

**Comment Summary and Responses**  
**Los Angeles River and Tributaries Metals TMDL**  
**July 12, 2004 Draft**

1. Rita L. Robinson, City of Los Angeles, Bureau of Sanitation
2. Rodney Andersen, City of Burbank, Department of Public Works
3. John R. Mundy, La Virgenes Municipal Water District
4. Victoria O. Conway, County Sanitation Districts of Los Angeles County
5. Michael Flake, California Department of Transportation
6.a: Don Wolfe, County of Los Angeles, Department of Public Works
6. Rod H. Kubomoto, County of Los Angeles, Department of Public Works
7. Dezi Alvarez, Executive Advisory Committee, Stormwater Program – LA County
8. Gerald E. Greene and Eduard Schroder, City of Downey and TECS Environmental
9. Gerald E. Greene, City of Downey
10. John J. Harris, Richards Watson Gershon, representing City of Monrovia
11. Pat Malloy City of Arcadia, Public Works Service Department
12. Manuel E. Guillen, City of Paramount
13. David Fike, City of Monrovia, Department of Public Works
14. Robert T. Dickey, City of South Gate, Department of Public Works
15. Martin R. Cole, City of Temple City
16. Richard Montevideo, Rutan & Tucker , representing CPR Cities
17. Mike Wang, Western States Petroleum Association
18. G. Scott Koken, Southern California Gas Company
19. Carolyn M. Casavan, West Coast Environmental and Engineering
20. Michael Cross, Glendale Galleria
21. William R. La Marr, California Small Business Alliance

22. Terri Canales, California Auto Dismantlers & Recyclers Alliance, Inc.
23. Martha Cowell, State of California Auto Dismantlers Association
24. Sam Bell, Metal Surfaces, Inc.
25. Daniel A. Cunningham, Metal Finishing Association of Southern California, Inc.
26. Carol Floss McCracken, Foss Plating Company, Inc.
27. Timothy Piasky, Construction Industry Coalition on Water Quality
28. Jerry Livingston, Building Industry Association of San Diego et al.
29. Robert W. Lucas, California Council for Environmental and Economic Balance
30. Shelly Luce and Mark Gold, Heal the Bay
31. Wynn Miller
32. Susan M. Damron, Department of Water and Power, the City of Los Angeles
33. Michael Rogge, California Manufacturers & Technology Association
34. Mike Eng, City of Monterey Park
35. Geoffrey Blake, Drilube
36. Jason Booth, Metal Recyclers Stormwater Monitoring Group
37. Rufus Young, Burke, Williams & Sorensen, representing City of Alhambra et al.
38. Chris Albrecht
39. Sarah Connick, Sustainable Conservation/Brake Pad Partnership
40. Eduard Schroder, TECs Environmental, representing City of Azusa et al.
41. Heal the Bay member form letters (sample comment)

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1.1	City of Los Angeles, Bureau of Sanitation	8/25/04	The State has no obligation or authority to perform a TMDL for waters not included on the 303(d) List. RWQCB and U.S. EPA did not present sufficient information to justify the inclusion and regulation of all metals in all reaches, as instructed by U.S. EPA in letters written as part of the Trash TMDL settlement (May 6, 2003). The data analysis is	The proposed TMDL does not regulate all metals in all reaches. Instead, the Regional Board has the authority to assign allocations to upstream reaches in order to meet TMDLs for downstream impaired

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			<p>distorted and does not support the inclusion of non-listed metals. The TMDL should be scaled back to apply only to impaired reaches and only for the pollutants listed in those reaches.</p>	<p>reaches. Reach 1 is listed for cadmium, copper, lead and zinc. The Regional Board can therefore assign waste load allocations to all upstream reaches and tributaries in order to meet the TMDL in Reach 1. Furthermore, a review of recent data indicates impairments in reaches not included on the 1998 and 2002 303(d) lists. The data review section of the staff report has been updated to include findings of these additional impairments. The staff report and Basin Plan Amendment (BPA) have been revised to clarify for which reaches TMDLs are developed and for which reaches allocations are developed to meet downstream TMDLs.</p> <p>The staff report and BPA have also been revised to state that the data review could not confirm dry-weather impairments for cadmium in any reach or dry-weather impairments for zinc in any reach except Rio Hondo Reach 1.</p> <p>The proposed TMDL is not inconsistent with the May 6, 2003, USEPA letter. Moreover, the issues presented by this TMDL are far different. The metals TMDL</p>

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				protects some listed, impaired water body from metals loading by upstream, unlisted water bodies that are contributing to the downstream impairment. That was not the subject of the May 6, 2003, letter.
1.2	City of Los Angeles, Bureau of Sanitation	8/25/04	Copper numeric targets should be implemented as effluent limits in NPDES permits in three phases: 1) impose interim, performance-based effluent quality limits. 2) phase in targets based on Water Effects Ratio (WER), translator, and hardness studies downstream of the POTWs. 3) adjust WLAs based on WER, translator, and hardness studies completed in all reaches of the River.	<p>The Staff report and BPA have been revised to state that compliance schedules may allow up to 5 years to meet permit requirements. If a POTW demonstrates that advanced treatment will be required to meet final waste load allocations, the Regional Board will consider extending the implementation schedule to allow the POTW up to 10 years from the effective date of the TMDL.</p> <p>The results of special studies will be due 4 years from the effective date of the TMDL. The TMDL will be reconsidered at year 5 to allow for potential revised waste load allocations and implementation schedules based on information obtained in the special studies, including WER, translator, and hardness studies. Therefore, there is no need for interim waste load allocations for POTWs in the TMDL.</p>
1.3	City of Los Angeles,	8/25/04	Stormwater and urban runoff requirements should be implemented as management practices (BMPs), or source control requirements. All	The implementation section of the proposed BPA and staff report have been

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	Bureau of Sanitation		<p>references to numeric limits for evaluation of compliance should be removed from the Basin Plan Amendment (BPA) and staff report, as there is insufficient evidence that numeric limits can be feasibly attained or scientifically monitored.</p> <p>Also, all references to “compliance points” should be replaced with “TMDL effectiveness monitoring points” to be determined during the development of the monitoring plan.</p>	<p>revised to clarify how waste load allocations will be translated into NPDES permits. The revised BPA and staff report reflect the expectation that storm water permit writers will translate waste load allocations into permit limits in the form of BMPs. Permit writers must provide adequate justification and documentation to demonstrate that specified BMPs are expected to result in attainment of the waste load allocations.</p> <p>All references to “compliance assessment” have been replaced with “TMDL effectiveness” in the BPA and staff report.</p>
1.4	City of Los Angeles, Bureau of Sanitation	8/25/04	<p>The WLAs for the entire river should not be based on a critical flow that is less than the design flow of the three treatment plants. This unreasonably limits POTWs from fully utilizing existing capacity that has been approved and funded by U.S. EPA and permitted by the RWQCB. The dry weather critical flow should be based on current design flow from the POTWs, plus an allocation for storm water flow (20 percent of the current stream flow). Design flows have already been permitted through a public process and a minimum stream flow will be present. Periodic reassessment of the TMDL should include consideration of POTW expansion as part of the IRP implementation and adjusts the WLAs accordingly.</p>	<p>The critical flow has been revised to equal the combined design capacity of the three treatment plants (169 cfs) plus the existing average stormwater flow (34 cfs, based on the median flow at Wardlow minus existing median flow from POTWs.)</p> <p>Potential POTW expansion would be included in the reconsideration of waste load allocations required in the re-evaluation of the TMDL at year 5.</p>
1.5	City of Los Angeles,	8/25/04	<p>Because of existing conservative assumptions in the development of CTR-based targets, there is no need to set the critical flow in the</p>	<p>See response to Comment No. 1.4.</p>

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	Bureau of Sanitation		TMDL at less than design capacity to allow a margin of safety. Dry weather flows in the Los Angeles River are by far represented by POTW flow. Setting the TMDL critical flow at less than design flow is tantamount to a growth cap for the City, absent significant upgrades to treatment processes.	
1.6	City of Los Angeles, Bureau of Sanitation	8/25/04	Daily maximum limits have been determined to be illegal (City of Los Angeles vs. State Water Resources Control Board, et al., Superior Court No. BS060957) and should not be a part of the waste load allocations or permit limits for POTWs unless and until an impracticability analysis is done on longer term limits. <i>See</i> 40 C.F.R. §122.45(d)(2). Since the TMDL is based predominantly on chronic criteria, there is no reason why longer-term average limits (e.g., monthly average) are not practicable as WLAs or effluent limits. Daily maximum limits should be removed unless an impracticability analysis is done and it can be demonstrated that longer-term averages will in fact cause aquatic toxicity.	Daily maximum effluent limitations are allowed in NPDES permits for POTWs when it has been demonstrated that weekly average effluent limitations are impracticable. Several years have past since the City filed suit. In that time, the USEPA has promulgated the California Toxics Rule (CTR), the State Board has adopted the State Implementation Policy's (SIP), and the Regional Board has renewed NPDES permits for POTWS consistent with the SIP and the CTR. The fact sheets for those NPDES permits explain why it is impracticable to use weekly average effluent limitations for toxic pollutants and justify the use of daily maximum effluent limitations. In cases where the discharge of a pollutant has an acute toxic effect on sensitive aquatic life and on other designated beneficial uses, it is impracticable to express the effluent limitation as a weekly average, because the weekly average effluent limitation would

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				<p>not be protective of the beneficial uses. It is therefore more appropriate to express the effluent limitation as a daily maximum. In addition, the SIP contains a detailed procedure for calculating daily maximum effluent limitations, rather than weekly average effluent limitations. The recently adopted NPDES permits for POTWs containing CTR-based daily maximum effluent limitations have withstood the petition process and have not been challenged in court. Finally, the commenter should recall that the requirements of section 303(d) of the Clean Water Act are designed to recognize the total maximum daily load—expressing WLAs as daily maxima and requiring a POTW' s NPDES permits to contain pollutant restrictions consistent with the TMDL is appropriate. There may be instances where WLAs are expressed as something other than daily maxima, but in dealing with continuous discharges of toxic pollutants (as this TMDL necessarily does when addressing WLAs for POTWs), it is appropriate and lawful to have daily maxima.</p>
1.7	City of Los Angeles,	8/25/04	Interim limits will be necessary for POTWs to meet the concentration-based limits as well as mass limits when the treatment plants are at or	The critical flow has been revised to include the combined design capacity of the

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	Bureau of Sanitation		near design capacity. POTWs may be required to construct new treatment facilities to meet these limits. In addition, these limits are based on factors such as translators, hardness, and WERs, which the TMDL acknowledges will require more study to clarify the technical uncertainties present in the calculations of these numeric targets. Interim, performance-based targets should be established, while uncertainties are resolved in the first phase of TMDL implementation.	three treatment plants in order to address concerns that setting the critical flow at less than the design capacity would limit growth or require significant upgrades. See also response to comment No. 1.2.
1.8	City of Los Angeles, Bureau of Sanitation	8/25/04	There is a need to clarify the maximum amount of volume or storm event size that MS4 dischargers are expected to capture and treat. It is not feasible to try and manage stormwater from extreme events, because the volume of water is so large, nor is it necessary to meet numeric water quality objectives at all times, because acute and chronic objectives allow exceedances of numeric objectives at frequencies of once every three years or longer.	Staff will address the issue of defining a maximum volume or storm event size through the wet-weather task force, which they committed to establishing as part of the Triennial review. Based on the task force's recommendation, staff will bring the definition of a storm that will address multiple TMDLs to the Board for their consideration as a Basin Plan amendment.
1.9	City of Los Angeles, Bureau of Sanitation	8/25/04	It is difficult to understand how the load capacity curves will be used to determine wet-weather compliance, and what actions should be taken if found to be out of compliance. The load capacity curves should not be used to determine compliance by MS4s and Caltrans, instead define wet-weather compliance as management of smaller more frequent flows to the maximum extent practicable (MEP). The loading capacity curves should be drawn on a normal scale, not a log scale, so that the magnitude of the mandated load reductions is apparent to non-scientists.	The BPA and staff report have been revised to include equations that describe load capacity curves and allocations. If the TMDL effectiveness monitoring shows exceedances of waste load allocations, the MS4 and Caltrans storm water permits will be revised in the next permit cycle to incorporate additional requirements to achieve compliance with the waste load allocation. The removal of references to "compliance monitoring" in the BPA and staff report clarify that the TMDL is not



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				<p>self-executing and that the MS4 and Caltrans permittees will not be subject to enforcement actions if waste load allocations are not met.</p> <p>The proposed BPA and staff report have been revised to better describe the load capacity curves. The curves are expressed as load per daily volume, rather than per rainfall event, eliminating the effects of the spatial variability of rainfall. The curves are now presented in the implementation section of the revised staff report. However, the curves are still presented on a log scale, as loads vary over orders of magnitude and cannot be clearly seen on a normal scale.</p>
1.10	City of Los Angeles, Bureau of Sanitation	8/25/04	Lead data should be examined to see if some of the historical exceedances occurred when leaded gasoline was legal. If that is the case, perhaps the data set should be shortened to exclude those years. This is consistent with the draft 303(d) listing policy that discourages listings for historic loadings. Lead is also one of the trace metals that most easily produces analytical artifacts. Trace metal clean techniques have only recently been standardized, so only the most recent lead data should be used to evaluate exceedances.	The reaches listed for lead were included on the 1998 303(d) list. The water quality assessment for this listing was completed in 1996 and contained data from 1988 to 1994. The phase out of added lead in gasoline began in 1978. It is conceivable that the data used in the 1996 assessment contained data collected prior to the completion of the added lead phase out. However, the newer monitoring data used in the water quality data review for this TMDL confirms current lead impairments.

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1.11	City of Los Angeles, Bureau of Sanitation	8/25/04	Due to the number of responsible municipalities, the monitoring plan schedule should be extended to at least 12 months after the effective date of the TMDL.	The proposed BPA and staff report have been revised to allow 12 months to submit a monitoring plan.
1.12	City of Los Angeles, Bureau of Sanitation	8/25/04	Due to the number of responsible municipalities, the deadline for the compliance plan schedule should be extended to 24 months after the effective date of the TMDL for the draft schedule and 30 months after the effective date for the final schedule.	Staff believes that 12 months for the draft and 16 months for the final implementation schedule is sufficient time.
1.13	City of Los Angeles, Bureau of Sanitation	8/25/04	The TMDL defines the duration of a rain event as the start of rain until return to base flow of 145 cfs. There is no need for prescriptive definitions of the wet weather monitoring triggers in the BPA and staff report. The appropriate place for the triggers to be defined is in the monitoring plan. The BPA and staff report should state that the triggers should consider both flow and rainfall and should be defined in the wet-weather monitoring plan.	The proposed BPA and staff report have been revised to exclude the definition of a storm from the TMDL effectiveness monitoring section. However, staff added a definition of dry and wet weather to the Numeric Targets section to clarify the distinction between wet and dry weather.
1.14	City of Los Angeles, Bureau of Sanitation	8/25/04	The TMDL should use the copper translators for dry weather derived in the Larry Walker study downstream of both the Tillman and LAGlendale POTWs. The sentence in the staff report that says ‘LWA proposed partition coefficients for use as copper translators,’ should be deleted and replaced with the following: ‘LWA used partition coefficients to validate copper translator study. RWQCB staff decided to use the partition coefficients in lieu of the copper translator study coefficients.’ The translators from the original study should be used to calculate targets as they are the best available data and research done to date.	The translators proposed in the original LWA study, which were based on direct measurement of dissolved to total metals, showed a weak correlation downstream from Tillman. The partition coefficient modeling conducted by LWA did not validate the original translators but rather provided alternative translators based on EPA guidance and allowed for by the SIP. Please note that the staff report has been revised to clarify the selection of translators. Also note that the implementation plan allows for further

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				study to evaluate and refine the translators through special studies.
1.15	City of Los Angeles, Bureau of Sanitation	8/25/04	Although U.S.EPA policy allows waste load allocations for storm water to be expressed in numeric form, it is not required. All language specifying that U.S. EPA requires numeric limits for storm water should be removed. Also, since new data or results from special studies may affect either waste load allocations or implementation methods, the implementation plan should allow reconsideration of the implementation schedule at the six-year point in addition to reconsidering the WLAs.	<p>EPA guidance on establishing WLAs for storm water (11/22/02) states that WLAs must be numerical but that most water quality-based effluent limitations (WQBELs)—the permit requirements that implement the WLAs—for municipal and small construction storm water discharges will be in the form of BMPs, and that numeric limits will be used only in rare instances. Considering that the federal regulations define a TMDL as “[t]he sum of the individual WLAs for point sources and LAs for nonpoint sources and natural background,” (40 C.F.R. 130.2(i)) it only makes sense that individual components that are “added” together are numeric. The arithmetic sum would be difficult if not impossible to calculate if the WLAs and LAs were not expressed numerically.</p> <p>The proposed BPA and staff report and have been revised to allow for reconsideration of the implementation schedule at year 5.</p>
1.16a	City of LA, Bureau of San	8/25/04	The State Water Code explicitly forbids the RWQCB from prescribing the method or manner of compliance with any requirement or order of	Prescriptive monitoring requirements have been removed from the staff report and

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1.16	City of Los Angeles, Bureau of Sanitation	8/25/04	<p>the RWQCB, including a TMDL. Water Code §13360(a).</p> <p>The burden of all monitoring requirements, including cost, must be weighed against the benefits to be obtained and the relationship between the two must be reasonable. Water Code §13267 and §13225(c).</p>	<p>BPA.</p> <p>The TMDL does not contain self-executing monitoring program requirements, and an appropriate analysis of benefits and burdens will be undertaken when the regional board orders the preparation of a monitoring and reporting program. The TMDL is not adopted pursuant to Water Code section 13267, but subsequent orders may be. Those orders would require an analysis under Water Code section 13267 for entities discharging waste—such as municipal dischargers. The regional board does not anticipate relying on the authority in Water Code section 13225, subdivision (c)—which allows it to require cities to investigate the quality of waters, even if the cities did not cause or contribute to the waste.</p> <p>The BPA does not specify a compliance monitoring program or report, but instead anticipates a further order from the Regional Board' s Executive Officer. At this time, it is not possible to evaluate the burdens of any such report, because the parameters of the program and reports have not been specified in a Water Code section</p>

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				<p>13267 order. Moreover, the revised BPA shall make clear that the responsible agencies will propose reporting requirements to the Regional Board. As such, the responsible agencies will have a role in determining the actual burden. In developing the 13267 order, the Executive Officer will consider costs in relation to the need for data. With respect to benefits to be gained, the TMDL staff report demonstrates the significant impairment and metals loading. This impairment makes the Los Angeles River toxic to aquatic life, contrary to express national policy and goals. Further documenting success or failure in achieving waste load allocations will benefit the responsible agencies and beneficial uses, so that they know when to scale back or reduce compliance efforts.</p>
1.17	City of Los Angeles, Bureau of Sanitation		Source investigations in the event of an exceedance per provisions in the monitoring plan should be required beginning 6 years after the effective date of the TMDL (after the first compliance milestone), rather than immediately.	References to source investigations have been removed from the proposed BPA and staff report.
1.18	City of Los Angeles, Bureau of Sanitation	8/25/04	The description of how the dry weather load allocations were derived for both the POTWs and storm water permittees is not clear.	The staff report has been revised to clarify how the dry weather load allocations were derived for both the POTWs and storm water permittees.

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1.19	City of Los Angeles, Bureau of Sanitation	8/25/04	There is not a consistent use of hardness. The SIP does not contain hardness-related justification for using the 10 <sup>th</sup> percentile of hardness. The closest statement is related to translator derivation. Therefore, since the selection of the 10 <sup>th</sup> percentile of hardness is arbitrary, the median of the hardness data is more reasonable.	<p>The selection of hardness is not arbitrary, To clarify, the staff report has been revised to read, ‘methods similar to the SIP procedures for choosing translator values are used to choose the percentile hardness values in calculating dry-weather targets.’ 10<sup>th</sup> percentile hardness values are used to calculate acute criteria and median hardness values are used to calculate chronic criteria. This results in lower chronic criteria for all metals except zinc. The dry-weather targets are based on the most protective of the chronic or acute criteria. Therefore, the chronic criteria are the dry-weather numeric targets for copper and lead and the acute criterion is the dry-weather numeric target for zinc.</p> <p>Because of the variability in hardness values during wet weather, staff proposed that the 10th percentile of hardness data would not accurately represent the hardness values during storm water conditions. Staff therefore chose the 50th percentile hardness values to use in calculating the wet weather numeric targets.</p>
1.20	City of Los Angeles,	8/25/04	The cost analysis was not provided until August 2, 2004. An extension of the commenting period should be allowed in order to address overall	An extension has been provided by re-noticing the TMDL.

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	Bureau of Sanitation		<p>difficulties in the review and commenting process caused by this delay. The cost analysis for stormwater should include data to support the effectiveness of each BMP specific to land uses, data that was used to establish the per unit cost included in the BMP, and assumptions that were used to determine the extent of BMP deployment and runoff capture required to achieve the load allocations. No potential cost impacts to POTWs were analyzed.</p>	<p>The BMP effectiveness and cost data is referenced in the staff report and Appendix III. The structural BMPs that were selected for the purposes of a cost analysis are specifically designed for an ultra urban environment. Since the TMDL cannot dictate the means of compliance, staff made assumptions about reasonably foreseeable means of compliance. These assumptions were based on estimates of the proposed extent of the IRP and literature about the applicability of structural and non-structural BMPs. The references cited in the Cost Analysis have been included in the Reference section in the revised staff report.</p> <p>At this time, it would be premature and speculative to assess the costs associated with treatment alternatives. Past experience with individual POTW permits has shown that design/build cost estimates are grossly inflated. Most POTWs in the Los Angeles region seem to have been able to meet CTR-based effluent limitations without the installation of treatment. Therefore, effective source control</p>

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				approaches through the pretreatment program is not only cost-effective (essentially no-cost to the POTWs), but is also effective.
1.21	City of Los Angeles, Bureau of Sanitation	8/25/04	Regarding the Integrated Resources Plan, the reference to a goal of 50% of the annual average wet-weather urban runoff is not entirely correct. The language referencing a goal of using “50% of the annual average wet-weather urban runoff” should be replaced with the more accurate IPWP goal of “increasing the amount of wet weather urban runoff that can be captured and beneficially used in Los Angeles.”	The staff report has been revised to incorporate the suggested language.
1.22	City of Los Angeles, Bureau of Sanitation	8/25/04	There are critical calculation errors in the dry weather waste load allocations.	Calculations have been reviewed and corrections have been made to the staff report and proposed BPA, where necessary.
1.23	City of Los Angeles, Bureau of Sanitation	8/25/04	The TMDL waste load allocations should be revised as soon as more accurate, scientifically based information on the WERs becomes available and the peer review is complete. Also, reconsideration of the compliance schedule should be allowed so that agencies will have additional time to modify the plan and to design and construct structural BMPs based on new waste load allocations.	The peer review has already been completed. The results of special studies are required by year 4. The reconsideration of the WLAs and implementation schedule have been pushed back to year 5 in the revised BPA. This will allow for consideration of the results of special studies and a reconsideration of the WLAs and implementation schedule prior to the first compliance deadline at year 6.
1.24	City of Los Angeles, Bureau of Sanitation	8/25/04	The City will attempt to “treat” deposited air emissions, which enter the MS4, in order to comply with this TMDL, but the RWQCB should recognize the importance of source prevention by gaining participation from agencies with authority over air issues. Alternatively, air sources	Comment noted. Please not that direct atmospheric deposition has been assigned a load allocation in the revised BPA and staff report.



