decreased environmental protection, however healthy watersheds and a safe and stable supply of drinking water are required if additional housing is needed.</p> <p>In any event, the purpose of the triennial reviews is to review the Basin Plan to determine which of its components are currently inadequate or otherwise in need of revision, and to prioritize the Regional Board’s limited resources (which are primarily from the State’s General Fund) for basin planning and water quality standards maintenance to where they are most needed over the next three years. A variety of considerations bear upon this prioritization. Some of these include whether the Regional Board is in possession of evidence that a particular water quality standard or standards are not set at the appropriate level as relates generally to the uses to be protected or the uses present in a particular water body, whether changes to the standards are authorized by limitations on standards revisions specified in federal law, the extent to which revisions of standards actually affect uses or stakeholders in view of other standards in the water body or downstream that may compel similar levels of treatment irrespective of the modifications desired, and the regionwide significance of the standards revision (including but not limited to the number of stakeholders affected, and the environmental/public health impacts associated).</p> <p>In many cases, stakeholders in this proceeding have requested blanket revisions of standards, but have not presented evidence that the standards are set at an incorrect level, that the standards could lawfully be modified</p>

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		<p>consistent with federal and state law, or that the changes they have requested would actually result in substantial changes to their obligations under any permits that authorize their discharges, or conversely, would result in significant changes to the level of protection of beneficial uses. Rather, often comments have only included generalized economic arguments about municipal resources, which do not consider the environmental obligations imposed by federal/state law and regulations, or commentary about the manner in which the standards were adopted in the first instance, without regard to whether they are currently set at the level required by applicable law and in accordance with current scientific knowledge. Such comments do not present a justification to prioritize the requested tasks over the projects identified in the staff report, which are supported by evidence demonstrating their utility. The absence of specific justifications with supporting evidence prevents the Regional Board from providing a meaningful assessment of the need for and likely impact of the requested changes. The Regional Board's resources should be devoted at this time to those projects that have been demonstrated to be most beneficial to the stakeholders in the region, and most likely to yield results that are meaningful.</p> <p>Some commenters have suggested that some of the standards or parts of the basin plan that were previously adopted, were not properly adopted or supported by an adequate administrative record. The Triennial Review is not the forum to argue about the adequacy of the administrative record or analysis undertaken for other regulatory actions of the Regional Board, including the adoption of TMDLs, or the initial adoption of the water quality standards themselves. Those comments should be directed to those proceedings in a timely and appropriate manner. The Triennial Review is a proceeding to consider the current technical and legal efficacy of the water quality standards, or to address changed circumstances that may warrant a subsequent review; it is not a forum to reargue previous regulatory decisions made by the Regional Board without new significant evidence.</p>

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GR-2	The Basin Plan “lacks an implementation plan”, or the implemenantation plan should be rewritten to include compliance costs, the cost of providing housing or low income housing, municipal budgetary resources,	<p>The Basin Plan already complies with Water Code §13242. Section 13050, subd (j) specifies that a water quality control plan consists of a designation or establishment for the waters within a specified area of all the following:</p> <ol style="list-style-type: none"> 1) beneficial uses to be protected, 2) water quality objectives, and 3) a program of implementation needed for achieving water quality objectives. <p>Section 13242 specifies that the program of implementation shall include but not be limited to:</p> <ol style="list-style-type: none"> a) a description of the nature of actions which are necessary to achieve the objectives, including recommendations for appropriate action by any entity, public or private, b) a time schedule for the actions to be taken, c) a description of surveillance to be undertaken to determine compliance with objectives. <p>These components pervade the basin plan. Specific implementation plans exist for water quality objectives, through various regulatory programs including each of the approximately 45 total maximum daily loads (TMDL) (which are essentially pollutant-specific, watershed-wide implementation plans), waste discharge requirements (WDRs), NPDES permits, waivers, and remediation programs among others. In addition, the entire Chapter 4 is devoted to “Strategic Planning and Implementation”, and Chapter 6 is entirely devoted to “Monitoring and Assessment”.</p> <p>Many commenters have requested that the program of implementation be rewritten to incorporate cost, budgetary, and funding issues. While costs are considered in a variety of ways with respect to water quality regulation, as shown above, section 13242 does not include cost considerations as part of the program of implementation in the basin plan.</p>
GR-3	Recommendations for programmatic changes and	The Triennial Review is a proceeding to consider the current technical and legal efficacy of the water quality standards, or to address changed