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			should be treated as background sources and addressed as stated in the next section.	
1.25	City of Los Angeles, Bureau of Sanitation	8/25/04	A reference system/antidegradation approach should be allowed upon completion of reference system studies in our region, if such studies indicate that significant amounts of metals come from background non-anthropogenic sources. A reference system approach was used for bacterial TMDLs in our region, in which a reasonable amount of exceedances was allowed for wet weather and winter dry weather.	A study by SCCWRP is already under way to quantify natural contributions, including metals, during wet and dry weather. The results of studies on background loadings of metals studies will be considered prior to TMDL reconsideration at year 5.
1.26	City of Los Angeles, Bureau of Sanitation	8/25/04	The Regional Board cannot adopt this BPA without a Peer Review and a public review of the Peer Review Report. Access to the Peer Review Report should be provided for public review and an adequate comment period should be allowed prior to conducting a hearing for the adoption of this TMDL.	The proposed TMDL staff report and technical appendices were reviewed by two peer reviewers. Peer review comments were included in the September 2, 2004 Board workshop package. Copies of peer review comments have also been provided upon request. The staff has made the peer review comments available, even though there is no requirement to allow public comments on the peer review. Peer review and public comment serve two different, but complementary purposes. Peer review is designed to provide an objective, independent, and scientific analysis of the scientific portion of the TMDL.
1.27	City of Los Angeles, Bureau of Sanitation	8/25/04	In a letter to the Los Angeles City Council dated May 6, 2003 (see Enclosure 2), U.S. EPA Region IX agreed to publish draft TMDLs in the Federal Register. The TMDL should be renoticed for public comment in the Federal Register.	According to the referenced memo, Federal Register notices would be published for TMDLs established by EPA, not for TMDLs being adopted by the Regional

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				Board and submitted to EPA for approval.
1.28	City of Los Angeles, Bureau of Sanitation	8/25/04	Smaller cities were not involved in the development of this TMDL and may disagree with portions of the TMDL. The RWQCB should continue its outreach to interested cities and address their concerns regarding the TMDL. The City has a collaborative stakeholder process that can support such outreach in the future.	Comment noted.
1.29	City of Los Angeles, Bureau of Sanitation	8/25/04	Table 31 in the staff report should be revised to identify those reaches and tributaries that are listed versus non-listed since the waste load allocations should only apply to listed portions of the Los Angeles River.	See response to comment No. 1.1
1.30	City of Los Angeles, Bureau of Sanitation	8/25/04	The RWQCB should lead the charge to sponsor legislative actions to pursue the development of alternative brake pad materials.	The staff report has been revised to remove the suggestion that permittees work with state and federal agencies to pursue alternative brake pad materials. Staff acknowledges the efforts of the Brake Pad Partnership to understand and address as necessary the impacts on surface water quality that may arise from break pad wear debris.
1.31	City of Los Angeles, Bureau of Sanitation	8/25/04	The section of the staff report (page 67 ) that discusses BMP implementation in stormwater permits should be revised to say “selected BMPs” not “required BMPs”	The referenced language means that permits will require BMPs in general, not necessarily specific BMPs.
1.32	City of Los Angeles, Bureau of Sanitation	8/25/04	The re-evaluation of the TMDL waste load allocations does not occur until 6 years after the TMDLs effective date. The special studies due date should be adjusted to 5 years after the TMDL effective date to allow more time for the studies to be conducted, thus allowing for a more thorough evaluation.	It is necessary that the special studies be submitted by year 4 in order to allow time for review prior to reconsideration of the TMDL, which has been revised to occur during year 5. Staff notes that many special

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				studies are already underway.
1.33	City of Los Angeles, Bureau of Sanitation	8/25/04	Fifteen years is not enough time to comply with the wet-weather portion of this TMDL. This TMDL requires extensive coordination effort among over than 30 agencies. More time is needed to properly identify the pollutant sources and appropriate control strategies, to determine whether the impairment even exists, and to conduct further water quality studies. The City requests 22 years to comply with the wet-weather waste load allocations. This is reasonable in comparison with the Santa Monica Beaches Bacterial TMDL implementation schedule, which allows up to 18 years.	The proposed BPA and staff report have been revised to allow 22 years for wet weather compliance. Interim compliance deadlines have been revised as well.
1.34	City of Los Angeles, Bureau of Sanitation	8/25/04	As of Monday, August 2nd, Appendix III, which provides an analysis of costs was not available on the RWQCB website.	This comment has been addressed by re-noticing the TMDL.
1.35	City of Los Angeles, Bureau of Sanitation	8/25/04	A breakdown of the Total Construction and Maintenance Costs in Table 40 of the staff report should be provided based on BMP. Also, is the 30% reduction from the IRP included?	The maintenance costs were broken down based on BMP in Tables 38 and 39 (Tables 7-6 and 7-7 in the revised staff report). The cost of implementing the IRP is not included in the analysis.
1.36	City of Los Angeles, Bureau of Sanitation	8/25/04	The sentence on page 77 of the staff report should be modified to read: "The City plans to extend <u>and modify</u> their program to include metals sampling of the tributaries in the future."	The staff report has been revised to make this change.
1.37	City of Los Angeles, Bureau of Sanitation	8/25/04	This CEQA Checklist does not identify or discuss the environmental impacts of siting and constructing a new stormwater treatment plant with reverse osmosis, which may be required to comply with these new regulations.	The CEQA checklist and staff report discuss the potential impacts of construction and operation of urban runoff treatment facilities. The extent to which treatment facilities would be required,

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				including facilities with reverse osmosis, is purely speculative at this point. The Regional Board has located no evidence that reverse osmosis is required to achieve compliance with waste load allocations. Based on the metals removal efficiencies reported by EPA, FHWA, and Caltrans as discussed in Section 7 of the staff report, it is reasonably foreseeable that the structural and non-structural BMPs considered would achieve compliance with the waste load allocations.
1.38	City of Los Angeles, Bureau of Sanitation	8/25/04	Two subwatersheds, divided by the Arroyo Seco tributary, are recommended for ease of coordination and implementation: one for the upper LA River and one for the lower LA River. The lead jurisdiction for each subwatershed would be the one with highest percentage area of the subwatershed under their jurisdiction.	The proposed BPA has been revised to reflect that this suggestion could be considered by the responsible jurisdictions in the monitoring and compliance plans.
1.39	City of Los Angeles, Bureau of Sanitation	8/25/04	The sentence on page 68 of the staff report that reads, "The Regional Board does not intend to revise the waste load allocations until reductions have been achieved," should be revised to allow the possibility of revising waste load allocations prior to the reopener of the TMDL or indication of any reductions. The Regional Board should not be restricted to revise the waste load allocations until some kind of reduction is achieved, but rather on the basis of any new data that is compiled from the special studies.	This language has been removed from the staff report.
1.40	City of Los Angeles, Bureau of	8/25/04	All state and national park system areas within the watershed should be included as a part of the compliance area due to potential sediment contributions. In addition, the approach that the Regional Board has	The staff report and proposed BPA have been revised to include load allocations for open space and direct air deposition.

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	Sanitation		taken to exclude atmospheric deposition in the areas except for what occurs directly over the river does not give a accurate representation of what is really happening. With a watershed this large, a large portion of the entire area needs to be accounted for.	<p>However, no load allocation is developed for indirect air deposition on the urbanized portion of the watershed. This deposition is accounted for in the waste load allocations for the storm water permittees. Once metals are deposited on land under the jurisdiction of a permittee, they are within a permittee's control and responsibility. Permittees are responsible for the storm water they discharge to the river.</p> <p>The TMDL allows for special studies to further characterize loadings from background or natural sources. The results of these studies will be considered when the TMDL is reconsidered in year 5.</p>
1.41	City of Los Angeles, Bureau of Sanitation	8/25/04	The assumption the TMDL uses that 20% of the watershed would be treated by infiltration trenches and 20% of the watershed would be treated by sand filters may not be realistic. The Upper LA River watershed area may not be able to implement such projects throughout a majority of the area because of regulations set by the Watermaster that limit infiltration.	See response to comment No. 1.20.
1.42	City of Los Angeles, Bureau of Sanitation	8/25/04	The storm year should be revised to reflect the LACDPW water year, which is October 1 <sup>st</sup> through September 30 <sup>th</sup> .	The proposed BPA and staff report have been revised to remove the definition of a storm year. Details of the monitoring plan will be submitted by responsible jurisdictions pursuant to a subsequent order issued by the Regional Board's Executive

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				Officer.
1.43	City of Los Angeles, Bureau of Sanitation	8/25/04	It is our understanding that the low flow channelized gaging stations (e.g. Tujunga Ave) are accurate. The first bullet of the Special Studies section in the staff report should therefore be revised to read, "Refined flow estimates for the Los Angeles River mainstem and tributaries where there presently are no flow gages and improved gaging of low-flow conditions <u>where needed.</u> "	The proposed BPA and staff report have been revised to reflect this change.
1.44	City of Los Angeles, Bureau of Sanitation	8/25/04	Page 11 of the staff report, discussing the Reach 4 and 5 boundaries, should be revised so that "Riverside St." reads "Riverside Dr."	The staff report have been revised to reflect this change.
1.45	City of Los Angeles, Bureau of Sanitation	8/25/04	The ambient monitoring program should be a responsibility shared by all dischargers to the river, which includes all POTWs, minor and general NPDES dischargers, industrial permittees, and national forest and state parks in addition to the MS4s and Caltrans.	Regional Board stall will consider ways to expand participation in the ambient monitoring program when a subsequent monitoring order is issued.
1.46	City of Los Angeles, Bureau of Sanitation	8/25/04	There is a need to unequivocally define the term total metals. The currently used version of EPA Method 200.7 (metals by ICP-AES) contains a sample preparation procedure for "total recoverable metals" but not for total metals. Standard Method for the Examination of Water and Wastes contains sample preparation procedures for both total and total recoverable metals. CTR references total recoverable metals. This document should contain a statement that the terms total metals and total recoverable metals are used interchangeably.	The proposed BPA and staff report have been revised to reference total recoverable metals.
1.47	City of Los Angeles, Bureau of Sanitation	8/25/04	There may be a typographical error on page 12 of the staff report regarding the discharge by Southern California Edison Company to Reach 1. The flow, 720 mgd, seems unreasonably large.	The sentence with the incorrect flow has been deleted from the staff report.
1.48	City of Los	8/25/04	There is a typographical error on page 13 of the staff report regarding	The staff report has been revised to state

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	Angeles, Bureau of Sanitation		flow data from the Wardlow station. There is probably a typographical error in the listing of the dates as October 1998 – December 2000.	“October 1988 through December 2000.”
1.49	City of Los Angeles, Bureau of Sanitation	8/25/04	On page 79 of the staff report, regarding sampling of metals for compliance assessment, one assumes that the TMDL refers to the 303(d) listed metals. This should be stated explicitly.	This section of the staff report, containing specific monitoring requirements, has been deleted.
1.50	City of Los Angeles, Bureau of Sanitation	8/25/04	The reference to Figure 2 on page 21 of the staff report should be changed to Figure 1.	The staff report has been revised to reflect this change.
1.51	City of Los Angeles, Bureau of Sanitation	8/25/04	The implementation schedule for this TMDL should be reviewed when the San Pedro Bay and LA River Estuary TMDLs are developed. The implementation schedule for this TMDL extends over 10 (dry weather) to 15 (wet weather) years. Some efforts (e.g., non-structural BMPs) should be implemented regardless of the status of additional TMDL development, but it probably would be better if other efforts (e.g., major structural BMPs) were implemented after all relevant TMDLs are developed.	Staff agrees that compliance efforts should be coordinated. The Regional Board may reconsider the TMDL at any time. Please note that the final wet-weather compliance deadline has been extended to 22 years in the revised BPA.
1.52	City of Los Angeles, Bureau of Sanitation	8/25/04	The following statement from the Source Assessment section of the staff report on page 40 needs clarification: “Not all the metals deposited on the land from the atmosphere are loaded to the river. The mass loading in stormwater is typically 10 to 20% of the mass loading from atmospheric deposition (compare Table 16 and Table 17).” The percentages seem closer to one-third or more based on the “Typical year” values (SCCWRP) or the average of LACDPW data (Table 16). It appears indirect aerial deposition makes a larger contribution than suggested on page 40.	This comparison is not presented to suggest that indirect aerial deposition is insignificant. It is intended to show that not all of the total metals deposited on land are washed off and carried to the river (i.e., the values in Table 17 are greater than the values in Table 16.) The percentage of metals present in storm water due to atmospheric deposition is unknown.

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				However, all of the metals present in storm water are the responsibility of the storm water permittees. The staff report has been revised for clarification.
1.53	City of Los Angeles, Bureau of Sanitation	8/25/04	The reference to Table 33 in the sentence on page 62 of the staff report is incorrect.	The staff report has been revised to reflect this change.
1.54	City of Los Angeles, Bureau of Sanitation	8/25/04	The cost estimate assumes that compliance could be achieved in an urbanized portion of the watershed using an integrated resources approach (30%), non-structural BMPs (30%), and structural BMPs (40%). There should be a discussion of how these percentages were determined.	See response to comment No. 1.20.
1.55	City of Los Angeles, Bureau of Sanitation	8/25/04	The references section is incomplete. The entire reference section should be reviewed and corrected for the final report.	The reference section has been revised.
2.1	City of Burbank, Department of Public Works	8/26/04	An Implementation Schedule is proposed in Exhibit I. Interim Limits and an implementation schedule are needed because there has been a change in the way hardness is used to calculate chronic criteria, the plant was recently upgraded to implement the Nutrient TMDL, which reduced copper removal efficiency, time is needed to pursue source reduction through the pretreatment program, the ongoing development of a WER study, the development of the IRP, and the time required to design, bid, build and start-up an advanced treatment process, if necessary.	See response to comment No. 1.2.
2.2	City of Burbank,	8/26/04	Since the Regional Board assumed the POTWs could immediately comply with their allocations, the proposed TMDL does not include an	See response to comment No. 1.2 and 1.20.



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	Department of Public Works		implementation strategy or any associated costs of additional treatment that will be incurred at the POTWs to meet these allocations. The TMDL should include language that addresses these necessary upgrades and takes into account the projected costs of compliance. Exhibit 3 has provides the language that can be inserted into the TMDL.	
2.3	City of Burbank, Department of Public Works	8/26/04	The proposed TMDL includes allocations for metals where there are no impairments. In all, there was only one exceedance of the CTR criteria for cadmium in 202 dry-weather samples taken from four locations in the watershed. In the stormwater monitoring data for cadmium (taken from only one station in the watershed), only three of forty-two measurements exceeded the CTR criteria. Clearly, a review of this impairment should be made, and the metal should be de-listed from the two reaches in the watershed where the impairment is listed. Zinc exceeded the chronic criteria only seven times out of 240 samples and should also be de-listed.	Because the detection levels for cadmium were higher than the chronic criteria for a large number of samples, there are not enough data to de-list cadmium. However, the staff report and BPA language have been revised to reflect that the data review could not confirm cadmium listings during dry weather. No dry-weather numeric targets or allocations are developed for cadmium. A review of storm water data collected at Wardlow indicates several exceedances of acute and chronic cadmium criteria. Therefore, wet-weather allocations are assigned for cadmium. By the same argument, dry-weather numeric targets and allocations have been removed for zinc in all reaches of and tributaries to the River except Rio Hondo Reach 1. There was no additional data to assess the dry-weather impairment in Rio Hondo Reach 1, so the dry-weather numeric targets and allocations remain.

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2.4	City of Burbank, Department of Public Works	8/26/04	The proposed TMDL should focus on Best Management Practices (BMPs) for stormwater rather than numeric limits and compliance monitoring. All references to numeric limits for evaluation of wet weather compliance by MS4 stormwater programs and Caltrans should be removed, as there is insufficient evidence that numeric limits for stormwater can be feasibly attained or even scientifically monitored.	See response to comment No. 1.3.
2.5	City of Burbank, Department of Public Works	8/26/04	A reconsideration of the critical flow for the entire river is warranted. The WLAs for the entire river should not be based on a flow that is less than the design flow of the three treatment plants. The dry weather critical flow should be based on current design flow from the POTWs, plus an allocation for stormwater flow (20-40 percent of the current stream flow).	See response to comment No. 1.4
2.6	City of Burbank, Department of Public Works	8/26/04	The claim in the proposed Resolution that the numeric targets are not water quality objectives (paragraph 4) conflicts with a later statement in paragraph 12 that “the amendment is consistent with the State Antidegradation Policy (State Board Resolution No. 68-16), in that the <u>changes to the water quality objectives...</u> ” Either the objectives are being changed or not, and the Resolution must make clear which is the case. If the targets are new objectives, then the Regional Board must comply with Water Code § 13241 prior to imposing requirements based upon these objectives. The claim that the targets create no new bases for enforcement is also unfounded since the numeric targets are an indirect regulation of the discharges.	The tentative Resolution has been revised for clarification. The TMDL is implementing existing objectives—namely, the federal water quality standards contained in the California Toxics Rule.
2.7	City of Burbank, Department of Public Works	8/26/04	The Resolution is legally infirm for not complying with Government Code §11353. The Resolution at paragraph 15 concludes, with no citation of evidence to support this conclusion, that the “regulatory action meets the ‘Necessity’ standard of the Administrative Procedures Act (APA), Government Code, Section 11353, Subdivision (b).” It is	The TMDL staff report and record demonstrate the necessity of this action. TMDLs were developed for each metal that contributes to an impairment of a reach and its tributaries. There is a necessity to assign

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			<p>unclear from the record how a TMDL for all metals is a necessity for waters that are not included on the state's 303(d) for each of the metals, or why WLAs for each metal need to be applied to all point sources whether or not they are in compliance with the objectives or are discharging into reaches that are not deemed impaired.</p>	<p>waste load allocations all sources to all upstream reaches in order to meet TMDLs for impaired reaches downstream. Reach 1 is listed for cadmium, copper, lead and zinc. The Regional Board can therefore assign waste load allocations to all upstream reaches and tributaries because they cause or contribute to impairments in downstream reaches. Furthermore, a review of recent data indicates impairments in reaches not included on the 1998 and 2002 303(d) lists. The data review section of the staff report has been updated to include findings of these additional impairments. The staff report and Basin Plan Amendment language have been revised to clarify for which reaches TMDLs are developed and for which reaches waste load allocations are developed to meet downstream TMDLs.</p>
2.8	City of Burbank, Department of Public Works	8/26/04	<p>The problem statement should be corrected to read that no reach of the River or the tributaries is listed for all of these metals. In addition, it should state that the water supply and groundwater recharge uses do not exist throughout all reaches of the River and its tributaries.</p> <p>There needs to be some explanation of how each of these uses is impaired by each of these metals. Just because a criterion is exceeded, this is not necessarily conclusion of a use impairment since the CTR</p>	<p>The proposed BPA and staff report have been revised to clearly describe the Problem Statement.</p> <p>The CTR criteria are set to protect the beneficial uses of the water body. If the criteria are exceeded, then the uses are being impaired. The Los Angeles River and</p>

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			criteria were not set specifically to address waters that are effluent dominated and flow through concrete-lined channels.	its tributaries are waters of the state and CTR-based targets shall apply.
2.9	City of Burbank, Department of Public Works	8/26/04	It is unclear why dry-weather numeric targets are necessary. For many reaches, there were “zero exceedances of the CTR limits, when adjusted for hardness, for cadmium during dry weather.” Since TMDLs are supposed to recognize seasonal variation (33 U.S.C. § 1313(d)(1)(c)), the targets should only apply to each of the metals in the actual reaches that are impaired.	See response to comment 2.3.
2.10	City of Burbank, Department of Public Works	8/26/04	<p>The explanation of why both concentration and mass WLAs are needed is lacking as is whether the concentrations for the POTW loads are dissolved or total.</p> <p>The waste load allocation section does not explain why both daily and monthly limits are needed. The daily WLAs may result in effluent limits that are inconsistent with 40 C.F.R. §122.45 (d)(2), unless the Regional Board includes an analysis at some point as to why longer term limits are impracticable.</p>	<p>The concentration- and mass based POTW waste load allocations are for total recoverable metals. The proposed BPA and staff report have been revised to update dry-weather loading capacity and waste load allocation tables to present total recoverable metals. Mass-based waste load allocations are included to better allocate the loading capacity among the different sources in the watershed and to recognize downstream sediment impairments, which will be addressed in a future TMDL.</p> <p>See also response to comment No. 1.6.</p>
2.11	City of Burbank, Department of Public Works	8/26/04	The information contained in the source assessment is not based upon substantial evidence. The findings containing phrases such as “unlikely to contribute significantly” and “believed to be minor” should be deleted if not supported by evidence in the record. See also Staff Report page 58 (“thought to be” and “expected to be”) and 61 (“believed to be” and “do not believe”).	The statements in the staff report are not findings but are general assumptions about the contribution from various sources based on available data. The assumptions are based on the staff’s scientific and technical expertise applied to the available data on

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				metals impairments in the Los Angeles River. As accurate statements of the staff's technical understanding, they are appropriate in the staff report. Similar statements are common in scientific literature, where certainty is often rare. The special studies allow for additional source characterization that will be reviewed during reconsideration of the TMDL in year 5.
2.12	City of Burbank, Department of Public Works	8/26/04	The Implementation section is incorporating a regulatory requirement specifically rejected by the federal government. The requirement that the stormwater permittees "provide reasonable assurance" was part of the TMDL regulations promulgated by USEPA that were overturned by congressional order. Therefore, it is inappropriate to include such a requirement in this TMDL. (See also Staff Report page 67.)	The BPA has been revised to state, "The administrative record and the fact sheets for the MS4 and Caltrans storm water permits must provide reasonable assurance..." This language is intended to explain that the permit writer will provide assurance that the selected BMPs will meet WLAs. This language is necessary to effect the express language of Congress in section 303(d)(1)(C) of the CWA that the TMDLs must implement water quality standards.
2.13	City of Burbank, Department of Public Works	8/26/04	The alternative compliance determination for stormwater of assessing compliance with targets at the storm drain outlet or the requirement of effluent monitoring for POTWs ignores that the TMDL and its WLAs are <u>receiving water</u> targets that should be based on the receiving water, not end of pipe for effluent or stormwater to which the CTR criteria do not apply.	The implementation section of the proposed BPA and staff report have been revised to clarify that waste load allocations are not end of pipe effluent limits. Language has been added stating that storm water permit writers may translate waste

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				load allocations into permit limits in the form of BMPs and non-storm water permit writers may translate waste load allocations into effluent limits by applying the SIP procedures or other applicable engineering practices.
2.14	City of Burbank, Department of Public Works	8/26/04	The front cover and the Introduction of the Staff Report identify the USEPA Region IX and the Regional Board as jointly issuing this document. However, USEPA Region IX did not publish notice in the Federal Register of this draft TMDL. In a letter dated May 6, 2003, USEPA Region IX agreed to publish draft TMDLs in the Federal Register. Since the USEPA Region IX is listed as jointly establishing this TMDL with the Regional Board, it did not comply with its agreement to publish this draft TMDL in the Federal Register.	See response to comment No. 1.27. Nothing in the letter precludes USEPA from participating in the preparation of TMDLs at the Regional Board level.
2.15	City of Burbank, Department of Public Works	8/26/04	The TMDL improperly adopts a TMDL for unlisted waters and pollutants. Only Reach 1 of the LA River is listed for five of the six metals discussed in the Staff Report. The State has no obligation or authority to perform a TMDL for waters not included on the State's 303(d) List. Both the Regional Board and USEPA Region IX seem to be ignoring the statutory requirements as well as the recommendations and commitments made in EPA's May 6, 2003 letter (Exhibit 5). For these reasons, the TMDL must be scaled back to comply with statutory requirements.	See response to comment No. 1.1.
2.16	City of Burbank, Department of Public Works	8/26/04	For those waters where it is determined that the TMDL is not required consistent with the federal requirements, the Regional Board should stop work on the TMDL and propose to de-list the waterbody and/or pollutant. In this TMDL, the Regional Board found that there are no	See response to comment 2.3.

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			applicable water quality standards for aluminum being exceeded and thereby needing a TMDL. However, the Regional Board makes no attempt to de-list this water and merely states that there “are not water quality standards requiring TMDL development at this time.” Similarly, cadmium should be de-listed.	
2.17	City of Burbank, Department of Public Works	8/26/04	CTR criteria are ambient water quality criteria applicable to the receiving water, not to direct samples of stormwater or wastewater that have not been fully mixed in the receiving water. Any listings of metals based on this comparison of effluent or stormwater to the CTR criteria should be overturned and not included in this TMDL. It is questionable whether episodic exceedances should be listed.	The Wardlow mass emission station is located in the receiving water and samples taken at this station represent receiving water samples. The data used in the listings and in the staff report are receiving water data, not effluent data. These data provide sufficient evidence to support the impairment findings. In addition, POTW receiving water data, which are expressly designed to demonstrate condition of the receiving water, not wastewater, support the impairments.
2.18	City of Burbank, Department of Public Works	8/26/04	The Clean Water Act expressly provides that permits for discharges from MS4s are not to require compliance with the requirements set forth in CWA section 301(b) or water quality standards set forth in CWA sections 301(b) or water quality standards set forth in CWA section 302 and 303, but rather, such permits shall contain the requirements set forth in CWA §402(p), namely controls to reduce discharges “to the maximum extent practicable.”	TMDLs are planning tools under section 303 of the CWA that shall be established solely “to implement the applicable water quality standards with seasonal variations and a margin of safety.” (33 U.S.C. 1313(d)(1)(C).) TMDLs are not limited by the maximum extent practicable technology standard of section 402(p)(3)(B)(iii) of the CWA. Moreover, CWA section 402(p)(3)(B)(iii) requires that MS4 dischargers “shall require controls to reduce

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				<p>the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, <i>and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.</i>” (Emphasis added.) Even if section 402(p)(3)(B) applied to this TMDL, federal and state courts have uniformly held that the italicized portion of section 402(p)(3)(B) allows NPDES permitting authorities (such as the state) to require compliance with water quality standards. (<i>Defenders of Wildlife v. Browner</i> (9th Cir.1999) 191 F.3d 1159 &amp; <i>BIA v. SWRCB</i> (2004) 124 Cal.App.4th 866.) When dealing with an impaired water body, it is not only “appropriate” under section 402(p)(3)(B) to include other water quality-based requirements, but consistent with the Clean Water Act’s purposes of restoring and protecting our nations waters and the national policy to prohibit discharges of toxic pollutants in toxic amounts, the additional water quality-based requirements would be compelled under section 303(d) of the CWA.</p>



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				<p>The revised BPA and staff report reflect the expectation that storm water permit writers will translate waste load allocations into permit limits in the form of BMPs. Permits will only contain WQBELs if permit writers cannot provide adequate justification and documentation to demonstrate that specified BMPs are expected to result in attainment of the waste load allocations.</p>
2.19	City of Burbank, Department of Public Works	8/26/04	<p>The standard flow measurements are using the Wardlow River Road station. (See e.g., Staff Report page 31.) However, the TetraTech Report (May 2004) on page 21 states that “it is presumed that this station is associated with the incorrect flow measurements.” It is unclear why this apparently incorrect station is being used as the flow gauge for the TMDL.</p>	<p>To the extent that any incorrect flow measurements occur, the special studies will allow for refined flow estimates and improved gauging of flow conditions. These will all occur prior to the need for substantial load reductions by municipal permitting agencies.</p>
2.20	City of Burbank, Department of Public Works	8/26/04	<p>The Regional Board must under CWA Section 303(d) identify the actual “uses to be made” of these waters. The proposed TMDL is improperly being developed to address the impairment of potential and intermittent beneficial uses. Under natural conditions the LA River cannot support many of the designated uses assigned to it during dry weather, such as warm freshwater habitat. No evidence exists in the record indicating the method by which the Regional Board determined how any particular level and type of metals impairs the beneficial uses of the LA River Watershed, and how that impairment figured into the allocations contained therein.</p>	<p>The commenter misreads and misapplies section 303(d) of the Clean Water Act. Consideration of specific “uses to be made” is only relevant in establishing the priority list required under section 303(d)(1)(A). It would make sense to focus on “uses to be made” in determining whether to tackle one TMDL before another. However, section 303(d)(1)(A) makes clear that the a water body is impaired if existing conditions “are</p>

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				<p>not stringent enough to implement any water quality standard applicable to such waters.” Moreover, section 303(d)(1)(C) requires the TMDL to be “established at a level necessary to implement the applicable water quality standard.” This TMDL is being developed to meet water quality objectives set to protect the past, present, and probable beneficial uses (CWC § 13241) of the Los Angeles River as identified in the Basin Plan, and to specifically implement the numeric water quality standards established in the CTR. These beneficial uses must be protected year-round. (Basin Plan page 2-1)</p> <p>Moreover, the toxicity standards (which are a reflection of national policy prohibiting the discharge of toxic pollutants in toxic amounts) are designed to protect presumptive uses under section 101 of the Clean Water Act. The CTR criteria are set to protect both existing and potential beneficial uses of the water body.</p>
2.21	City of Burbank, Department of Public Works	8/26/04	<p>The proposed TMDL is a “Rule” that must comply with APA. The Public Notice did not include the legally required Peer Review [CA Health and Safety Code, § 57004]</p> <p>The adoption of a BPA to incorporate a TMDL into the Basin Plan</p>	<p>See response to comment No. 1.26. The board has complied with Health and Safety Code section 57004. Nothing requires a specific “public notice” of the availability of a peer review, and in light of the</p>

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			<p>prior to, and without the USEPA's approval of the TMDL is contrary to CWA section 303(d)(2) and 40 C.F.R §130.7 (d)(2).</p>	<p>requirements of section 57004, such a requirement would not make sense. The purpose of the peer review is to ensure that the board has considered the comments of an independent peer review of the scientific portions of the rule. Here, the Board has considered the peer review comments and, where appropriate, made revisions to the scientific portion of the TMDL.</p> <p>The TMDL will not become effective until U.S. EPA approves the TMDL and staff files the Notice of Decision document and final Certificate of Fee Exemption.</p>
2.22	City of Burbank, Department of Public Works	8/26/04	<p>The proposed TMDL violates the Foundational Requirements of the Clean Water Act. These foundational requirements include developing a Continuing Planning Process, developing an approved area-wide waste treatment planning process and developing a proper 305(b) Report that meets all of the statutory requirements. Additionally, the TMDL attempts to impose standards under section 301 of the CWA to for discharges from municipal storm drains, while discharges from municipal storm drains are only subject to the requirements set forth in section 402(p)(3)(B) of the CWA.</p>	<p>See response to comment Nos. 2.18 &amp; 2.20. Regional Board staff disagree that any foundational requirements have been violated the continuing planning process of section 303(e) is regularly updated by the State Water Resources Control Board and has been submitted to and approved by USEPA. The area-wide waste treatment plan is established under section 208 of the Clean Water Act. While the area-wide waste treatment plan was particularly important in the initial development and planning of local treatment facilities, it has largely been subsumed by other clean water</p>

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				<p>planning programs. In this case, the designated planning agency is the Southern California Association of Governments (SCAG), of which the commenter is a member. Any failure to maintain an area-wide treatment would be a failure on SCAG's part. Similarly, section 305(b) reports are regularly submitted by the State Water Resources Control Board.</p>
2.23	City of Burbank, Department of Public Works	8/26/04	<p>The Regional Board failed to adequately comply with CEQA. The Environmental Impacts checklist and discussion of Environmental Evaluation fail to provide any explanation or grounds supporting the conclusions that no potential, short-term significant, or cumulative environmental impacts may be associated with this TMDL. Furthermore, these conclusions contradict the Regional Board's later declaration the "specific projects employed to implement the TMDL may have significant impacts," and defers these projects to a "separate environmental review." This deferral of review is contrary to reviewing the cumulative impacts at the earliest possible point.</p> <p>The implementation of the TMDL may cause potentially substantial adverse changes in the environment that have not been adequately addressed and for which no alternatives or mitigation measures have been analyzed, suggested, or required.</p>	<p>The method by which a discharger decides to achieve compliance is a project-level decision that will require an independent environmental review (Pub. Res. C. § 21159.2) which is beyond the scope of analysis that the Regional Board is required to take (Pub. Res. C. § 21159(d).) However, staff has indicated reasonably foreseeable environmental impacts of the TMDL as an overall program, and reasonably foreseeable environmental impacts of feasible methods of implementing the TMDL. The environmental checklist draws on analysis contained in and conclusions reached in the staff report. Because the Regional Board does not prescribe the method of achieving compliance with the TMDL, staff cannot identify all project-level impacts (and</p>

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				associated mitigation measures) that might occur from the myriad of structural and non-structural implementation strategies that could be used to achieve the TMDL. However, staff considered substantial evidence when conducting CEQA review and could find no fair argument that there could be project-level significant environmental impacts.
3.1	La Virgenes Municipal Water District	8/26/04	A complete analysis should include data gathered as part of CTR, which began in 2001. LVMWD collected 18 months of data at the official westerly edge of the Los Angeles River (Reach 6). We would like to submit this data again, in a more data-friendly summary. The data set includes both metal and hardness data that will fill a void in the current data set. The data may not change the conclusion of the WLA's for the TMDL, but would add vital information to the analysis.	Comment noted.
3.2	La Virgenes Municipal Water District	8/26/04	The draft TMDL did not include a contribution from Tapia's discharge in the modeling analysis, because there was no discharge from Tapia released to the Los Angeles River during the two days of water quality sampling in September 2000 and July 2001. While the three major point source dischargers do account for the vast majority of flow in the River, there are times when Tapia may need to discharge several million gallons of recycled water per day. Current discharge volumes should be considered the minimum flow inputs from Tapia. The discharge is usually highest in the months of April and May or October and November. This consideration would be consistent with the finds of the Los Angel River Nutrient TMDL.	The proposed BPA and staff report have been revised to include a concentration-based WLA for Tapia.

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4.1	County Sanitation Districts of Los Angeles County	8/26/04	The proposed TMDL improperly includes allocations for some pollutants in some reaches where there is no applicable listing, and for some pollutant-waterbody combinations where the waterbody is listed but is not impaired. Even if the Regional Board believes it is justified to keep cadmium and zinc on the 303(d) list, the alleged impairments are limited to wet weather only. Aluminum should not only be excluded from this TMDL, it should be delisted from the waters that are currently identified because no applicable water quality standards are being exceeded.	See response s to comment Nos. 1.1 and 2.3.
4.2	County Sanitation Districts of Los Angeles County	8/26/04	The proposed TMDL should be revised to assign the POTWs appropriate interim waste load allocations, sufficient compliance schedules to sequentially implement source control and pollution prevention measures, and then allow sufficient time to design and build end-of-pipe treatment facilities if necessary, and to take into account their projected costs of compliance.	See response to comment No. 1.2 and 1.20.
4.3	County Sanitation Districts of Los Angeles County	8/26/04	All stormwater wasteload allocations in the TMDL should be implemented through an iterative Process of BMP implementation. The commentor suggested language for the implementation and waste load allocation sections of the BPA.	See response to comment No. 1.3
4.4	County Sanitation Districts of Los Angeles County	8/26/04	The basis of the dry weather mass-based wasteload allocations for the proposed TMDL is ill-founded and not protective of water quality. Notwithstanding the Districts belief that the Metals TMDL would be more effective for the protection of water quality if concentration based wasteload and load allocations were implemented, the Districts recommend that a minimum critical flow based on POTW design flow plus an allocation for stormdrain flow contribution be used to determine the dry weather mass-based wasteload allocations.	See response to comment No. 1.4. Mass-based waste load allocations are included in recognition of downstream sediment impairments, which will be addressed in a future TMDL.

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			<p>Furthermore, the Districts recommend that the TMDL have periodic reopeners to reassess and adjust wasteload allocations in the future, coincident with treatment plant expansions due to growth.</p>	
4.5	County Sanitation Districts of Los Angeles County	8/26/04	<p>While load allocation curves may provide a useful tool for watershed managers, the use of the curves to determine allowable wet weather loads is technically flawed, and does not meet the "clarity" standard under the California Administrative Procedures Act. Since the rainfall axis is not to scale, interpolation to the measured rainfall is not possible. It appears that the extreme fluctuations in the allowable loads (mostly the case with the smaller storms) are an artifact of the spatial nature of storms. The authors should move the load duration curves to the Implementation section, where these issues should be discussed.</p> <p>The proposed BPA should be modified to define a threshold storm event consistent with water quality standard calculations which account for magnitude, frequency, and duration, above which capture, treatment, or other action is not needed due to the allowable once-in-three year exceedance frequency and feasibility issues.</p>	See response to comment Nos. 1.8 and 1.9.
5.1	California Department of Transportation	8/26/04	<p>The Los Angeles River is an effluent dominant system, which would have little or no flow during substantial parts of the year. Under natural conditions the LA River cannot support many of the designated uses assigned to it during dry weather, such as warm freshwater habitat. Consequently, the development of a TMDL for dry weather conditions to support aquatic life is not appropriate.</p>	See response to comment No. 2.20. While POTW flow may constitute the majority of flow in the Los Angeles River, there is nonetheless a viable aquatic environment even in these low-flow conditions. Although there is evidence of fish and fishing in the portions of the river receiving POTW flow, the protections for warm

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				freshwater habitat are not limited to high-level organisms such as fish. The WARM designation includes “aquatic habitats, vegetation, fish, or wildlife, including invertebrates.” These are viable in low-flow waterways that receive POTW flow, and are entitled to the protection afforded in national policy that discharges of toxic pollutants in toxic amounts shall be prohibited.
5.2	California Department of Transportation	8/26/04	The TMDL draft staff report and the Basin Plan amendment acknowledge assigning load and waste load allocations based on watersheds. Approximately 6,950 acres of the Department’s Right-of-Way within Region 4 drains to Los Angeles River. This area represents approximately 1.3% of the total watershed (834 square miles) that flows to Los Angeles River. Given the small fraction of the runoff the Department contributes to the watershed, the Department’s equitable annual loading and share allocation must be based on tangible data.	The wet-weather waste load allocations have been revised to allocate loadings among the different storm water permittees based on their percent area of the watershed, including the area served by Caltrans, as provided by the commentor. The dry-weather waste load allocations shall be shared by the MS4 and Caltrans permittees because there was insufficient data on their relative reach-specific extent to assign individual waste load allocations.
5.3	California Department of Transportation	8/26/04	The economic analysis described in the TMDL staff report discounts the actual cost of installation of infiltration and sand filter systems documented by the Caltrans BMP Retrofit Report. Although a third party study did find that reported costs were lower in other areas, only the Department’s facilities had actual bid cost estimate based on unit prices compiled from historical highway projects were very similar to the actual costs incurred. The TMDL draft staff project report grossly	The cost analysis is provided as a general estimate of the costs based on reasonable foreseeable compliance methods with the TMDL. The staff report does not discount the costs documented by Caltrans in their BMP retrofit study. The staff report compares the costs reported by Caltrans



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			underestimates the cost of BMP implementation and does not consider lifecycle costs including operation and maintenance costs. Furthermore, the Department is limited in available land within its right-of-way, which may require purchase of additional land to accommodate the installation of BMPs.	with costs calculated based on FHWA and EPA estimates then discusses possible reasons for the differences in costs based on conclusions drawn from the third party study. The staff report does provide a general estimate operation and maintenance costs (see Tables 7-6, 7-7, and 7-8 of the staff report and Appendix III.)
5.4	California Department of Transportation	8/26/04	The LA River is concrete lined over much of its length and would not fully support a natural aquatic system even if the water was of sufficient quality. Consequently, the TMDL proposed will not achieve the desired result.	See response to comment Nos.2.20 & 5.1. Moreover, if implemented, the TMDL will achieve the congressional policy that the discharges of toxic pollutants in toxic amounts be prohibited.
5.5	California Department of Transportation	8/26/04	Calibration and verification of the low flow model is based on only the data for a single day. This is an insufficient sample on which to base a model.	The dry weather hydrodynamic model was calibrated and validated using the data collected during two separate two-day sampling events (September 10 and 11, 2001 and on July 29 and 30, 2001).
5.6	California Department of Transportation	8/26/04	Although the report states the Publicly Owned Treatment Works (POTWs) “are generally discharging effluent that meets the water quality standards, “it is clear from Table 20, in the TMDL Staff Report page 43, that these discharges routinely exceed water quality standards for dissolved copper.	According to Table 20 (Table 5-2 in revised staff report), the POTW discharges do not exceed the reach specific hardness targets for total or dissolved copper for reaches 3, 4, 5 or the Burbank Western Channel.
5.7	California Department of Transportation	8/26/04	Since the dry weather model is not able to represent all the temporal and spatial variability observed in the in-stream metals concentrations, it seems contradictory to conclude that the model provides a reasonable assurance that the relationship between in-stream loads and targets is understood.	The model performs well at predicting the long-term average concentrations of metals. The staff report explains possible reasons for the temporal and spatial variability of the model on shorter time scales and

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				supports the conclusion that the model presents a reasonable assurance that the relationship between in-stream loads and targets is understood.
5.8 and 5.13	California Department of Transportation	8/26/04	The calibrated wet weather model does a poor job at predicting stream concentrations and is not sufficiently accurate for developing a TMDL. In general, the model predicts maximum concentrations that far exceed any observed concentrations. The TMDL reports that the wet weather “model tends to overestimate loads, actual reductions required to meet the waste load allocations are likely less than predicted by the load-duration curves. “Consequently, the required reductions should be decreased to reflect this bias.	The staff report has been revised to clarify that the wet-weather model is not used in developing loading capacities. The only time the model is used is to assign wet-weather load allocations to open space. The over prediction of loading from open space is applied to the margin of safety.
5.9	California Department of Transportation	8/26/04	Table 30, page 56 of the TMDL Staff Report, allows the POTW to discharge copper during dry weather at concentrations that exceed the water quality objective for copper. By allowing the POTWs to discharge a disproportionate share of the copper loading, the MS4 permittees are unfairly penalized.	The staff report and BPA have been revised to state that POTW concentration-based waste load allocations are equal to reach-specific numeric targets.
5.10	California Department of Transportation	8/26/04	Transportation is not among the land use categories entered into the wet-weather model, but represents a hydrologically discrete land use that should be incorporated into the model. This is especially true since the Department and MS4s are held to specific Waste Load Allocations (WLAs).	Many of land use categories that shared hydrologic or pollutant loading characteristics were grouped into similar classifications. Transportation was grouped with the industrial land use since the potency factors from SCCWRP were very similar.
5.11	California Department of Transportation	8/26/04	The TMDL assumes a water effects ration of 1, meaning that all of the measured metals are biologically available and toxic. This assumption may drastically over-state the actual toxicity of the concentrations that are observed onsite. A site-specific ecotoxicological evaluation of the	The TMDL allows for special studies, due at year 4, to determine site specific objectives. These special studies will be evaluated prior to reconsideration of the