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	other comments unrelated to efficacy of water quality standards	circumstances that may warrant a subsequent review. Comments unrelated to the efficacy of the water quality standards or particular components of particular water quality standards are outside of the scope of the triennial review process. Suggestions for programmatic enhancements, changes to current permitting practice, additional TMDL guidance, comments related to how specific regulations should be incorporated into permits, what form of effluent limitations/discharge requirements should take for specific dischargers, etc., are welcome at any time, and should generally be directed to the appropriate program staff.
GR-4	<p>TMDLs (CWA § 303(d)) and implementation of the Basin Plan (Wat. Code § 13242) will cost local government considerable compliance resources.</p> <p>The Basin Plan is not economically achievable for municipal government.</p>	<p>Effective in 1987, Congress determined that municipal governments have the obligation to control the pollutants discharged from their storm sewer systems. The structure of the Clean Water Act includes both technological and water quality based components. The technological components generally relate to infrastructure/management controls that are technically achievable. The water quality components require that the uses of each water body be specifically identified, and that criteria (or water quality objectives) be established for each constituent at levels necessary to protect those uses. Federal law requires at least that all uses that have existed from 1975 to the present be deemed “existing uses”, and federal law requires that those uses must be protected.</p> <p>The basic municipal obligations set forth in CWA section 402(p) to both effectively prohibit non-storm water from entering MS4s and to control pollutants in storm water to the <i>maximum</i> extent practicable, were expected to result in significant costs to local government, and the Regional Board is well aware of the significant expenditures doing so involves. Key among the water quality based requirements of the CWA are the “back stop” TMDL provisions, which require the states to develop TMDLs for impaired water bodies, and to specifically assign load and waste load allocations to all sources of each impairing pollutant, including MS4s. Under CWA section 303(d), the states are required to establish TMDLs at levels necessary to implement all applicable</p>

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		<p>water quality standards, with a margin of safety. Federal regulations require the states to ensure that NPDES permits include effluent limitations/conditions that are consistent with the assumptions and requirements of any available waste load allocations. The Regional Board has no discretion to not comply with these requirements.</p> <p>The Regional Board recognizes that compliance with federal and state environmental law is costly. It is not the impending TMDLs however, that cause the costs, but the obligation to control pollutants and attain water quality standards. From a regulatory standpoint, the municipal stakeholders have been required to comply with the receiving water limitations provisions of the current iteration of the MS4 permit since 2001. The 303(d) list, which formally identifies impaired waters in the region, is a public document, drives the Regional Board's TMDL schedule, and stakeholders have always been encouraged to commence remediation efforts, without waiting for the Regional Board to adopt regulations, such as TMDLs to compel restoration. Accordingly, municipalities have considerable discretion to ensure cross-pollutant coordination, and therefore reduce costs of compliance, even if the Regional Board's process often must address pollutant/water body combinations in a piecemeal manner. Responsible jurisdictions should encourage practices that result in reduced pollutant loading to surface and groundwaters in the most cost-effective manner that matches their abilities and resources.</p> <p>Since standards revision is a resource intensive activity, a concrete factual and legal basis (as discussed in GR-1) allows the Board to prioritize basin planning tasks and use the Board's resources appropriately. The cost of compliance, by itself, typically does not provide a lawful basis to modify water quality standards under federal law (although there are some exceptions); typically the current scientific knowledge of what is necessary to protect beneficial uses controls over cost considerations.</p>

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		<p>Notably, TMDLs include significant analyses of the reasonably foreseeable means of compliance and the associated costs to municipalities with implementing those means of compliance. Comments related to the costs of compliance with specific regulations or suggestions about how the Regional Board might assist in making such regulations less costly, are always welcome but should properly be directed to the proceedings that actually adopt or apply those regulations to local government—not to the triennial review process.</p> <p>While the Regional Board lacks discretion to forgo implementing the Clean Water Act, in view of the significant expense on local government, the Board endeavors to accommodate requested modifications to its regulations that tend to minimize costs, where it can do so while abiding by its obligation to implement the applicable laws and regulations. Staff also notes that compliance with environmental laws often has significant positive economic consequences for the region that are sometimes overlooked by the agencies objecting to the regulations. In this regard, the economics factor of section 13241 is not limited to the costs of compliance but would properly include the costs of not attaining standards (and economic benefits of attaining standards, such as reduced health care costs, and increased economic regional vitality from healthy ecosystems within properly functioning watersheds, etc.) as well.</p> <p>In recognition of the planning and development needed by responsible jurisdictions to achieve compliance with TMDL requirements, many TMDLs contain extended schedules for compliance with the assigned waste load allocations and load allocations. For example the Los Angeles River Metals TMDL has 22 years for full compliance with the TMDL requirements.</p> <p>In addition responsible jurisdictions may seek grants to offset some of the costs associated with improving water quality. For example, in 2009, the State Water Resources Control Board awarded \$10 million in stimulus funding to the</p>

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