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			water effects ratios at LA River should be undertaken to ensure the accuracy of the aquatic life criteria.	TMDL at year 5.
5.12	California Department of Transportation	8/26/04	The method of presentation of wet weather load reductions i.e. the load-duration curve), is ineffective and confusing. The concentration-based targets that are supposedly derived from these model-generated curves are apparent, but their determinations not clearly elaborated. More detail needs to be added to allow for comprehension of the model outputs.	See response to comment No. 1.9. Please note that the concentration-based targets were used as input for the generated curves, and were not derived from them.
5.14	California Department of Transportation	8/26/04	The economic analysis is based on an unsubstantiated assumption that compliance can be achieved without structural controls for 60 percent of the watershed. The basis for this determination needs to be clarified.	See response to comment No. 1.20.
5.15	California Department of Transportation	8/26/04	The economic analysis assumes that 20 percent of the watershed could be treated with infiltration facilities. The technical feasibility for implementing infiltration devices needs to consider site constraints such as soils conditions, proximity to groundwater, adequate maintenance access, and safety standards for motorists along the Department's facilities	Staff agrees. Comment noted.
6.a.	County of LA	8/16/04	The length of the public comment period is inadequate. The adoption of the proposed TMDL should be postponed.	The item proposed for Board action at the September 2, 2004 Board meeting was changed to a workshop and action on the item was continued. The proposed BPA and staff report have been revised to reflect comments and re-noticed to allow additional public comment on the proposed changes. At the public workshop, interested persons were notified that there would be an additional comment period. Interested persons have therefore had

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				nearly a year to consider and comment on the proposed TMDL and its underlying methodology.
6.1	County of LA Public Works	8/26/04	The proposed BPA should be considered at a future Board hearing.	See response to comment No. 6.a.
6.2	County of LA Public Works	8/26/04	The attached Flow Science report describes some of the deficiencies of the proposed amendment. The proposed amendment should be subjected to the requisite scientific peer review prior to its adoption by the Regional Board.	See specific responses to Flow Science report. See also response to comment No. 1.26.
6.3	County of LA Public Works	8/26/04	If comments cause staff to propose significant changes to the proposed amendment, it will be necessary to re-notice the hearing for its consideration.	See response to comment No. 6.a.
6.4	County of LA Public Works	8/26/04	<p>The CTR or SIP was never intended to apply to storm water discharges nor was it intended to be applied without consideration of dilution or as never to be exceeded values.</p> <p>It is anticipated that Regional Board staff's response to this comment is that because the CTR standard is intended for specified receiving waters in the LA River watershed, it must be employed as the numerical objective for the TMDL. However, during wet weather, it is plain that the receiving waters are merely conduits for storm water flows. Were the Regional Board to adopt the CTR criteria as numerical objectives for wet weather flows, it would be doing so in clear violation of the rationale for the CTR criteria, without evidence in the record, and in an arbitrary and capricious manner.</p>	<p>The commenter misstates the CTR and federal law. The CTR establishes federal, numeric water quality criteria for inland surface waters in California, including the Los Angeles River. As a result, they are a part of the applicable water quality standards and, hence, the TMDL must be established at levels necessary to implement the CTR. (33 U.S.C. 1313(d)(1)(C); see also Response to Comment 2.20.) The CTR criteria are set at levels designed to protect aquatic life and implement Congressional policy prohibiting toxic discharges in toxic amounts. The CTR contains no wet weather exception. The CTR-based targets</p>

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				<p>apply to the receiving water, which is a water of the State, and not merely a conduit for storm water flows. In fact, if that were the case, it would be a violation of federal law which prohibits waters of the U.S. from being used merely for waste transport or assimilation. The beneficial uses of that receiving water must be protected in wet and dry weather. Given that the CTR criteria are expressed as concentration, the concentrations at which metals are toxic does not change because there is more water (i.e., the toxicity concentration does not change in wet weather) because expressing the metals load as a concentration inherently controls for the volume of water. (Only contact recreational uses are suspended during high-flows, and only under very specific circumstances.)</p> <p>The TMDL does not apply CTR-based effluent limits to permit holders but rather CTR-based waste load allocations. Because the Los Angeles River is impaired due to exceedances of CTR objectives, there is no excess assimilative capacity to provide dilution during critical conditions.</p>

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				<p>Therefore, waste load allocations based on applicable CTR criteria are the least stringent waste load allocations that could be applied.</p> <p>The TMDL acknowledges that waste load allocations for storm water will likely be implemented through MS4 NPDES permits as BMPs.</p> <p>The citation to the SIP is irrelevant. The SIP was the State Board's approach for implementing the CTR in certain NPDES permits and programs of the water boards. The SIP did not, and in fact could not, exempt storm water from the water quality standards established in the CTR.</p>
6.5	County of LA Public Works	8/26/04	The proposed BPA proposes to establish waste load allocations for several reaches, including 3, 5, and 6 for all metals covered by the TMDL, even where such reaches are not listed as impaired for various metals. We note that the San Diego Superior Court recently held that the Regional Board abused its discretion when it included the Los Angeles River Estuary in the TMDL for trash, even though the estuary had not been listed.	See response to comment No. 1.1.
6.6	County of LA Public Works	8/26/04	The listing of the Burbank Western Channel as impaired for cadmium is improper. The staff report indicates that the channel was listed as impaired for a single exceedance of the chronic criteria for dissolved cadmium in 96 sampling events. Staff should revise the 303(d) listings	See response to comment No. 2.3.

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			upon which the TMDL is based to ensure that those reaches truly impaired by metals be included in the TMDL.	
6.7	County of LA Public Works	8/26/04	The proposed BPA fails to establish load allocations for non-point sources of metals. It does not account for atmospheric deposition of metals on the urbanized portion of the watershed nor the loadings of metals coming from non-urbanized areas, which account for some 44% of the watershed.	See response to comment No. 1.40.
6.8	County of LA Public Works	8/26/04	As the attached Flow Science report notes, the failure to include atmospheric deposition as a non-point source beyond the control of the MS4 and Caltrans dischargers may violate law. Atmospheric deposition was characterized as a non-point source in the Regional Board's 'Draft Strategy for Developing TMDLs and Attaining Water Quality Standards in the Los Angeles Region.'	See response to comment No. 1.40.
6.9	County of LA Public Works	8/26/04	As the attached Flow Science report notes, the Regional Board's failure to identify load allocations for non-point sources in the proposed BPA violates the Clean Water Act. This identification also is required by USEPA guidance for the development of TMDLs in California. (See Exhibit 1 to Rutan & Tucker comment letter, filed concurrently herewith). Moreover, it is arbitrary and capricious for the Regional Board to assume, without any evidence or analysis, that metals sources in the non-urbanized areas may be ignored.	See response to comment No. 1.40.
6.10	County of LA Public Works	8/26/04	There is little evidence that construction sites have any reasonable potential to contribute to exceedances of water quality standards. Applying waste load allocations to construction storm water runoff is inconsistent with previous State Board determinations that it is infeasible to impose numeric effluent limits on construction runoff. State Board Order 99-08-DWQ and EPA state that the only pollutants present in storm water discharges from construction sites are sediment,	The wet weather model simulated land-use based sources of sediment and associated metals loads and, as discussed in the staff report, metals loadings are often associated with sediment, especially during wet weather. Construction sites are a potential source of sediment loading and metals

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			<p>TSS and turbidity. Nearly all metals associated with construction are associated with sediment, while biologically toxic effects of metals are associated with the dissolved fraction.</p>	<p>loading where metals exist in the soil or where metals are washed off construction equipment. Additional references regarding construction sources of metals are included in the source assessment section of the revised staff report.</p> <p>A waste load allocation must be assigned to all construction storm water permittees. Because the Los Angeles River is impaired due to exceedances of CTR objectives, there is no excess assimilative capacity to provide dilution during critical conditions. Previously, general storm water permittees were assigned concentration-based waste load allocations. In order to better allocate loading among sources, the staff report and BPA have been revised to assign mass-based waste load allocations to all storm water permittees, including the general construction and industrial permittees. The allocations are divided among the permittees based on their percent area of the watershed. General construction and industrial storm water permittees have been given a 10-year compliance schedule to achieve wet-weather allocations and interim waste load allocations based on</p>



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				<p>EPA benchmarks. General construction and industrial storm water permittees have been given a dry-weather WLA equal to zero.</p> <p>The TMDLs must establish numeric WLAs for general construction permit activities. While historically many storm water permits have not included strict numeric water quality-based effluent limitations, the TMDLs are designed to serve as a water quality backstop. The definition of a TMDL recognizes that a TMDL is the sum of the individual WLAs and LAs. (40 CFR 130.2(i).) Appropriate numeric WLAs for construction storm water are established to implement section 303(d)(1)(C) of the Clean Water Act.</p>
6.11	County of LA Public Works	8/26/04	The proposed amendment violates the Requirements of Water Code § 13242 because it contains no description of the nature of actions which are necessary to achieve the objectives of the metals TMDL. Instead, the Staff Report contains a series of loosely described non-structural and structural BMPs. Staff conducted no analysis of the ability of these BMPs to achieve compliance with the objectives.	The proposed TMDL implements existing water quality objectives in conformance with section 13242. The TMDL contains a description of likely structural and nonstructural BMPs that would be used to comply with the existing water quality objectives. Section 13242 only requires a “description of the nature of actions,” which is what the TMDL staff report describes. Furthermore, the Regional Board cannot prescribe the method of

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				achieving compliance with the TMDL because of the restrictions in Water Code section 13360, and is unable to describe the nature of all potential actions to achieve compliance. However, the staff report takes into account a reasonably foreseeable means of compliance and the costs associated with compliance.
6.12	County of LA Public Works	8/26/04	The proposed amendment violates water code sections 13225 and 13267 by failing to conduct a cost benefit analysis for the compliance/ambient monitoring programs the proposed special studies required by the amendment.	See response to 1.16.
6.13	County of LA Public Works	8/26/04	At the August 19 workshop, staff, including Interim Executive Officer Jon Bishop, indicated that the purpose of compliance monitoring was to establish BMP effectiveness. If initial monitoring indicated that the waste load allocation was being exceeded, additional BMPs would be required, with further monitoring to establish the effectiveness of the additional BMPs. However, the proposed BPA instead requires permittees to monitor for compliance at four specific monitoring locations. This suggests instead that strict compliance with receiving waters limitations would be required of the permittees. The proposed amendment also requires ambient monitoring of unimpaired reaches (3,5,6 and Arroyo Seco), which violates section 13267 of the Water Code.	See response to comment Nos. 1.3 and 1.16. Further, as discussed in Response to Comment No. 1.1 the upstream reaches cause or contribute to impairments in the lower reaches. As a result, effective monitoring will require an understanding of what load is being contributed by upstream reaches. There will be significant benefits to the dischargers because the monitoring will allow dischargers to tailor BMPs to those areas cause or contributing to specific impairments. The proposed TMDL implements existing water quality objectives in conformance with section 13242. The TMDL contains a description of likely structural and nonstructural BMPs

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				<p>that would be used to comply with the existing water quality objectives. Section 13242 only requires a “description of the nature of actions,” which is what the TMDL staff report describes. Furthermore, the Regional Board cannot prescribe the method of achieving compliance with the TMDL because of the restrictions in Water Code section 13360, and is unable to describe the nature of all potential actions to achieve compliance. However, the staff report takes into account a reasonably foreseeable means of compliance and the costs associated with compliance. The TMDLs must establish numeric WLAs for general construction permit activities. While historically many storm water permits have not included strict numeric water quality-based effluent limitations, the TMDLs are designed to serve as a water quality backstop. The definition of a TMDL recognizes that a TMDL is the sum of the individual WLAs and LAs. (40 CFR 130.2(i).) Appropriate numeric WLAs for construction storm water are established to implement section 303(d)(1)(C) of the Clean Water Act.</p>

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				<p>Further, as discussed in Response to Comment No. 1.1 the upstream reaches cause or contribute to impairments in the lower reaches. As a result, effective monitoring will require an understanding of what load is being contributed by upstream reaches. There will be significant benefits to the dischargers because the monitoring will allow dischargers to tailor BMPs to those areas cause or contributing to specific impairments.</p>
6.14	County of LA Public Works	8/26/04	<p>The Resolution proposing to adopt the amendment does not indicate that the Regional Board considered, or will consider the factors set forth in section 13241 of the Water code. Moreover, the staff report contains no assessment of economic factors beyond a cursory description of potential costs for certain non-structural and structural BMPs, which does not even include land acquisition costs.</p>	<p>The proposed TMDL does not establish or alter water quality objectives. Therefore, the analysis set forth in §13241 is not required here, since section 13241 applies when “<i>establishing</i> a water quality objective.” Because the TMDL is required under federal law, and is necessary to implement water quality criteria (i.e., water quality objectives) established by USEPA, there can be no serious argument that the TMDL establishes an objective.</p> <p>Furthermore, the Regional Board cannot prescribe the method of achieving compliance with the TMDL and is unable to describe the nature of all potential actions to achieve compliance. However,</p>

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				<p>the staff report takes into account a reasonable range of economic factors in estimating potential costs associated with TMDL compliance.</p> <p>Despite its position that Water Code section 13241 does not apply, the Regional Board has developed information relevant to the section 13241 factors and considered them where appropriate. For example, the regional board has no discretion not to establish the TMDL at a level that will implement the CTR. Consideration of economics in establishing the TMDL could not result in a different total maximum daily load; however, the economics are considered in establishing a lengthy and flexible implementation schedule. This is particularly true of municipal storm water dischargers, where the TMDL implementation anticipates the use of BMPs. (See also the economic discussions set out in See Devinny, Kamieniecki, and Stenstrom “Alternative Approaches to Storm Water Quality Control” (2004), included as App. H to Currier et al. “NPDES Stormwater Cost Survey” (2005). Similarly, the past, present, and probable</p>

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				<p>future beneficial uses have been considered extensively in the staff document. Again, though, the TMDL must implement the existing, federal criteria, federal toxics policy, and protect aquatic life. The environmental characteristics of the Los Angeles River are carefully considered through the TMDL staff document to support the various modeling and implementation strategies. Achieving waters that are free of toxic compounds in toxic amendments is Congressional policy, but by adopting a TMDL that applies to all dischargers to the Los Angeles River's impaired reaches, the TMDL establishes a framework for the coordinated control of all factors affecting water quality. It is reasonable to establish this coordinated framework to implement federal policy on toxic water pollutants. With respect to housing, the Los Angeles region draining to the Los Angeles River is already substantially built out, but new housing developments are able to incorporate new structural BMPs that would facilitate compliance with the TMDL. The record in the municipal storm water case demonstrates that SUSMP-type measures</p>

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				<p>can be effective and do not preclude the developing housing. Finally, the TMDL may encourage the development and use of recycled water, as the TMDL creates incentives to beneficially reuse water.</p>
6.15	County of LA Public Works	8/26/04	<p>State Board Office of Chief Counsel has concluded that the Regional Board has an affirmative obligation to consider economics when adopting a TMDL (see memorandum prepared by Sheila K. Vassey of the Office of Chief Counsel attached as Exhibit 4 to the Rutan &amp; Tucker letter.)</p>	<p>See response to comment No. 6.14. In addition, the cited memorandum does not support the commenter. Ms. Vassey's memorandum identifies when economics must be considered, but only the CEQA obligation comes into play with this TMDL. As discussed in Ms. Vassey's memorandum and in response to Comment 6.14, economics must be considered when establishing a water quality objective. This TMDL does not establish a water quality objective. Instead, as required by section 303(d)(1)(C) of the Clean Water Act and section 13242 of the Water Code it establishes a waste load allocation to implement an existing water quality objective. Here the objective is the CTR criteria established by USEPA.</p> <p>Again, economics have been extensively considered in developing the TMDL implementation program. For example, the TMDL recognizes that the use of BMPs</p>

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				<p>will be the anticipated means of compliance for municipal dischargers--which makes clear that costly treatment plants do not need to be pursued initially. The TMDL also provides a lengthy implementation period which reflects the economic considerations that a longer period of time will allow a cost-effective mix of implementation measures and BMPs to be developed. A shorter timeframe would likely trigger a need for treatment plants.</p> <p>In addition, the economic discussion in the staff report satisfies not only the CEQA requirements described in Ms. Vassey's memo, but that analysis would also satisfy any economic "consideration" required by section 13241. Economics were plainly considered in proposing the TMDL; otherwise, the regional board would not have delayed compliance with the final waste load allocations for more than a decade.</p>
6.16	County of LA Public Works	8/26/04	The analysis of economic impacts from the proposed amendment are insufficient. The staff report makes no attempt to calculate the cost of land acquisition for BMPs and these costs are not considered in the CEQA checklist. A rough estimate of land acquisition costs equal to \$3 billion can be made based on the median house price in Los Angeles County. Similarly, the staff report contains no estimate of costs for	Since the Regional Board cannot prescribe the method of achieving compliance with the TMDL, the cost analysis is provided as a general estimate of the costs of selected structural and non-structural BMPs. The staff report clearly states the assumptions



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			diversion/treatment BMPs.	<p>made for the cost analysis. An analysis of the costs associated with the diversion of resources is not required by CEQA because it is an economic impact, which does not contribute to and is not caused by physical impacts on the environment. An estimation of the costs associated with land acquisition or treatment devices such as reverse osmosis would be speculative. The staff report provides an analysis of size constraints for each type of structural BMP considered (see Appendix III). Although land acquisition costs were not calculated based on these size requirements, staff assumes that the permittees would site structural BMPs so as not to displace housing. An estimate of land acquisition cost based on median house price would be unreasonable. Furthermore, staff evaluated structural BMPs that were suitable for an urban setting. For example, Delaware sand filters are subsurface BMPs that are designed to accommodate limited land area.</p> <p>The staff report has been revised to state that the costs of the BMPs analyzed for the MS4 WLAs could generally be applied to other permittees such as the general</p>

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				construction and industrial storm water permittees.
6.17	County of LA Public Works	8/26/04	<p>The County incorporates the comments of Rutan &amp; Tucker on the CEQA compliance issues found in their comment letter, filed concurrently herewith.</p> <p>The City of Los Angeles recently issued a Notice of Preparation of an EIR for their Integrated Resources Program (IRP). If this program, which is considered a chief implementation strategy in the staff report, requires an EIR, how could staff determine that there are feasible alternatives or feasible mitigation measures that would substantially lessen any significant adverse impacts of the entire TMDL.</p>	<p>Comment noted. Staff will respond to Rutan &amp; Tucker comments specifically (Comment Nos. 16.1 to 16.31). Also see response to comment No. 2.23.</p> <p>The staff report supports the IRP but does not require it as an implementation strategy. The cost analysis assumes that compliance in 30% of the watershed would be achieved through IRP in order to provide a reasonable estimate of potential costs associated with compliance.</p>
6.18	County of LA Public Works	8/26/04	<p>The CEQA checklist notes that a separate CEQA review process will likely be required. However, the Regional Board must analyze the entire project and cannot avoid responsibilities by deferring them to other agencies who will be legally bound to implement split off segments of that project.</p> <p>Moreover, the Checklist wrongly assumes that there are feasible mitigation measures for every potential adverse impact. Future actions that will be required in order to carry out the TMDL may result in significant unavoidable impacts.</p>	<p>See response to comment No. 2.23. As noted in that response, there are myriad ways individual discharges could choose to select, combine, and optimize BMPs. Any more detailed analysis at this time would be purely speculative, and CEQA does not require speculative assumptions to be made.</p>
6.19	County of LA Public Works	8/26/04	<p>The CEQA checklist fails to adequately note and evaluate the environmental impacts from the proposed amendment. Comments submitted by Dr. Gerald Greene of the City of Downey and Eduard Schroder, P.E., of TECs Environmental and Kimberly Colbert of</p>	<p>See responses to the incorporated comments. (Comment Nos. 8.1 to 8.33)</p>

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			Charles Abbot Associates are incorporated as a good overview of the deficiencies in the Checklist.	
6.20	County of LA Public Works	8/26/04	The Checklist Does not Meet the Statutory Requirements for a Substitute Environmental Document. The determination that while the proposed BPA "could have a significant adverse effect on the environment," there are "feasible alternative and/or feasible mitigation measures that would substantially lessen any significant adverse impact" is not supported in the Checklist or the Staff Report. Neither the checklist nor the Staff Report sets forth any specific mitigation measures, only vague assurances that have no empirical basis.	See response to comment No.2.23.
6.21	County of LA Public Works	8/26/04	The Checklist and Staff Report do not discuss alternatives to the "project" represented by the TMDL, in direct violation of CEQA and the Regional Board' s own regulations in Title 23 of the Code of Regulations.	The BPA, together with the staff report and backup materials, are a substitute document for an EIR or negative declaration and initial study. Included in these backup materials is the agenda item summary prepared prior to the Board's consideration of the proposed BPA. The item summary will discuss alternatives to the proposed action, including a 'ho action' alternative. It is important to recall that there is no discretion in establishing WLAs derived from the CTR. The discretion, for which appropriate alternatives are considered, is contained within the program of implementation.
6.22	County of LA Public Works	8/26/04	As noted in the Staff Report, the TMDL, when implemented, will require significant outlays of funds by local governments to design, install, construct and maintain both non-structural and structural BMPs.	The entire TMDL is compelled by federal law, and as such, is not an unfunded state mandate. First, the reductions in loading

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			<p>No funding mechanism has, however, been provided for the TMDL by the State. The TMDL also goes far beyond the specific requirements of the Clean Water Act or USEPA' s regulations, and represents in fact a state program not a federal program. (In that regard, we note that the CTR criteria which form the basis for the TMDL numerical objectives, were adopted specifically as not creating a federal mandate on any state, local or tribal government, or on the private sector. See 65 Fed. Reg. 31682, 31708.</p>	<p>will be required as part of the NPDES permits. The State Board has previously found that the requirement to reimburse local agencies for state-mandated costs does not apply to NPDES permits. SWRCB Order No. WQ 90-3 (In the Matter of San Diego Unified Port District). Second, the requirement that states develop TMDLs for impaired waters is clearly set forth at 33 U.S.C. 1313(d)-(e). The proposal includes several years for the affected agencies to conduct planning and implementation activities, and to explore and select any necessary funding options, including loans, grants and revenue increases.</p> <p>Moreover, the TMDL implements the applicable water quality standard, and makes all dischargers (regardless of whether they are private individuals, corporations, or public agencies) responsible for meeting the water quality standard. As a result, the TMDL is generally applicable and not subject to subvention requirements in Article XIII.</p> <p>Finally, whether a USEPA regulatory</p>

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				action is a ‘federal mandate’ is irrelevant to analyzing this TMDL under Article XIII of the California Constitution. USEPA found that the CTR did not meet the specific definitions set forth in the federal “Unfunded Mandates Reform Act of 1995.” Those standards are irrelevant to California law.
6.23	County of LA Public Works	8/26/04	The implementation schedule should be changed to allow 300 days, or 10 months, rather than 120 days to prepare a coordinated monitoring plan for compliance and ambient monitoring.	See response to comment No. 1.11.
6.24	County of LA Public Works	8/26/04	The 12 months allowed for a draft implementation plan is not enough time and should be expanded to 30 months.	See response to comment No. 1.12.
6.25	County of LA Public Works	8/26/04	The final implementation plan should be required after 36 months, not 16 months, after the adoption of the TMDL.	See response to comment No. 1.12.
6.26	County of LA Public Works	8/26/04	To the extent that the special studies will be conducted by the regulated community, the studies should be required to be completed within five years of the effective date instead of four years.	See response to comment No. 1.32.
6.27	County of LA Public Works	8/26/04	The reopener should be scheduled for five years instead of six years as this will coincide with the completion of special studies.	See response to comment No. 1.32.
6.28	County of LA Public Works	8/26/04	The first compliance deadline should be at a minimum, 8 years after the effective date, with the second deadline at 11 years, the third deadline at 15 years, and the final deadline at 20 years.	Staff agrees. See response to comment No. 1.33.
6.29	County of LA Public Works	8/26/04	From the attached Flow Science report: The SIP does not apply to regulation of stormwater discharges and was not intended to be applied without consideration of dilution or as never-to-be exceeded values. Further, in adopting the CTR, EPA intended to allow periodic	See response to comment No. 6.4.

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			exceedances of CTR criteria. The Los Angeles River TMDL applies CTR concentration-based limits to all NPDES permit holders and mass-based allocations for the Wardlow gaging station to storm flows.	
6.30	County of LA Public Works	8/26/04	From the attached Flow Science report: The Board would be overstepping its authority (see Statement of Decision and Judgement in the Cities of Arcadia et al v. State Water Resources Control Board) by specifying waste load allocations for reaches that are not on the 303(d) list.	See response to comment No. 1.1.
6.31	County of LA Public Works	8/26/04	From the attached Flow Science report: The data for the Burbank Western Channel are inadequate to support a cadmium listing. Out of 96 samples taken, only one exceeded the chronic dissolved criterion. Since the City of Burbank samples quarterly, this means only one excursion in 24 years of sampling. The WMP data is irrelevant since hardness was not sampled, but based on concentrations reported, would likely not exceed the criteria. Since total metals concentrations were compared to dissolved criteria, the one measurement may not truly be an exceedance. It is inappropriate to use grab sample data to establish an exceedance because the CTR chronic criterion is understood as a 4-day average.	See response to comment No. 2.3. Comparison of totals metals concentrations obtained from a grab sample to the dissolved criteria provides a conservative assessment of compliance.
6.32	County of LA Public Works	8/26/04	From the attached Flow Science report: It is inappropriate to require stormwater discharges to assume responsibility for metals in storm water that originate from aerial deposition. The commentor cited <i>Communities for a Better Env't v. State Water Resources Control Bd</i> as support for this conclusion.	See response to comment No. 1.40.
6.33	County of LA Public Works	8/26/04	From the attached Flow Science report: No data are used to support the assumption that loads from non-urban areas are insignificant and data from other sources suggest that this assumption may be invalid. Aerial deposition is a significant source of trace metals in storm water runoff	See response to comment No. 1.40.

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			and is likely to occur at high rates in the non-urban portions of the watershed. Native soils in the natural areas of the watershed contain significant quantities of copper, lead, and zinc, assuming typical concentrations in soil and typical storm conditions. Although little research has been conducted, natural soils may contribute even higher loads under post-fire conditions. The fact that Monrovia Canyon Creek is listed as impaired for lead and is dominated by natural and open land use suggests that natural areas may make significant contributions to metals concentrations in storm water.	
6.34	County of LA Public Works	8/26/04	From the attached Flow Science report: The application of waste load allocations to construction storm water is inconsistent with determinations by the SWRCB that it is infeasible to impose numeric effluent limits on construction runoff. There is little evidence that construction sites have reasonable potential to contribute to exceedances of water quality standards.	See response to 6.10.
6.35	County of LA Public Works	8/26/04	The low-cost, non-diversion and treatment BMPs anticipated by staff may not be capable of achieving the requirements of the TMDL, either alone or in conjunction with nonstructural BMPs. Typical BMPs such as detention basins are not able to remove a significant proportion of dissolved metals. The BMPs that are most effective at removing dissolved metals are retention basins, treatment wetlands, and biofilters, which are impractical for use in Southern California. Dissolved metals removal is particularly important since dissolved metal is the fraction that contributes to toxicity in receiving waters. Infiltration trenches and sand filters, which are more suited to Southern California, are only capable of 11% removal of dissolved copper, 21% removal of dissolved zinc, and 50% removal of dissolved lead.	The staff report included total and dissolved metals removal efficiencies as reported by U.S. EPA, FHWA, and Caltrans. The removal efficiencies of each type of BMP vary from study to study depending on site specific conditions. That is why a successful approach to compliance will involve a matrix of structural and non-structural BMPs that take into account site specific factors. It is important to note that while the CTR standards are expressed in terms of dissolved metals, the waste load allocations are expressed in terms of total

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				metals. Therefore, total metals, not just dissolved metals, removal is important for TMDL compliance.
6.36	County of LA Public Works	8/26/04	From the attached Flow Science report: The proposed BPA's requirement for additional compliance monitoring in addition to the Wardlow station is unspecified, as is the mode of determining whether a flow (or a particular discharger) is out of compliance. Leaving the determination of compliance up to the dischargers and failing to specify monitoring requirements potentially would create the need for very extensive monitoring, such as multiple water quality and flow measurements over many hours.	The Regional Board cannot prescribe monitoring requirements or the method of achieving compliance with the TMDL. The staff report and BPA have been revised to require the MS4 and Caltrans permittees to demonstrate TMDL effectiveness in prescribed percentages of the watershed, without specifying the method of compliance or monitoring.
6.37	County of LA Public Works	8/26/04	From the attached Flow Science report: The modeling was generally conducted according to sound engineering principles. However, many of the calibrations and validations are poor and the models fail to predict the variability that occurs in the watershed. The modeling does not appear sufficient or appropriate for supporting the implementation actions proposed by the TMDL. Indeed, the modeling was not relied upon in any substantive way in determining load or waste load allocations.	The purpose of the model is to present a reasonable assurance that the relationship between in-stream loads and targets is understood, which it does. The TMDL allows for special studies to provide data to refine the model and account for any weaknesses.
6.38	County of LA Public Works	8/26/04	<p>From the attached Flow Science report: The flow calibration in the dry weather modeling appears to be inadequate. The model is not able to reproduce dry weather flow rates in a precise way and tends to predict high and not average or median dry weather flows. Figure 5 is mislabeled in the staff report.</p> <p>The water quality comparison of the dry weather model is also inadequate. There are very few data points for cadmium and lead and</p>	The staff report acknowledges the limitations of the hydrology and water quality portions of the dry-weather model. Neither the hydrology nor the water quality portions of the model were used to determine dry weather waste load allocations. The TMDL allows for special studies to provide data to refine the model



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			<p>the model results are ‘compared’ to concentrations of these elements despite a lack of measured data for all but one value. The model is not able to reproduce dry weather concentrations of copper or zinc with any precision. In Figure 6, both copper and zinc are presented on graphs with y-axes that are longer than necessary, leaving the impression that observed data are clustered closer to the model results than actually is the case.</p>	<p>and account for any weaknesses. The reference to and caption for Figure 5 has been revised in the staff report. The y-axis labels for Figure 6 clearly represent the distribution of data for copper and zinc.</p>
6.39	County of LA Public Works	8/26/04	<p>From the attached Flow Science report: Comparison of observed and modeled data were not made on timescales that allowed realistic assessment of the watershed. The caption for 9a. indicates that the figure compares monthly flows, which is inadequate for such a dynamic watershed.</p> <p>The statement that “during model calibration the model predicted storm volumes and storm peaks well” is misleading. In multiple cases, the model did a poor job of reproducing monthly flow rates and annual flow volumes and in most cases the model did a poor job of reproducing the observed average daily flow rate record. The inadequacies of the calibration of the wet weather model are most evident on the time scale of individual storm events.</p> <p>The water quality calibration is even poorer than the hydrological calibration. For none of the events and for none of the constituents was the model able to reproduce observed data with any precision. Wet weather water quality model results were compared to observed conditions for only one legitimate event at the Wardlow gage.</p> <p>Use of a single potency factor for a given land use type precludes</p>	<p>The caption for Figure 9a. shall be revised to read “comparison of <i>daily</i>” flows</p> <p>The staff report states that “<i>overall</i>, during model calibration the model predicted storm volumes and storm peaks well.” It also states that the model occasionally over-predicted or under-predicted runoff depending on the spatial variability of the meteorological and gage stations.</p> <p>The staff report acknowledges the limitations of the model and allows for updates and revisions to the model based on the results of special studies. Special studies will allow for refinement of the model to account for the poor correlation between rainfall and flow and will allow for the validation of potency factors. Certain graphs are plotted on a log scale because there is much variability in</p>

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			<p>simulation of variability in concentrations and wrongly assumes that all trace metals are completely particle bound during washoff.</p> <p>Some data are inappropriately presented on logarithmic scales, disguising significant disparities between model results and observed data.</p>	<p>observed data and modeled data. EMCs are not required as a measure of compliance.</p> <p>The staff report has been revised to clarify that the wet-weather model is not used in developing loading capacities. The only time the model is used is to assign wet-weather load allocations to open space. The over prediction of loading from open space is applied to the margin of safety.</p>
6.40	County of LA Public Works	8/26/04	The modeling is essentially irrelevant to the discharge requirements for small discharges in the watershed. The TMDL simply imposes CTR concentration-based requirements on all but several select points in the watershed. If properly implemented and utilized by the Regional Board, both the dry and the wet weather modeling could be used as tools to properly establish waste load and load allocations throughout the watershed, to identify the true sources of water quality impairment, and to establish allocations that are based on firm science and that are consistent with available data and known impairments.	The model will continue to be refined as more data becomes available. For the purpose of the proposed TMDL, the model is an effective tool in the linkage analysis. The model presents a reasonable assurance that the relationship between in-stream loads and targets is understood.
7.1	Executive Advisory Committee	8/26/04	We are taking this opportunity to submit comments on the subject Basin Plan Amendment and request that the record indicate that the EAC directed preparation of this letter with no dissenting votes.	Comment noted.
7.2	Executive Advisory Committee	8/26/04	The April 23, 2004 CEQA Scoping meeting for this amendment inadequately outlined the proposed TMDL, which limited the ability of the participants to characterize the environmental impacts needing evaluation by the Board. As an example the "Implementation" slide listed: "Source Reduction"; "Target hot spots"; "Structural and Non-structural BMPs"; and "Improving site design to prevent/minimize dry	The purpose of the CEQA scoping meeting was for stakeholders to provide input to the Regional Board in determining the scope and content of the TMDL documents—which serve as CEQA substitute documents. Because the Regional Board

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			and wet water flows”.	cannot prescribe the method of achieving compliance with the TMDL, staff was unable to describe the nature of all potential actions necessary to achieve compliance with the TMDL at the CEQA scoping meeting. Staff did however present an overview of reasonably foreseeable means of compliance to facilitate the scoping discussion. Stakeholders provided numerous constructive comments based on this presentation. All comments received at the scoping meeting were considered in preparing the CEQA checklist, and developing additional information within the TMDL documents that serve as the CEQA substitute documents.
7.3	Executive Advisory Committee	8/26/04	The staff report and CEQA checklist ignored most of the impacts that local agencies identified during the Scoping meeting. One example would be the impact on existing housing, due to ignoring the need to sacrifice an unknown number of residential units to construct the nearly 12,000 infiltration trenches identified in the report. A similar assertion can be made in regards to the sand filters identified as being used in an equal area of the urban watershed.	While it is reasonably foreseeable that the installation of infiltration trenches, sand filters, or other structural BMPs will be necessary to achieve compliance with the TMDL, it is not reasonably foreseeable that the installation of these BMPs would lead to sacrificed housing. This is because structural BMPs can be suitable for an ultra-urban setting and can be specifically designed to accommodate limited land area, such as the subsurface Delaware sand filters. Furthermore, based on the estimated

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				size constraints discussed in Appendix III of the staff report, the area required to site structural BMPs is significantly less than the total urbanized portion of the watershed. It is not reasonably foreseeable that there would be a need to displace housing for this limited area. The extent to which housing would be affected by implementation of the TMDL would be purely speculative.
7.4	Executive Advisory Committee	8/26/04	The LARWQCB estimate of \$ 1 billion can easily balloon to over \$20 billion based on local agency experience. The EAC recommends that Board staff review the financial impacts projected in the November 2002 USC Study.	Costs were estimated based on a reasonably foreseeable means of compliance. The 2002 USC Study is based on one potential method of compliance, which is neither required nor supported by the proposed TMDL. Further, a subsequent analysis by professors from USC and UCLA has determined that a cost-effective mix of BMPs can achieve water quality standards at a significantly lower cost and with substantial environmental and economic benefits. (See Deviny, Kamieniecki, and Stenstrom "Alternative Approaches to Storm Water Quality Control" (2004), included as App. H to Currier et al. "NPDES Stormwater Cost Survey" (2005).)
7.5	Executive Advisory	8/26/04	For a TMDL based on total, rather than dissolved, metal concentrations and acknowledging the impact of aerial deposition, it is unconscionable	See response to comment No. 1.40.

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	Committee		to not have developed a load allocation for the 44% or 367 square miles of the watershed within the open land use category. The Angeles National Forests are renowned for their erosion potential.	
7.6	Executive Advisory Committee	8/26/04	Table 14 of the Staff Report acknowledges the presence of over 1,500 General Industrial and Construction Activities Stormwater Permit holders in the watershed, many of which have already submitted monitoring data demonstrating them to be in violation due to excessive metal contamination in their runoff. We propose that the Board staff review the monitoring data, identify sources of excessive runoff discharge concentrations and work with municipal staff to identify and control these sources.	The staff report and BPA have been revised to assign load-based waste load allocations to the general industrial and construction storm water permittees. Compliance with the permit requirements established to achieve these waste load allocations will likely lead to reductions in MS4 loadings. The Regional Board looks forward to working cooperatively with municipalities to identify and control these sources, whether they be direct dischargers to receiving waters or dischargers that rely upon the MS4.
7.7	Executive Advisory Committee	8/26/04	No credit for past and continuing efforts (many cities have used non-structural BMPs, like weekly vacuum sweeping for years) and inadequate source investigation. This TMDL continues with the approach of ignoring the most recalcitrant sources, while those who try to work with the Board to achieve common goals are serially hammered with iterative BMPs and subject to additional compliance measures regardless of efficacy or cost.	The proposed implementation schedule for the TMDL has been extended to 22 years in order to acknowledge the past and continuing efforts of MS4 permittees. All potential sources have been assigned a waste load allocation in the revised BPA. No recalcitrant sources are being ignored.
7.8	Executive Advisory Committee	8/26/04	The EPA (CTR) translator is inaccurate and flawed. As demonstrated by Tables 10 and 12 of the staff report, the overestimate can be as much as 75% (lead during dry-weather) with copper and zinc in wet weather being overestimated by 48 and 61% respectively. The EAC believes that for the foreseeable future, there is no need to evoke some	The TMDL addresses both dissolved and total metals concentrations because of the potential for transformation between the two. The overestimate is applied to the margin of safety, which is required by

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			conservative Margin of Safety Assumptions and the analysis should concentrate on dissolved metals and the BMPs that will sufficiently control them. It will do little good to install sand filters if the translators are correct.	CWA section 303(d)(1)(c). Total metals loadings are also controlled because of future TMDLs to address sediment metals listings downstream.
8.1a	City of Downey and TECS Environmental	8/26/04	The CEQA checklist is irreparably shallow and flawed, due to the apparent disregard for the many concerns shared with Regional Board staff by the commentors.	See response to comment No. 2.23.
8.2a	City of Downey and TECS Environmental	8/26/04	While the checklist makes a finding of “no” significant impact on housing, the City of Los Angeles IRP EIR Notice of Preparation (NOP), which the subject amendment is dependent upon, identifies housing loss as a potential project impact. The Santa Monica Urban Runoff Reclamation Facility occupies 19,000 square feet or about 3 typical residential lots. Based on typical media filter design parameters, a projected 1 in 500 single-family residential lots would be sacrificed for runoff filtration.	See response to comment No. 7.3.
8.1	City of Downey and TECS Environmental	8/26/04	Checklist review: There would be an impact on “Earth” as large storm runoff detention basins may be built below grade, treatment plants may be constructed and the subsoil compacted, and structural BMPs may be constructed below grade or require soil removal and disposal. The City of LA NOP noted similar issues for the IRP.	Staff responded with a “maybe” answer to this question in the CEQA checklist because to the extent that project-level impacts may exist, staff recommended certain mitigation measures, in accordance with 14 CCR 15091, such as the proper design and siting of structural BMPs, that could be adopted by to avoid negative impacts. Furthermore, the benefits to aquatic life and wildlife habitat outweigh any potential negative impacts.
8.2	City of	8/26/04	Checklist review: There would be an impact on “Earth” because even	Staff responded with a “no” answer to this

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	Downey and TECS Environmental		with BMPs, most construction projects are susceptible to the loss of silts, clays and other fine materials, as well as organic and biologic soil constituents. This project will result in many construction projects such as filters and treatment plants. The City of LA NOP noted similar issues for the IRP.	question in the CEQA checklist because there is no substantial evidence that there would be significant or reasonably foreseeable impacts on erosion associated with the implementation of the TMDL by permittees. To the extent that construction of structural BMPs would be needed to comply with the TMDL, construction sites are required to retain sediments on site, either by a general construction storm water permit or through the construction program of the applicable MS4 permit—both of which are already designed to minimize or eliminate erosion impacts on receiving water. See also response to Comment No. 7.3.
8.3	City of Downey and TECS Environmental	8/26/04	Checklist review: There would be an impact on ‘Earth’ because the greatest metal mass loading in runoff is from particulates, not dissolved metals. Ignoring source control, the most effective metal control strategy is to remove the particles of sediment that would otherwise settle in the bay or harbor. This will exacerbate the already sediment starved condition of the Los Angeles River System, although the harbor would be dredged less frequently.	Staff responded with a ‘no’ answer to this question in the CEQA checklist because there is no substantial evidence that there would be a significant or reasonably foreseeable negative impact on sedimentation. The removal of sediments and sediment-bound metals will have a positive impact on the river and will address impaired sediments in the harbor.
8.4	City of Downey and TECS	8/26/04	Checklist review: There would be an impact on ‘Earth’ because although much of the watershed soil is poor for infiltration, to the extent that basins and trenches are successful, adjacent areas may	Staff responded with a ‘no’ answer to this question in the CEQA checklist because there is no substantial evidence that there

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	Environmental		become more susceptible to liquifaction. During construction sand filters and new drain lines are susceptible to ground failures, which must be mitigated with engineering and construction measures. The City of LA NOP noted similar issues for the IRP.	would be a significant or reasonably foreseeable negative impact on ground stability. The commentors' assertion that the use of infiltration trenches will cause increased risk of liquefaction is an unsubstantiated opinion and a speculative possibility. In fact, infiltration trenches, when properly sited, can have a positive impact by addressing the effects of development and increased impervious surfaces in the watershed.
8.5	City of Downey and TECS Environmental	8/26/04	Checklist review: There would be an impact on "Air" because during construction, air emissions and fugitive dust can be expected to reduce air quality. State Boards have precipitated other errors in environmental judgement (e.g. MTBE and Carver Greenfield). The City of LA NOP noted similar issues for the IRP.	Staff responded with a "maybe" answer to this question in the CEQA checklist because to the extent that project-level impacts may exist, staff recommended certain mitigation measures to avoid negative impacts, in accordance with 14 CCR 15091, such as consulting with and obtaining appropriate permits from the applicable air pollution control agency. Furthermore, the benefits to aquatic life and wildlife habitat outweigh any potential negative impacts.
8.6	City of Downey and TECS Environmental	8/26/04	Checklist review: There would be an impact on "Air" because public resources (state and local) are insufficient to deal with current pollution and homeless issues. The project would further consume those resources while constructing in more problematic facilities. The City of LA NOP noted similar issues for the IRP.	Staff responded with a "no" answer to this question in the CEQA checklist because the diversion of resources is an economic impact, which does not contribute to and is not caused by physical impacts on the



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				environment.
8.7	City of Downey and TECS Environmental	8/26/04	Checklist review: There would be an impact on “Water” because infiltration basins and trenches, potable and wastewater treatment facilities will move water from surface receiving waters into ground or different receiving water locations. As reclaimed water replaces ocean cooling water, this may result in less available surface waters.	Staff responded with a “maybe” answer to this question in the CEQA checklist because to the extent that project-level impacts may exist, they are positive effects. The use of infiltration devices reverses the negative effects of development by increasing pervious surfaces in the watershed.
8.8	City of Downey and TECS Environmental	8/26/04	Checklist review: There would be an impact on “Water” because infiltration basins and trenches will directly add surface runoff into regional groundwater basins. If groundwater levels rise, there may then be a subsequent, and potentially beneficial, increase in ground water withdrawals	Staff responded with a “maybe” answer to this question in the CEQA checklist because to the extent that project-level impacts may exist, staff recommended certain mitigation measures to avoid negative impacts, in accordance with 14 CCR 15091, such as proper design and siting of infiltration devices and groundwater monitoring. Furthermore, the benefits to aquatic life and wildlife habitat outweigh any potential negative impacts.
8.9	City of Downey and TECS Environmental	8/26/04	Checklist review: There would be an impact on “Animal Life” because reaches upstream of POTWs may no longer receive dry-weather runoff, depriving wildlife of this water source. (Water may still be found in street gutters and yards, but with greater risk exposure.) The City of LA NOP noted similar issues for the IRP.	Staff responded with a “maybe” answer to this question in the CEQA checklist because to the extent that project-level impacts may exist, staff recommended certain mitigation measures to avoid negative impacts, in accordance with 14 CCR 15091. Furthermore, the CEQA checklist states that critical flow in the river

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				<p>would be maintained despite a potential dry-weather diversion because of the continual dry-weather flow from POTWs and groundwater discharge. Even discounting POTW flow, there would still be dry-weather flow from groundwater discharge and other permitted NPDES discharges within the watershed. This is supported by the staff report. To the extent that negative impacts may exist, they are outweighed by the benefits to aquatic life and wildlife habitat of removing toxic discharges of pollutants to the river.</p>
8.10	City of Downey and TECS Environmental	8/26/04	<p>Checklist review: There would be an impact on ‘Noise’ because the project will result in numerous residential area construction projects. Pumps may be required, needing soundproofed facilities. The City of LA NOP noted similar issues for the IRP.</p>	<p>Staff responded with a ‘maybe’ answer to this question in the CEQA checklist because to the extent that any limited, short-term project-level impacts may exist, staff recommended certain mitigation measures to avoid negative impacts, in accordance with 14 CCR 15091, such as limiting or restricting hours of construction. The commentors assertion that pumps would be required needing soundproofing facilities is an unsubstantiated opinion and a speculative possibility. To the extent that pumps would be used to supplement structural BMPs (although they are not required) negative noise impacts could be</p>

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				<p>avoided by properly siting facilities. Furthermore, the benefits to aquatic life and wildlife habitat of removing toxic pollutants from the river outweigh any potential negative impacts.</p>
8.11	City of Downey and TECS Environmental	8/26/04	<p>Checklist review: There would be an impact on “Noise” because the project will result in numerous residential area construction projects, often needing heavy earthmoving equipment. The City of LA NOP noted similar issues for the IRP.</p>	<p>See response to comment Nos. 8.10 and 8.14.</p>
8.12	City of Downey and TECS Environmental	8/26/04	<p>Checklist review: There would be an impact on “Light and Glare” because to the extent that the project facilities, including ancillary structures, may be attractive nuisances, lights maybe used to increase safety. The City of LA NOP noted similar issues for the IRP.</p>	<p>Staff responded with a “no” answer to this question in the CEQA checklist because there is no substantial evidence that there would be a significant or reasonably foreseeable negative impact on light and glare. The assertion that lights used to increase safety at project facilities would produce new light or glare is an unsubstantiated opinion and a speculative possibility. To the extent that light would be needed to increase safety at a project facility, the facility could be sited in an area where any potential increased lighting could not pose a significant impact.</p>
8.13	City of Downey and TECS Environmental	8/26/04	<p>Checklist review: There would be an impact on “Risk of Upset” because treatment plants often use a variety of disinfectants and caustics to maintain efficient process operation. Despite great care, there is a small risk that these contaminants might escape. The City of LA NOP noted similar issues for the IRP.</p>	<p>Staff responded with a “no” answer to this question in the CEQA checklist because there is no substantial evidence that there would be a significant or reasonably foreseeable risk of upset. The assertion that</p>

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				<p>there could be a potential escape of disinfectants and caustics used to maintain efficient operation of treatment facilities is an unsubstantiated opinion and a speculative possibility. The staff report considers a potential means of compliance that uses a mix of non-structural BMPs and infiltration devices which would not require disinfectants and caustics. This approach is supported by a separate study. (See Devinity, Kamieniecki, and Stenstrom “Alternative Approaches to Storm Water Quality Control” (2004), included as App. H to Currier et al. “NPDES Stormwater Cost Survey” (2005).) Furthermore, the “small risk” of escape of contaminants could be mitigated by proper maintenance and oversight.</p>
8.14	City of Downey and TECS Environmental	8/26/04	<p>Checklist review: There would be an impact on “Transportation” because despite the vague staff report, it is clear the project calls for hundreds of new construction projects. This will generate substantially more traffic primarily in residential areas. The City of LA NOP noted similar issues for the IRP.</p>	<p>Staff responded with a “no” answer to this question in the CEQA checklist because there is no substantial evidence that there would be a significant or reasonably foreseeable negative impact on transportation. The assertion that there could be a significant increase in traffic due to hundreds of construction projects is an unsubstantiated opinion and a speculative possibility. The extended nature of the</p>

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				proposed implementation schedule allows for construction projects to be spread out both spatially and temporally. To the extent that any limited, short-term, project-level impacts may exist, they could be mitigated by limiting or restricting hours of construction.
8.15	City of Downey and TECS Environmental	8/26/04	Checklist review: There would be an impact on “Transportation” because the most common location for drainage facilities is the public right of way. In addition to foreseeable traffic detours, bicyclists and pedestrians often use access roads along channels. Even with appropriate signage/barricades, the public risk factor is significant. The City of LA NOP noted similar issues for the IRP.	Staff responded with a “no” answer to this question in the CEQA checklist because there is no substantial evidence that there would be a significant or reasonably foreseeable negative impact on transportation. The assertion that there could be a significant risk to bicyclists and pedestrians by locating drainage facilities along the public right of way is an unsubstantiated opinion and a speculative possibility. To the extent that any limited, short-term, project-level impacts may exist, they could be mitigated by limiting or restricting hours of construction.
8.16	City of Downey and TECS Environmental	8/26/04	Checklist review: There would be an impact on “Public Service” because without a significant increase in public support, a diversion of over 1 billion local dollars is likely to reduce the supply of most public services. It is notable that Los Angeles City has prepared a \$500 million bond measure for other TMDL related projects. Detours may impact traffic and further increase response times. The City of LA NOP noted similar issues for the IRP.	Staff responded with a “no” answer to this question in the CEQA checklist because the diversion of resources is an economic impact, which does not contribute to and is not caused by physical impacts on the environment. See response to comment No. 8.14 regarding potential traffic detours.

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8.17	City of Downey and TECS Environmental	8/26/04	Checklist review: There would be an impact on ‘Public Service’ because without a significant increase in public support, a diversion of over 1 billion local dollars is likely to reduce the supply of most public services. This project has the potential to greatly increase the number of public facilities, which law enforcement must protect from various forms of vandalism and vagrancy. The City of LA NOP noted similar issues for the IRP.	Staff responded with a ‘no’ answer to this question in the CEQA checklist because the diversion of resources is an economic impact, which does not contribute to and is not caused by physical impacts on the environment. The assertion that there would be a significant effect on law enforcement because they would have to protect treatment facilities is an unsubstantiated opinion and a speculative possibility.
8.18	City of Downey and TECS Environmental	8/26/04	Checklist review: There would be an impact on ‘Public Service’ because without significant support, a diversion of over 1 billion dollars is likely to reduce the supply of public services. Los Angeles City has installed an infiltration structure at a Pacoima school. This impact may be short term, but cannot be determined from the project report. The City of LA NOP noted similar issues for the IRP.	Staff responded with a ‘no’ answer to this question in the CEQA checklist because the diversion of resources is an economic impact, which does not contribute to and is not caused by physical impacts on the environment.
8.19	City of Downey and TECS Environmental	8/26/04	Checklist review: There would be an impact on ‘Public Service’ because while the checklist identifies additional maintenance, the project mandates the construction of new government services. This project imposes construction of detention basins, infiltration trenches, sand filters, pump stations, and dedicated runoff treatment facilities. The City of Los Angeles proposes to greatly expand existing POTWs, such as Hyperion, while excluding water from other communities. The City of LA NOP noted similar issues for the IRP.	Staff addressed this potential impact by checking ‘yes’ in the CEQA checklist. The environmental checklist draws on analysis contained in and conclusions reached in the staff report. Because the Regional Board does not prescribe the method of achieving compliance with the TMDL, staff cannot identify all project-level impacts (and associated mitigation measures) that might occur at the project level.
8.20	City of	8/26/04	Checklist review: There would be an impact on ‘Public Service’	See response to comment No. 8.19.

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	Downey and TECS Environmental		because the checklist identifies monitoring, public outreach, additional sweeping and structural BMP maintenance. To this we would add specialized treatment plant and pump station operators, laboratory staff, construction inspectors, hydrologic modelers and inspectors. The City of LA NOP noted similar issues for the IRP.	
8.21	City of Downey and TECS Environmental	8/26/04	Checklist review: There would be an impact on ‘Energy’ because the project creates a significant demand for heavy equipment fuel and long term demand for electricity to operate pumps, dedicated runoff treatment plants, and expanded POTWs.	Staff responded with a ‘no’ answer to this question in the CEQA checklist because there is no substantial evidence that there would be a significant or reasonably foreseeable negative impact on energy. The assertion that there could be a significant impact to energy due to the demand for heavy equipment fuel and electricity for pumps, treatment plants, and expanded POTWs is an unsubstantiated opinion and a speculative possibility. The staff report considers a potential means of compliance that uses a mix of non-structural BMPs and infiltration devices which would not require such demands. See also response to comment No. 8.13.
8.22	City of Downey and TECS Environmental	8/26/04	Checklist review: There would be an impact on ‘Energy’ because some facilities could be constructed with solar cells/roofing, but this would need to be balanced against increased maintenance, construction, and protection costs. Alternatives such as recreation and wildlife habitat might also have to be abandoned or modified in some frequent cases.	See response to comment No. 8.21.
8.23	City of Downey and	8/26/04	Checklist review: There would be an impact on ‘Utilities and service systems’ because telemetry systems may need to be developed to	See response to comment No. 8.17.

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	TECS Environmental		monitor flows, sand filters and treatment plant operation. Increased security monitoring maybe required to protect these facilities and the public from vandalism and vagrancy.	
8.24	City of Downey and TECS Environmental	8/26/04	Checklist review: There would be an impact on “Utilities and service systems”. It is unclear from the staff report whether the detention basin and treatment plants might be used to produce supplemental potable water. The incremental cost of producing treated runoff and potable water is diminished by this proposal and may cause new reclamation opportunities to develop.	Staff responded with a “no” answer to this question in the CEQA checklist because there is no substantial evidence that there would be a significant or reasonably foreseeable negative impact on utilities and service systems - water. The impact due to new reclamation opportunities would be a positive impact.
8.25	City of Downey and TECS Environmental	8/26/04	Checklist review: There would be an impact on “Utilities and service systems”. It is unclear whether the Board staff considered a runoff treatment plant or diversion to be an altered part of the sewer system or a new public service, but it should be included somewhere in the checklist. Los Angeles City plans to expand the Hyperion POTW an impact. The City of LA NOP noted similar issues for the IRP.	Staff responded with a “no” answer to this question in the CEQA checklist because there is no substantial evidence that there would be a significant or reasonably foreseeable negative impact on utilities and service systems – sewer or septic tanks. Diversion of runoff to a treatment plant is one potential means of compliance. The need for a treatment plant to alter or expand its design capacity is an unsubstantiated opinion and a speculative possibility. In fact, staff has received comments that certain POTWs would not accept additional inflow from dry-weather diversions that would cause them to expand their facilities.
8.26	City of	8/26/04	Checklist review: There would be an impact on “Utilities and service	Staff has indicated reasonably foreseeable



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	Downey and TECS Environmental		systems”. A one sentence mitigation statement doesn’t convey the magnitude of impacts associated with a Public Works program projected by LARWQCB at > \$1 billion. The City of LA NOP noted similar issues for the IRP.	environmental impacts of the TMDL as an overall program, and reasonably foreseeable environmental impacts to storm water drainage (and associated mitigation measures) at the project level. See also response to comment No. 8.19.
8.27	City of Downey and TECS Environmental	8/26/04	Checklist review: There would be an impact on “Utilities and service systems” because the project proposes removal of multiple pollutants at the proposed facilities. Solid waste might be collected at some or all and would need to be collected and properly disposed of on a regular schedule. The sand filter schmutzdecke needs to be regularly disposed of. The City of LA NOP noted similar issues for the IRP.	Staff responded with a “no” answer to this question in the CEQA checklist because there is no substantial evidence that there would be a significant or reasonably foreseeable negative impact on new or altered solid waste disposal. The references cited in the staff report discuss the operation and maintenance requirements of infiltration trenches and sand filters. For example, sand filters in Austin are tested prior to disposal and it has been shown that the media is not toxic and can be safely landfilled. Removal of sand media is typically required every 3 to 5 years.
8.28	City of Downey and TECS Environmental	8/26/04	Checklist review: There would be an impact on “Human health” because vector production is a foreseeable impact attributable to this project. Public resources are too scarce to support the required level of filter, trench, and wet well inspection and maintenance activities.	Staff responded with a “maybe” answer to this question in the CEQA checklist because to the extent that project-level impacts may exist, staff recommended certain mitigation measures to avoid negative impacts, in accordance with 14 CCR 15091, such as minimizing stagnant water and consulting with vector control

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				agencies.
8.29	City of Downey and TECS Environmental	8/26/04	Checklist review: There would be an impact on ‘Human health’ because many of the facilities and habitat areas contemplated by this project, will be located in residential areas where the exposure risk from zoonotic and vector borne diseases will be greatest.	See response to comment No. 8.28.
8.30	City of Downey and TECS Environmental	8/26/04	Checklist review: There would be an impact on ‘Aesthetics’ because the proposed project contemplates constructing over \$1 billion of treatment and ancillary facilities in the Los Angeles River watershed. Many sites will be in residential areas, becoming attractive nuisances with graffiti, trash, homelessness and potential criminal activity occurring within the public view.	Staff responded with a ‘no’ answer to this question in the CEQA checklist because there is no substantial evidence that there would be a significant or reasonably foreseeable negative impact on aesthetics. The assertion that the installation of structural BMPs will cause graffiti, trash, homelessness, and potential criminal activity in residential areas is an unsubstantiated opinion and a speculative possibility. In fact, many structural BMPs are designed to provide habitat, recreational areas, and green spaces, which would increase the quality of life for residents. As discussed in the staff report, these BMPs are effective at <i>removing</i> trash, not creating trash. The commentor offers no evidence to support the claim that green spaces and recreational areas attracts criminal activity.
8.31	City of Downey and TECS Environmental	8/26/04	Checklist review: There would be an impact on ‘Recreation’ because to the extent that lot size exceeds treatment demands, open space may be created; but this implies that more lots will be sacrificed to reach the required treatment area. Parks and schoolyards maybe preferentially	Staff responded with a ‘no’ answer to this question in the CEQA checklist because there is no substantial evidence that there would be a significant or reasonably

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			sacrificed to preserve the existing housing stock. The City of LA NOP noted similar issues for the IRP.	foreseeable negative impact on recreation. While it is reasonably foreseeable that the installation of infiltration trenches, sand filters, or other structural BMPs will be necessary to achieve compliance with the TMDL, it is not reasonably foreseeable that the installation of these BMPs would lead to sacrificed parks and schoolyards. This is because structural BMPs can be suitable for an ultra-urban setting and can be specifically designed to accommodate limited land area, such as the subsurface Delaware sand filters. They can serve multiple land use purposes. See also response to comments 7.3 and 8.30.
8.32	City of Downey and TECS Environmental	8/26/04	While parks and wildlife habitat may constitute an impact mitigation measure to Regional Board Staff, residents will reject their insertion, into what had been quiet uniform neighborhoods, just as vigorously as storage basins, sand filters, diversion stations, and even industrial style treatment plants.	See response to comment No. 8.30.
8.33	City of Downey and TECS Environmental	8/26/04	The CEQA analysis must seriously consider alternative strategies, and their respective mitigation measures, before implementing significant intrusive facilities in existing residential areas. The undersigned strongly believe that LARWQCB Staff should have made a Mandatory Finding of Significant, Substantially Adverse, and Cumulative Impacts, leading to the preparation of a project EIR commensurate with the construction of a billion-dollar regional drainage project. The capture and treatment of runoff water should not be so benignly trivialized and	See response to comment Nos. 2.23 and 6.17.

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			to certify the subject reports as being Functionally Equivalent in addressing “all activities and impacts associated with a project”, does irreparable harm to the watershed Permittees. This is especially true considering that one municipality has apparently committed to a costly EIR on a portion of the Board project that occurs within its jurisdiction.	
9.1 and 9.2	City of Downey	8/26/04	The data used in calculating numeric targets for Rio Hondo Reach 1 is old and is not consistent with the hardness values from municipal water providers. City staff advised Board staff of additional municipal hardness data that could be used to calculate numeric targets at the April 23, 2004, CEQA Scoping meeting. Unfortunately, the same data appeared in Table 8 of the July 9, 2004 staff report, impacting many of the subsequent tables and report sections.	While the hardness data is from 1988 to 1995, the staff report explains the justification and support for using the older data. The hardness data used in calculating reach specific numeric targets were collected from the receiving water. Hardness data provided by a municipal provider would not be useful in calculating numeric targets. However, staff recognizes the inconsistency between the municipal supply data and receiving water data. Numeric targets may be revised if additional receiving water hardness data becomes available.
9.3 and 9.4	City of Downey	8/26/04	Based on updated hardness data, there is no indication that the surface runoff from the cities is the primary water in Reach 1 of the Rio Hondo. Our 6 cities should not be penalized if a soft, but metal containing upper aquifer ground water is leaking into the channel, or if a significant discharger to this reach cannot be located by any of the regulatory agencies.	The hardness of the municipal water supply does not necessarily rule out the contribution of municipal storm water as a source of water in the Rio Hondo. There is no data to support the suggestion that soft groundwater is the major source of flow in the Rio Hondo. However, special studies will allow better characterization of the contribution of groundwater, storm drains,

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				and other discharges to the flow in the Rio Hondo.
10.1	Richards Watson Gershon (City of Monrovia)	8/26/04	While we presume that the implementation of the wasteload allocations was intended for those MS4 Permittees within the Los Angeles River Watershed, we would appreciate if the Regional Board could clarify its intention in this regard.	The BPA has been revised to make this clarification.
10.2, 10.6, 10.9, and 10.19	Richards Watson Gershon (City of Monrovia)	8/26/04	The Staff Report does not provide adequate facts to support the assignment of waste load allocations to cities upstream of Monrovia Canyon Creek and the Rio Hondo. There are serious questions regarding the quantity of flow of urban runoff originating in upstream cities that actually makes it to the impaired reach of the Rio Hondo. The draft TMDL does not take into account any natural or man-made barriers to water flow such as dams, lakes or spreading grounds. Cities above these areas may not contribute significantly to a downstream metals problem.	The staff report and BPA have been revised to clarify for which reaches TMDLs are assigned and for which reaches waste load allocations are assigned. Because flow above Whittier Narrows does not reach Rio Hondo Reach 1 or the main stem in dry-weather, no dry-weather copper waste load allocations are assigned to Monrovia Canyon Creek or Rio Hondo Reach 2. During wet weather, flow from all tributaries reaches the main stem of the river so waste load allocations for all metals are assigned throughout the watershed to meet the TMDL for Reach 1.
10.3 and 10.4	Richards Watson Gershon (City of Monrovia)	8/26/04	No allocation is assigned to the Whittier Narrows Water Reclamation plant. If the basis for the conclusion to not assign a waste load allocation to the Whittier Narrows WRP is that less than one percent of the effluent from the plant ‘remains in the channel downstream of the spreading grounds’, what is the factual basis for concluding that any urban runoff flows from MS4 Permittees upstream from the Whittier narrows Dam is greater than that amount? The Staff Report contains no analysis, as far as we can tell, of this point.	The BPA and staff report have been clarified to explicitly state that a concentration based waste load allocation has been assigned to the Whittier Narrows Reclamation Plant.

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10.5	Richards Watson Gershon (City of Monrovia)	8/26/04	No allocation has been assigned to non-point sources and non-jurisdictional sources. Considering that a significant portion of the water volume entering the Rio Hondo originates in that portion of the watershed within the National Forest, we fail to understand the basis for no allocation to nonpoint sources and other non-permitted sources.	See response to comment No. 1.40.
10.7 and 10.10	Richards Watson Gershon (City of Monrovia)	8/26/04	The Regional Board staff should specifically identify <u>all</u> data upon which it is relying to assign any waste load allocation to the City of Monrovia or any other upstream cities. In this regard, you may consider this request to be a request under the California's Public Records Act.	All data relied upon is contained in the staff report, appendices, and references cited in the staff report and appendices. Please note that the reference section has been updated.
10.8, 10.11, and 10.12	Richards Watson Gershon (City of Monrovia)	8/26/04	The Regional Board staff should specifically identify the factual basis for assigning one hundred percent of the waste load allocation to MS4 Permittees. Little, if any, effort appears to have been made to identify either other point sources or non-point sources for metals, other than POTWs, as required by 40 C.F.R. § 130.2(h) and 40 C.F.R. § 130.7c(1).	The staff report and BPA have been revised to assign wet- and dry-weather waste load allocations to all sources in the watershed, including nonpoint sources. Mass-based waste load allocations are developed for the three POTWs (Tillman, Glendale, and Burbank) and mass-based load allocations are developed for open space and direct atmospheric deposition. A grouped mass-based waste load allocation is developed for storm water permittees (Los Angeles County MS4, Long Beach MS4, Caltrans, General Industrial and General Construction) by subtracting the mass-based waste load and load allocations from the total loading capacity. Concentration-based waste load allocations are assigned to all other point sources in the watershed.
10.13	Richards	8/26/04	The proposed TMDL is not based on sound science and has not been	The proposed TMDL is based on sound

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	Watson Gershon (City of Monrovia)		<p>established in accordance with state and federal regulations, which provide for informed decision making and opportunities for meaningful public input. An adequate basis for numeric targets has not been specifically documented in the submittal and the relationship between numeric target(s) and identified pollutant sources, and estimate total assimilative capacity have not been provided. Furthermore, seasonal variations and critical conditions have not been accounted for.</p> <p>The Regional Board is adopting a “rule” within the meaning of Health &amp; Safety Code § 57004 without having subjected the rules to the requisite scientific peer review. That process should take place <u>before</u> moving forward on this TMDL.</p>	<p>science and was based on the input of numerous stakeholders. Numeric targets have been set to achieve water quality objectives as contained in CTR and are based on site specific conditions in the river. The assimilative capacity of the river was assessed by calculating the loading capacity of the river during dry and wet weather. Seasonal variation has been addressed by developing separate waste load allocations for dry and weather. Critical conditions were addresses by assigning a critical flow during dry-weather and by using a load-duration curve approach for wet weather. The scientific portions of the TMDL have been peer reviewed by two external peer reviewers- in conformance with Health &amp; Safety Code section 57004.</p>
10.14	Richards Watson Gershon (City of Monrovia)	8/26/04	<p>We are very concerned about the time schedule for implementing the programs set forth in the TMDL. Moreover, the proposed TMDL is establishing the target reduction goals before the baseline studies are completed. The feasibility of attaining these goals may be dependent upon what is determined in the baseline studies.</p>	<p>The proposed BPA and staff report have been revised to allow 22 years for wet weather compliance by the MS4 and Caltrans permittees. The TMDL will be reconsidered at year 5 to allow for potential revised waste load allocations and implementation schedules based on information obtained in the special studies, which are due by year 4.</p>

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10.15	Richards Watson Gershon (City of Monrovia)	8/26/04	The MS4 Permittees' cost of implementing the TMDL, as drafted, would be very high. Moreover, alternative methods of achieving the goal of litter reduction [sic] must be considered for potential environmental impacts under the California Environmental Quality Act (CEQA). Furthermore, the Federal Regulatory Flexibility Act (5 U.S.C. § 601 et seq.) requires a determination of the cost of implementing the TMDL.	<p>The Regional Board is not required to consider the costs of all potential means of complying with the requirements of the TMDL. It is required to consider the costs of a reasonably foreseeable means of compliance, which it has done. Federal Regulatory Flexibility Act (5 U.S.C. § 601 et seq.) is a requirement on federal agencies, and has no applicability to the regional board. As set forth in the TMDL documents, the reasonably foreseeable costs of compliance have been documented to satisfy CEQA requirements. This same analysis provides sufficient information for the board to consider "economics" associated with the TMDL.</p> <p>See also response to comment No. 6.16.</p>
10.16	Richards Watson Gershon (City of Monrovia)	8/26/04	The draft of the TMDL contains new programs and mandates which go beyond the specific requirements of either the Clean Water Act or the EPA's regulations implementing the CWA. If the RWQCB wishes to impose these programs, it needs to provide a means to pay for their implementation. The California Commission on State Mandates should be allowed to hear and determine a test case and to decide whether the programs proposed in the draft of the TMDL are reimbursable.	See response to comment No. 6.22. As set forth previously, the TMDL is compelled under federal law, the WLAs are compelled under federal law, and the TMDL generally applies to municipal and nonmunicipal dischargers by requiring all dischargers to comply with federal water quality standards.
10.17	Richards Watson	8/26/04	The additional information collection requirements of the TMDL were not contemplated nor are they consistent with the requirements of the	The Federal Paperwork Reduction applies only to federal agencies. The federal act



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	Gershon (City of Monrovia)		federal Paperwork Reduction Act. Accordingly, these requirements may be invalid for failure to comply with the Paperwork Reduction Act.	has no application to data collection requirements issued by the Regional Board.
10.18	Richards Watson Gershon (City of Monrovia)	8/26/04	CEQA requirements that the RWQCB review any significant potential environmental impacts have not been fulfilled. Furthermore, the draft TMDL does not reflect any serious analysis of the individual factors set forth in Water Code § 13241, and specifically, the requirements that the RWQCB take into account economic consideration in establishing water quality objectives.	See response to comment Nos. 2.23 and 6.14 & 7.4. No water quality objective is being established by the TMDL. Instead, a federal water quality standard established by USEPA is being implemented through a TMDL that includes WLAs and LAs. Further, there have been extensive discussion and consideration of economics in establishing a lengthy timeline to comply with federal law.
10.20	Richards Watson Gershon (City of Monrovia)	8/26/04	The TMDL should focus on the implementation of BMPs rather than establishing inflexible numeric requirements.	See response to comment No. 1.3.
10.21	Richards Watson Gershon (City of Monrovia)	8/26/04	The TMDL should focus on permittee action to address metals only when the primary causes of violations are sources over which individual cities have actual jurisdiction and control.	Permittees are responsible for storm water that they discharge to the river. For example, although permittees may have little control over sources of indirect air deposition of metals, once metals are deposited on land under the jurisdiction of a permittee, they are within a permittee's control and responsibility. Please note that permittees will not be deemed out of compliance if WLAs are not achieved. Permittees must only demonstrate

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				compliance with their permit requirements. The revised staff report and BPA clarify that permit requirements will likely be in the form of BMPs.
10.22	Richards Watson Gershon (City of Monrovia)	8/26/04	The City of Monrovia has no particular desire to be continually forced into an adversarial position with respect to the RWQCB or its staff. However, it is absolutely necessary that any TMDL be adopted in compliance with proper administrative procedures, that full public participation be allowed, and that the TMDL which is the result of that process realistically reflects cities' individual capabilities. Regrettably, the current TMDL does not achieve those objectives.	The TMDL shall be adopted in accordance with applicable administrative procedures, with full public participation and consideration of the capabilities of all permittees.
11.1	City of Arcadia	8/26/04	The 45-day comment period offered for detailed regulation such as this truly appears insufficient. Related, the first compliance point for the TMDL is 120 days from the effective date of the TMDL itself- this requirement is seen as unworkable.	See responses to comment Nos. 1.11 and 6.a.
11.2	City of Arcadia	8/26/04	The inclusion of several metals in the TMDL for specific water segments appears to be tenuous and unjust. Specific metals should be removed (or be able to be easily removed) from monitoring/compliance requirements if they do not show reproducible exceedances.	See response to comment No. 1.1.
11.3	City of Arcadia	8/26/04	The suggestion that cities take the lead in the promulgation and passage of legislation regulating industries known to contribute significantly to the deposition of metals is an unfair placement of ultimate responsibility on the cities.	See response to comment No. 1.30.
11.4	City of Arcadia	8/26/04	Exactly how compliance will be achieved is left to the individual permittees. Although many strategies are recommended, there is no true guidance on which BMPs would assist the local agencies on the road to compliance. There is analysis of the cost of individual compliance measures, but no analysis of the ultimate cost to actually meet the	The Regional Board cannot prescribe the method of achieving compliance with the TMDL. Staff is therefore unable to describe the nature of all potential actions which are necessary to achieve compliance with the

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			<p>proposed limits. Without this information, long-term budgets cannot be developed in the best manner.</p>	<p>TMDL. The staff report takes into account a reasonably foreseeable means of compliance and the costs associated with compliance. Water board staff will continue to be available to provide information on BMPs and to share the results of research from throughout the state and country.</p> <p>Additional discussions of costs and BMP section can be found in response to comment Nos. 6.14 and 7.4.</p>
11.5	City of Arcadia	8/26/04	<p>There is analysis of the cost of individual compliance measures, but no analysis of the ultimate cost to actually meet the proposed limits. Without this information, long-term budgets cannot be developed in the best manner. In addition, the compliance goals based upon drainage areas, rather than city-by-city, seem to be challenging and should be revisited. Under this scenario, a few permittees expending considerable resources could conceivably achieve compliance for others. This may result in some jurisdictions unfairly waiting for someone else to act.</p>	<p>The MS4 and Caltrans permittees are required to submit a joint final implementation plan 16 months after the effective date of the TMDL that will outline how compliance will be achieved in the drainage areas. Regional Board staff will oversee the development of the implementation plan, which is subject to approval by the Executive Officer. See also response to comment No. 6.11, 6.14, and 7.4.</p>
11.6	City of Arcadia	8/26/04	<p>The concept of discharging storm drain flow to structural BMPs, such as infiltration trenches, is seen as problematic because the City of Arcadia relies almost entirely on its own groundwater sources. In addition, the placement of any needed structural BMPs would require great capital and dedicated space. Sub-regional efforts are best left to</p>	<p>The use of infiltration trenches is discussed in the staff report as one possible means of compliance and is not required by the TMDL. Cities may chose the best way to meet allocations. The identification of</p>

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			the coordination of cities on their own accord, as opposed to the forced unions as mentioned previously.	jurisdictional groups for the purposes of monitoring and implementation is voluntary.
11.7	City of Arcadia	8/26/04	There is concern for the “piecemeal” approach given to the issuance and implementation of TMDLs on the whole. While it is understood that the TMDLs and their subsequent tight timelines are a result of the Consent Decree, it must be noted how difficult it is for cities to plan for change, one piece at a time. A much more workable approach would be to coordinate all of the proposed requirements for all necessary TMDLs, and forward these to the cities for thorough comment and subsequent implementation.	Comment noted. Regional Board staff have, where appropriate, attempted to synchronize the implementation plans for different TMDLs so effective, multi-pollutant approaches can be employed.
11.8	City of Arcadia	8/26/04	We strongly encourage the Regional Board to withdraw the adoption of the proposed Metals TMDL from the September 2 <sup>nd</sup> Board Meeting, until it has addressed the many issues raised by the permitted community. In addition, the City of Arcadia requests further explanation by the Board in reference to exactly how the proposed Metals TMDL, and its available monitoring data, justify application to our city specifically-noting applicable reaches and/or tributaries as listed in the TMDL.	This comment was addressed by continuing and re-noticing the TMDL. The City of Arcadia, which is located in the Los Angeles River watershed and which is as a co-permittee of the Los Angeles County MS4 permit, is subject to the requirements of the proposed TMDL. The staff report and BPA have been revised to clarify for which reaches TMDLs are assigned and for which reaches waste load allocations are assigned. Please also see response to comment No. 10.2.
12.1	City of Paramount	8/26/04	On behalf of the Paramount City Council, I would like to request some information regarding the TMDL regulations on storm water regarding metals. Paramount is a heavily Latino populated community and many of our population do not speak English. As Mayor, I would like to request a copy of these TMDL regulations in Spanish. This would	The Regional Board is sensitive to ensuring affected individuals can understand actions being taken by the Regional Board. However, the proposed TMDL does not regulate any specific populations. Instead,

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			allow me to better share this information with my constituents to solicit their input.	the TMDL establishes a framework that will be carried out through other state and federal permits, and in many respects will be carried out by municipal entities. If municipalities subsequently rely on BMPs that will impact specific communities, it may be appropriate to have multilingual community outreach.
13.1	City of Monrovia	8/26/04	There are many sources of metals in the watershed that are beyond the control of local municipalities. To simply recognize them and then pass their regulation onto local municipalities through this TMDL is not reasonable, attainable or equitable, and comes at price beyond the financial capabilities of local government.	See response to comment No. 10.21. In addition, the TMDL establishes WLAs for a variety of discharges and LAs for nonpoint sources that contribute metal loading. It is anticipated that these will reduce metal loading through the MS4. To the extent sources outside the legal authority of local municipalities are contributing metals loading, the regional board will work with the affected dischargers to develop an effective strategy to address the metals loading. If necessary, the Regional Board can and will take direct enforcement action against other sources.
13.2	City of Monrovia	8/26/04	Within the staff report, there is a reference that “based on a review of industrial stormwater monitoring data, it appears that substantial reductions will be required at several industrial facilities to meet the applicable CTR values. These reductions will translate to reductions in the existing load to the MS4 system”. Given that this is a recognition that an inherent problem exist and its impacts to the overall MS4	See response to comment No. 7.6.

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			system, it is unfair to expect local municipalities to absorb these loads and then have to remedy them.	
13.3	City of Monrovia	8/26/04	Question 8 on the CEQA checklist provides a response of ‘Maybe’ concerning impacts to Land Use. Within the staff report, infiltration trenches are identified as a BMP to utilize. As these trenches require land area to construct, this response should be Yes. If land is not available, existing development will be impacted if the State mandates their installation to achieve TMDL compliance.	See response to comment No. 2.23.
13.4	City of Monrovia	8/26/04	Question 14 on the CEQA checklist does not consider funding of a TMDL and if effects of all public services. The answer here must be Yes. Within the staff report, estimated costs for implementation and compliance are cited in the millions-\$500M (concerning construction of infiltration trenches and sand filter). If municipalities are unable to raise funding (through storm drain utilities), then general funds will be impacted.	See responses to comment Nos. 8.16, 8.17, and 8.18.
13.5	City of Monrovia	8/26/04	The staff reports states ‘The proposed TMDL will not degrade water quality, and will in fact improve water quality as it is designed to achieve compliance with existing water quality standard’. However, within the report, infiltration is cited as BMP to be used to achieve compliance. There has always been a concern over infiltration BMPs and its affects on groundwater quality. Has the Board staff worked closely with agencies such as ‘Water Master’ regarding the potential affects the proposed BMPs will have on groundwater supplies? Since substantial amounts of structural BMPs have been cited as potentially being use, should they not be consulted?	If a discharger were to choose to install infiltration trenches to comply with the TMDL, staff has recommended certain mitigation measures in the CEQA checklist and staff report, such as proper design, siting and monitoring and consultation with applicable groundwater agencies. See also response to comment No. 2.23.
13.6	City of Monrovia	8/26/04	A review of Figure 2 (Sampling Stations) shows the closest sampling station (Beverly far beyond the City limits. If sampling is outside the City, how can this be assessed to Monrovia Canyon Creek?	See response to comment No. 10.2.

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13.7	City of Monrovia	8/26/04	Although many strategies are recommended, there is no true guidance on which BMPs would assist the local agencies on the road to compliance.	See response to comment No. 11.4.
13.8	City of Monrovia	8/26/04	This section also recommends permittees sponsor legislative actions to reduce copper loadings. Are the municipalities now expected to “lead” the fight against the brake pad industry to address this problem. The State and Federal agencies are the agencies that must propose legislative action, with the support from local agencies.	See response to comment No. 1.30.
13.9	City of Monrovia	8/26/04	The 120-day timeframe to submit a coordinated monitoring plan (that includes both compliance assessment and ambient monitoring) to the Executive Officer is unrealistic.	See response to comment No. 1.11.
13.10	City of Monrovia	8/26/04	Cost estimates only address specific costs for compliance methods and not overall costs for complying with this TMDL. This must be fully examined.	The Regional Board is not required to consider the costs of all potential means of complying with the requirements of the TMDL. It is required to consider the costs of a reasonably foreseeable means of compliance, which it has done. See also response to comment Nos. 6.14, 6.16, and 7.4.
13.11	City of Monrovia	8/26/04	<p>Who will perform and fund special studies? Are these studies necessary for compliance or simply studies desired by the Regional Board?</p> <p>Comments provided by County of Los Angeles and the Executive Advisory Committee of the Los Angeles River Watershed are supported.</p>	<p>The special studies are voluntary studies, which may be conducted and/or funded by dischargers or other interested parties. The Regional board may be able to provide funding for certain special studies.</p> <p>Comments by the County of Los Angeles and EAC are addressed specifically.</p>
13.12	City of	8/26/04	The adoption of the proposed TMDL should be postponed until the	See response to comment No. 6.a.

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	Monrovia		many issues raises by the permitted community have been addressed.	
14.1	City of South Gate	8/26/04	While we understand that the consent decree the Board is following has tight deadlines, nonetheless the review and comment period should be extended for 90 days.	See response to comment No. 6.a.
14.2	City of South Gate	8/26/04	The CTR (California Toxic Rule) should not be used as the most appropriate guideline in establishing TMDL limits on urban runoff. Also, naturally occurring background levels should be taken into account.	See responses to comment Nos. 6.4 and 1.40.
14.3	City of South Gate	8/26/04	The inclusion of several metals in the TMDL for specific water segments appears to be tenuous in several instances. Specific metals should be removed (or be able to easily be removed) from monitoring/compliance requirements if they do not show reproducible exceedances.	See response to comment No. 2.3.
14.4	City of South Gate	8/26/04	The use of a “translator” to account for any dissolving of metals from particulates is very confusing. If testing is for either the dissolved or solid phase, the testing should be directly for that phase.	The CTR criteria are expressed in terms of dissolved metals. However, NPDES permits are required in most cases to have limits stated as total recoverable metals (see 40 CFR 122.45(c)). The WLAs in the proposed TMDL are therefore expressed in terms of total recoverable metals. How these WLAs are translated into permit requirements will be determined by the permit writer. It is likely that the MS4 and Caltrans storm water permittees will demonstrate TMDL effectiveness by sampling for total recoverable metals to show that WLAs are being met.



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14.5	City of South Gate	8/26/04	The proposed use of enhanced street sweeping or the use of diversion is either unproven to be successful or far too costly. The TMDL should not be issued until a clear method of achieving the goals is set forth.	See response to comment No. 11.4.
14.6	City of South Gate	8/26/04	It is very optimistic to expect a monitoring plan for metals to be developed within 120 days. This should be extended for a minimum of 9 months.	See response to comment Nos. 1.11.
14.7	City of South Gate	8/26/04	The compliance goals based upon drainage areas seem to be inherently unworkable and should be revisited. Under this scenario, a few permittees expending considerable resources could conceivably achieve compliance for others. This will result in everyone waiting for someone else to act.	See responses to comment Nos. 11.5 and 6.11.
14.8	City of South Gate	8/26/04	There is analysis of the cost of individual compliance measures, but no analysis of the ultimate cost to actually meet the proposed limits. Without this information, long-term budget projects cannot be developed.	See response to comment No. 11.4.
14.9	City of South Gate	8/26/04	If exceedances occur, it is not clear how dischargers within the same jurisdictional segment implementing differing degrees of control measures will be differentiated. In other words, how will a city implementing one compliance strategy be differentiated from another city implementing an entirely different compliance strategy?	The TMDL is not self-executing. The compliance of and propriety of enforcement against individual jurisdictions will be determined by the permit terms established in MS4 permits.
15.1	City of Temple City	8/26/04	The comment period should be extended for 90 days.	See response to comment No. 6.a.
15.2	City of Temple City	8/26/04	CTR may not be the most appropriate guideline in establishing TMDL limits on urban runoff. Also limits should take naturally occurring background levels into account.	See response to comment Nos. 6.4 and 1.40.
15.3	City of Temple	8/26/04	The inclusion of several metals in the TMDL for specific water	See response to comment No. 2.3

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	City		segments appears to be tenuous in several instances. Specific metals should be removed (or be able to easily be removed) from monitoring/compliance requirements if they do not show reproducible exceedances.	
15.4	City of Temple City	8/26/04	The use of conversion factors is not adequately detailed in the TMDL.	See response to comment No. 14.4.
15.5	City of Temple City	8/26/04	The lack of clear guidance of effective alternative methods will result in an inefficient “try something, if it doesn’t work, try something else” approach.	See response to comment No. 11.4.
15.6	City of Temple City	8/26/04	It is very optimistic to expect a monitoring plan for metals to be developed within 120 days. This should be extended for a minimum of 9 months.	See response to comment No. 1.11.
15.7	City of Temple City	8/26/04	The compliance goals based upon drainage areas seem to be inherently unworkable and should be revisited. Under this scenario, a few permittees expending considerable resources could conceivably achieve compliance for others. This will result in everyone waiting for someone else to act.	See responses to comment Nos. 11.5 and 6.11.
15.8	City of Temple City	8/26/04	There is analysis of the cost of individual compliance measures, but no analysis of the ultimate cost to actually meet the proposed limits. Without this information, long-term budget projects cannot be developed.	See response to comment No. 11.4.
15.9	City of Temple City	8/26/04	There is no provision for differentiating between dischargers within the same jurisdictional segment implementing differing degrees of control measures.	See response to comment No. 14.9.
16.1	Rutan & Tucker (Cities)	8/26/04	The proposed TMDL is contrary to federal and state law and represents impracticable and ambiguous regulatory requirements, developed without appropriate consideration of the economic, social, and	The proposed TMDL shall be adopted in accordance with applicable federal and state laws. The requirements are clear and

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			environmental impacts that may result, and without reliance upon scientifically valid data.	their implementation is detailed in the proposed BPA. The proposed TMDL is based upon scientifically valid data and has undergone peer review. The economic, social, and environmental impacts shall be considered as required by law and in order to address the concerns of numerous stakeholders.
16.2	Rutan & Tucker (Cities)	8/26/04	The CWA only permits California to develop a TMDL for a listed water body, and TMDLs established for unlisted water bodies may be adopted for informational purposes only. (33 U.S.C. 1313(d)(3).)	See response to comment No. 1.1.
16.3, 16.14, and 16.26	Rutan & Tucker (Cities)	8/26/04	The proposed TMDL is contrary to law. The staff report provides no estimates of the amount of pollutants entering the Los Angeles River. No assimilative capacity study has been conducted. Insufficient “scientifically valid data” exists on the true sources of the pollutants in question. The TMDL appears to be based on limited data. Numerous assumptions are developed to address “occasional exceedances” of CTR. Numeric objectives are not yet “suitable for calculation” and the TMDL has not been developed based on scientifically valid data. The TMDL fails to include a defined “translator” necessary to allow for the conversion of a narrative water quality standards into a pollutant specific numeric effluent limitation as required by 40 C.F.R. § 122.44(d)(1)(vi). The TMDL is based on data which indicates that there are only occasional exceedances of copper and lead during dry-weather conditions, a single exceedance for cadmium in the Burbank Western Channel during dry weather and occasional exceedances of CTR criteria from storm water for copper, lead, and to a lesser extent for zinc and cadmium.	The proposed BPA and staff report analyze the amount of pollutants entering the watershed (see for example the Source Assessment, Linkage Analysis and Pollutant Allocation sections of the staff report.) An assimilative capacity study was conducted. The assimilative capacity is equal to the hardness-adjusted, reach-specific, CTR-based numeric target times a critical flow for dry weather and a range of flows for wet weather. Sufficient data was used, and where data was limited, assumptions were clearly stated. Translators were used to convert from dissolved CTR objectives to total recoverable metals numeric targets.

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				<p>The commenter appears to conflate narrative and numeric water quality standards in discussing translators. Here the specific water quality standards that must be implemented pursuant to section 303(d)(1)(C) of the Clean Water Act are the numeric water quality standards established in the CTR.</p> <p>The data review section showed significant exceedances of copper and lead during dry and wet weather. The staff report and BPA have been revised to state that the data review could only confirm wet-weather impairments for cadmium and zinc in Reach 1 and a dry-weather impairment for zinc in Rio Hondo Reach 1.</p>
16.4	Rutan & Tucker (Cities)	8/26/04	Contrary to federal law, the TMDL provides no load allocation or implementation measures for non-point sources.	See response to comment No. 1.40.
16.5	Rutan & Tucker (Cities)	8/26/04	EPA's national policy is that all TMDLs are expected to provide reasonable assurances that they can and will be implemented in a manner that results in attainment of water quality standards and the waste load allocations are to be technically feasible. The state is to evaluate how waste load allocations will be translated into NPDES permit limits as part of the implementation plan.	See response to comment No. 1.3. Section 303(d)(1)(C) and USEPA policy require as an absolute minimum that the TMDL and its load allocations meet standards. There EPA guidance acknowledges flexibility in considering different allocation schemes to achieve the TMDL, and technical feasibility among different sources may be taken into account in choosing among different

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				allocation schemes. Here the TMDL and WLAs are set at the level necessary to meet the applicable water quality standards, and by incorporating an implicit margin of safety the TMDL provides a reasonable assurance that the water quality standards will be met. Regional Board staff are not aware of any “technical feasibility” considerations that would result in a different allocation scheme that would nonetheless meet water quality standards.
16.6	Rutan & Tucker (Cities)	8/26/04	EPA recommends that the consideration of potential non-point source measures and approaches and the effectiveness of available management practices will assist in the evaluating the practicability of load allocations.	Comment noted.
16.7	Rutan & Tucker (Cities)	8/26/04	According to the November 22, 2003 EPA guidance memo, water quality based effluent limits for NPDES-regulated municipal storm water discharges should be in the form of BMPs and the TMDL reflect this. The proposed TMDL sets numeric water quality targets based on CTR objectives. According to EPA, with respect to CTR, end-of-pipe treatment costs for storm water are inappropriate. The proposed TMDL is contrary to law as it in issue is a set of water quality based effluent limits to be imposed through municipal NPDES permits for occasional exceedances of CTR criteria.	See response to comment Nos. 1.3 and 6.4. The comment distorts the plain language of the EPA guidance memorandum. The memorandum, by its own terms is not a regulation and is not applicable to states, so even if the commenter correctly construed the memorandum, it would not provide a basis for deeming the TMDL “contrary to law.” However, the regional board has considered the memorandum in establishing this TMDL. The memorandum explicitly states that WLAs should be expressed numerically. The

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				<p>memorandum continues by noting EPA's expectation is that the TMDL will include language allowing WLAs to be converted into non-numeric BMPs in individual permits. The TMDL specifically allows this for municipal storm water dischargers. Contrary to the commenters assertion, the TMDL is not a set of 'water quality-based effluent limitation.' The commenter is conflating WLAs in a TMDL, with a more specific 'water quality-based effluent limitation,' which is derived in a permit. EPA recognizes in their regulations that a WLA is a 'type' of water quality-based effluent limitation, but that they clearly have different applications. WLAs are a planning concept. WQBELs are a permitting concept. The November 22 guidance memorandum from USEPA acknowledges this distinction.</p>
16.8	Rutan & Tucker (Cities)	8/26/04	The proposed TMDL violates CWC section 13241 and CEQA because economic factors were not considered.	See response to comment Nos. 6.14, 6.16, and 7.4.
16.9	Rutan & Tucker (Cities)	8/26/04	The proposed TMDL violates CWC sections 13165, 13225(c) and 13267 because a cost benefit analysis was not performed.	See response to comment No. 1.16. Water Code section 13165 is not applicable to this TMDL. Not only does the TMDL not rely upon Water Code section 13165, but it could not. The TMDL is being established

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				by the Regional Board. Water Code section 13165, does not apply to the Regional Board; it only applies to the State Board. Further, the proposed BPA does not specify a technical monitoring program or report to be provided by local agencies.
16.10	Rutan & Tucker (Cities)	8/26/04	The proposed TMDL violates CEQA because not all potentially significant adverse environmental impacts and mitigation measures have been considered.	See response to comment No. 2.23, and responses to specific CEQA comments throughout this document.
16.11	Rutan & Tucker (Cities)	8/26/04	The Metals TMDL is improperly based on CTR as the CTR and SIP are not to be applied to storm water discharges. In response to comments on CTR, EPA stated that it is premature to project that storm water discharges would be subject to strict numeric water quality based effluent limits and that the applicability of water quality standards is outside the scope of the rule.	<p>See response to comment No. 6.4. EPA’s comment is taken out of context. In establishing the CTR, the EPA was carrying out its obligation to establish numeric water quality criteria for priority pollutants. Those numeric criteria are now a component of California’s water quality standards, and they are the applicable water quality standards that must be implemented under section 303(d)(1)(C) of the Clean Water Act.</p> <p>The reference to EPA’s rulemaking for the CTR simply states that EPA was not deciding how storm water dischargers must meet water quality standards—that was beyond the scope of the rulemaking. EPA’s comment does not mean the subject water quality standards are not water</p>

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				quality standards applicable to storm water discharges. Clearly under section 303(c) and 303(d) of the Clean Water Act, the CTR is the applicable water quality standard.
16.12	Rutan & Tucker (Cities)	8/26/04	The proposed TMDL fails to include in the implementation plan maximum extent practicable BMPs as required by 1342(p)(3)(B) of the CWA. The TMDL Document includes no discussion of the MEP standard and there is no consideration of the practicability of complying with the end-of-pipe treatment approaches set forth in the implementation portion of the TMDL.	See response to comment No. 2.18.
16.13, 16.16, and 16.17	Rutan & Tucker (Cities)	8/26/04	The proposed TMDL is inconsistent with requirements under CWC sections 13241 and 13000 to only impose ‘reasonable’. There is no discussion in the TMDL Document or BPA of obtaining the highest water quality which is reasonable, considering all of the demands being made on those waters, and the total values involved, beneficial and detrimental, economic and social, tangible and intangible. Moreover, federal law required an economic analysis for both point and non-point sources when TMDLs are adopted (40 CFR 130.6(c).).	See response to comment Nos. 6.14 & 17.10.  Regional Board staff believe it is not only reasonable, but necessary to carry out the express requirements of Congress to establish TMDLs at a level that implement existing water quality standards (33 U.S.C. 1313(d)(1)(C)) and to carry out national policy to prohibit the discharge of toxic pollutants in toxic amounts (33 U.S.C. 1251(a)(1)(3).) While no cost-benefit analysis is required, economic studies demonstrate that there are a variety of means to achieve water quality standards, but to the extent there are significant costs associated with achieving water quality



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				<p>standards, those costs are outweighed by the relative benefits to be gained. To the extent there is any objective reasonableness requirement in Water Code section 13000, the TMDL is reasonable. However, it is important to recall that this general statement, which appears amongst loft goals such as “waters of the state shall be protected for use and enjoyment by the people of the state,” must give way to specific requirements. In this case, the specific requirement is spelled out in superior federal law, which requires that the TMDL implement the federal CTR. Moreover, the citation to 40 CFR 130.6(c), is misleading. Subdivision (c) of section 130.6 does not place any requirements on the development of TMDLs. In fact, the only portion of that subdivision relevant to TMDLs is that they be incorporated into water quality management plans (40 CFR 130.6(c)(1)). The other provisions that the commenter is presumably relying upon are subsections applicable to areawide waste treatment plans; however, those section 208 plans are the responsibility of the Southern California Association of Governments.</p>
16.15	Rutan &	8/26/04	The Metals TMDL in question is contrary to law as a cost/benefit	See response to comment No. 1.16 and

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	Tucker (Cities)		analysis has not been conducted and as the other requirements of sections 13267, 13225, and 13165 have not been met.	16.9. Further, when the regional board subsequently issues monitoring orders, it will only need to consider whether there is a reasonable relation between the burdens of providing the technical reports and monitoring programs and the benefits to be gained from the information. In other words, these sections have no application to anything other than monitoring
16.18	Rutan & Tucker (Cities)	8/26/04	The requirements of CEQA have not been met as discussed in the following specific comments.	See responses to specific comments.
16.19	Rutan & Tucker (Cities)	8/26/04	The Board has segmented the project in violation of CEQA. The Board has done this by adopting individual TMDLs as separate projects for the Los Angeles River. The Board should evaluate the environmental impacts of developing all the TMDLs for the river at once.	See response to comment No. 2.23.
16.20	Rutan & Tucker (Cities)	8/26/04	The substitute documents fail to identify and evaluate individual impacts of the project. The Board has failed to apply the “fair argument” standard to potential environmental impacts, to analyze the impacts of potential compliance methods, or to take into account specific sites. The checklist ignores impacts to many categories. Where impacts are identified, the checklist neglects to propose adequate mitigation measures or improperly defers evaluation of impacts to some undetermined future time.	See response to comment No. 2.23.
16.21	Rutan & Tucker (Cities)	8/26/04	The substitute documents fail to identify and evaluate cumulative impacts and growth-inducing impacts of the project.	See response to comment No. 2.23.
16.22	Rutan & Tucker (Cities)	8/26/04	There is no assessment of alternatives, including a no project alternative, in the substitute documents. The substitute documents should have evaluated the Aerial Deposition approach as set forth in	See response to comment Nos. 1.40 and 6.21.

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			Exhibit '20'.	
16.23	Rutan & Tucker (Cities)	8/26/04	The substitute documents contain no mitigation measures to lessen any of the significant impacts of the Project, and has improperly deferred mitigation analysis to an undetermined future time.	See response to comment No. 2.23.
16.24	Rutan & Tucker (Cities)	8/26/04	The TMDL is contrary to law as it improperly applies to water bodies not listed as being impaired in accordance with the CWA.	See response to comment No. 1.1.
16.25	Rutan & Tucker (Cities)	8/26/04	The metals TMDL is contrary to law as it was not developed based on the uses to be made of the identified water bodies as required by the CWA. The proposed TMDL is improperly being developed to address the impairment of 'potential' beneficial uses. In addition, as the TMDL is a numeric water quality objective, as found by the Superior Court in the Trash TMDL litigation, the requirements and factors under Water Code Section 13241 apply.	<p>See responses to comment Nos. 2.20 and 6.14. Like the Burbank commenter, the commenter is taking a provision of section 303(d)(1)(A) regarding the 'priority' for various TMDLs, which allows prioritization based on 'the uses to be made,' and adding that requirement to another subsection of the Clean Water Act. Section 303(d)(1)(C) specifically requires the TMDL to implement the applicable water quality standard. Here the applicable numeric standard was established by USEPA in the CTR. This TMDL 'shall' be established at a level to implement the standard. 'Uses to be made' is not a concept in the congressional requirements for TMDLs</p> <p>Any reliance on the Trash TMDL is misplaced. First, as the commenter knows that decision is under appeal. Second, the facts are substantially different. Here the</p>

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				TMDL is implementing specific numeric criteria established by USEPA. The Regional Board is not and could not be construed as “establishing” a water quality objective under Water Code section 13241.
16.27	Rutan & Tucker (Cities)	8/26/04	The TMDL is improper as local agencies have not been fully consulted and there has been a lack of intergovernmental coordination as required by law (under 40 C.F.R. 130.4 and CWC sections 13240 and 13144. The record is devoid of substantial evidence showing sincere consultation with local agencies in the development of the TMDL. The Cities request an additional 90 days to further analyze the full impacts and implications of the proposed TMDL and to further work with the Regional and State Boards.	Numerous municipal stakeholders participated in the process leading to the development of this TMDL. Local and state agencies have been consulted at numerous steps. The Regional Board is not bound by Water Code section 13144, but it takes its outreach efforts to local agencies seriously. These efforts have satisfied the requirements of section 13240 of the Water Code. These consultations have resulted in lengthy compliance schedules for municipal dischargers, and significant adjustments to the TMDL.  See also response to comment No. 6.a.
16.28 and 16.29	Rutan & Tucker (Cities)	8/26/04	The TMDL was not developed in accordance with the APA and is contrary to law. The metals TMDL lacks clarity as it is not easily understandable, it does not specify compliance methods, and it recommends the IRP approach, when the IRP does not apply to metals. The proposed regulation fails the necessity standard as the requirements are not necessary under existing statutory law and are not necessary to achieve the goals of the TMDL project. The TMDL is being issued without authority as the TMDL covers unlisted water bodies and	The proposed BPA and staff report have been revised to provide clarity. The Regional Board cannot prescribe the method of achieving compliance with the TMDL. Staff is therefore unable to describe the nature of all potential actions which are necessary to achieve compliance with the TMDL. The staff report states that the

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			<p>requires the cities to address atmospheric deposition. The proposed regulation fails the reference requirement as there is no statutory authority to compel TMDLs to be adopted as Basin Plan Amendments.</p>	<p>Regional Board supports an integrated resources approach in concept but does not require the implementation of such an approach. The proposed TMDLs and upstream WLAs, are necessary to protect beneficial uses and to achieve water quality objectives set to protect these uses. The staff report and BPA have been revised to clarify for which reaches TMDLs are developed and for which reaches waste load allocations are developed to meet downstream TMDLs. Indirect air deposition on the urbanized portion of the watershed is accounted for in the waste load allocations for the storm water permittees. Once metals are deposited on land, they are within a permittee's control and responsibility. Permittees are responsible for the storm water they discharge to the river. See also response to comment No. 10.21.</p> <p>For purposes of state law, the authority and reference for the TMDL is expressly spelled out in the draft resolution. The TMDL is a program of implementation for an existing water quality objective and is necessary under Water Code section 13242.</p>

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				<p>Moreover, as detailed at length in the TMDL document, Basin Plan amendment, and response to comments, the TMDL is necessary to comply with section 303(d)(1)(C) of the Clean Water Act. The need and reference for it to be a Basin Plan amendment is provided not only by Water Code section 13242, but also by 40 CFR 130.6(c)(1) (requiring incorporation into the state's water quality management plan, of which the Basin Plan is the only portion within the responsibility of the Los Angeles Regional Board).</p>
16.30	Rutan & Tucker (Cities)	8/26/04	<p>The TMDL is contrary to law as it fails to develop an implementation plan for non-point sources and fails to include non-point source control trade offs. The TMDL improperly reallocates the load allocation for all non-point sources onto the Cities, County, and Caltrans, forcing these entities alone to address such non-point sources of metals as atmospheric deposition and unregulated stormwater discharges from the Los Angeles National Forest. Because the unregulated storm water which flows from 44.6% of the watershed is not included as part of the metals TMDL, these non-point source areas of the watershed will become largely the responsibility of the municipalities. No justification is provided for the contention that the National or State parks are unlikely to contribute significantly to the overall pollutant load, whether by atmospheric deposition to these areas or otherwise. By failing to include a load allocation for atmospheric deposition, the TMDL fails to coordinate with the appropriate authorities and to</p>	<p>See response to comment Nos. 1.40, 10.21 13.1, and 19.9.</p> <p>Concentration-based waste load allocations have been assigned to all permitted discharges in the watershed, including universities, school districts, state facilities, federal facilities, and other similar institutions.</p>

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			include any air quality implementation strategies. The TMDL fails to assign load allocations to universities, school districts, State facilities, federal facilities, and other similar institutions, nor has any waste load allocation been assigned to these facilities.	
16.31	Rutan & Tucker (Cities)	8/26/04	The Cities and the Public have been denied a fair hearing and due process of law. The lack of available time, in light of the complexity of the TMDL Document and the Proposed BPA has deprived the Cities of a fair opportunity to evaluate this regulation and to provide meaningful comments to the Board. The Cities request a 90-day continuance.	See response to comment No. 6.a.
17.1	Western States Petroleum Association	8/26/04	The proposed TMDL improperly, arbitrarily, and unreasonably imposes concentration-based allocations at the CTR levels for storm water discharges without any translation mechanism suggesting that they will be implemented as never-to-be-exceeded end of pipe limits.	See response to comment Nos. 6.4 and 16.3.
17.2	Western States Petroleum Association	8/26/04	The proposed TMDL improperly, arbitrarily, and unreasonably fails to consider that the reduction of some metals requires actions beyond the dischargers control.	See response to comment Nos. 10.21 and 13.1.
17.3	Western States Petroleum Association	8/26/04	Smaller storm water dischargers are improperly, arbitrarily and unreasonably treated more stringently than the larger dischargers without commensurate environmental benefit.	All permitted dischargers must be assigned a waste load allocation under a TMDL. (40 CFR 130.2(i)). With respect to benefits to be gained, the TMDL staff report demonstrates the significant impairment and metals loading. Achieving waste load allocations will benefit the environment by meeting CTR objectives in order to restore aquatic life beneficial uses. Previously, general storm water permittees were assigned concentration-based waste load allocations. The larger dischargers were

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				assigned both concentration- and mass-based allocations. In order to better allocate loading among sources, the staff report and BPA have been revised to assign mass-based waste load allocations to all storm water permittees, including the smaller general permittees. The allocations are divided among the permittees based on their percent area of the watershed. General construction and industrial storm water permittees have been given a 10-year compliance schedule to achieve wet-weather allocations and interim waste load allocations based on EPA benchmarks.
17.4	Western States Petroleum Association	8/26/04	Natural sources were not properly considered.	See response to comment No. 1.40.
17.5	Western States Petroleum Association	8/26/04	Waste load allocations are being improperly imposed on non-listed reaches.	See response to comment No. 1.1.
17.6	Western States Petroleum Association	8/26/04	Economic impacts were not properly considered.	See responses to comment Nos. 1.16, 6.14, 6.16, and 13.10.
17.7 and 17.9	Western States Petroleum Association	8/26/04	The technical analysis and models fail to support the Regional Board's decision making.	The technical analysis is scientifically sound and supports the TMDL. All assumptions are clearly stated in the staff report. The staff report acknowledges the limitations of the models and allows for



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				updates and revisions based on the results of special studies. The staff report has been revised to clearly state the purpose of the modeling analysis. Further, the TMDL's scientific portions have been subjected to external scientific peer review in conformance with Health and Safety Code section 57004.
17.8	Western States Petroleum Association	8/26/04	The Regional Board did not follow the proper process for establishing TMDLs. The proper process is to scientifically determine a TMDL "number" and then develop discharge criteria by which individual dischargers can help meet that goal. CTR allocations were assigned rather than scientifically determining the pollutant contribution from all the sources and equitably assigning allocations.	The staff report and BPA have been revised to assign allocations to all point and nonpoint sources in the watershed. However, the total loading capacity of the river is still based on CTR-based numeric targets. Because the Los Angeles River is impaired due to exceedances of CTR objectives, there is no excess assimilative capacity to provide dilution during critical conditions. The loading capacity is therefore equal to the critical flow times the CTR-based numeric target. Each source is assigned a portion of the total loading capacity.
17.10	Western States Petroleum Association	8/26/04	The TMDL does not meet the underlying requirement of "Reasonableness". The State Board and Regional Boards are statutorily mandated to regulate water quality in a reasonable manner which takes into account all demands on those waters as well as the total values involved including economic factors. (CWC sections 13160, 13225, 13000, and 13001.)	Regional Board staff disagree that the requirements are not reasonable. It is express national policy that the discharges of toxic pollutants in toxic amounts be prohibited. (33 U.S.C. § 1251(a)(3).) In light of Congressional policy, it would be

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				<p>unreasonable to allow the prohibition to continue to be disregarded. Further, the proposed TMDL allows some latitude for BMPs and includes a lengthy implementation period to achieve the Congressional policy. These are reasonable actions.</p> <p>The commentor's citation to Water Code section 13160 is inappropriate because the portion of section 13160 the commentor relies upon applies only to water quality certifications—not to NPDES permits or TMDLs. Likewise, Water Code section 13225 is not a basis for the TMDL. To the extent there is any subsequent monitoring required of a discharger, it would be pursuant to Water Code sections 13267 and 13383—which apply to all dischargers. Finally, Water Code sections 13000 and 13001 establish broad policies for the state. Implementing the Federal Clean Water Act is consistent with that policy and required. The TMDL is reasonable.</p>
17.11	Western States Petroleum Association	8/26/04	It is inappropriate to directly apply CTR numeric standards as never-to-be-exceeded end-of-pipe limitations, especially without consideration of dilution in the receiving water, as this was never contemplated when CTR was adopted. Without clear guidance that specifies iterative BMPs	See response to comment No. 6.4. Also recall that the TMDLs WLAs were developed after extensive modeling to determine the relationship between in-

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			as the translation of CTR allocations, CTR numeric values are likely to be the default permit conditions.	stream loads and numeric targets.
17.12	Western States Petroleum Association	8/26/04	The TMDL unfairly holds permittees responsible for sources that are out of their control and does not consider background and ambient air deposits of metals. The commentor cited <i>Communities for a Better Env't v. State Water Resources Control Bd</i> as precedent that WSPA member companies' storm water may serve as a "conveyance of metals from other sources."	See response to comment No. 1.40.
17.13	Western States Petroleum Association	8/26/04	Smaller storm water dischargers are treated disproportionately to larger dischargers and natural sources. The largest storm water dischargers are provided more flexibility than smaller dischargers. The TMDL indicates that the criteria will not be enforced against large dischargers for storms greater than 10-year storms, and they will be allowed a phased compliance plan. Smaller dischargers will have waste load allocations incorporated into their permits immediately upon renewal of their NPDES permits. Natural sources are not adequately addressed as a source, including aerial deposition of metals on natural areas and metals concentrations in natural soils.	See response to comment Nos. 1.40 and 17.3.
17.14	Western States Petroleum Association	8/26/04	The TMDL specifies waste load allocations for metals that are not on the 303(d) list. Many of the impaired water listings are unsupported or contradicted by available data. Imposing waste load allocations for non-impaired waters or unproblematic constituents is arbitrary, capricious, unsupported by evidence, contrary to law, and unreasonable.	See responses to comment No. 1.1 and 2.3.
17.15	Western States Petroleum Association	8/26/04	The economic analysis is incomplete under CEQA. It does not take into account the "reasonable range" of economic consequences of the reasonable foreseeable methods of compliance. The estimated costs fail to include the real costs of land required to implement structural BMPs. A rough estimate provides land acquisition costs equal to	See response to comment Nos.6.16 and 7.4.

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			approximately \$3 billion. (See LA County comment No. 6.16.) There is no discussion of more stringent and costly treatment such as reverse osmosis. There is no analysis of the impact on the local economy through costs incurred by industrial and construction dischargers. Much of the analysis has no application to affected stakeholders such as WSPA member companies.	
17.16	Western States Petroleum Association	8/26/04	There are numerous deficiencies in the technical analyses used to justify the TMDLs. The models used have various flaws of lack requisite information needed to derive the conclusions. Included in comments is a technical review completed by Flow Science, Inc, which provides proof that the TMDLs are arbitrary and capricious, unsupported by evidence, contrary to law, and unreasonable.	See response to Flow Science comments (Nos. 6.29 to 6.40.)
18.1	Southern California Gas Company	8/26/04	Putting waste load allocations on each construction site and each industrial permittee is not necessary to meet water quality objectives and places an unnecessary economic burden on the permittee. 40 CFR 130.2(h) does not require that every individual point source have a portion of the allocation. It is only necessary to allocate the loading capacity <u>among</u> individual point sources. A facility or site should be allowed to show that their storm water is not impairing the water quality or that BMPs are effective.	See response to comment No. 17.3.
18.2	Southern California Gas Company	8/26/04	The cost analysis does not discuss the increased costs to NPDES permittees for additional monitoring and reporting.	See responses to comment Nos. 1.16 and 13.10. Those costs are not part of this TMDL, and will be developed in further regional board actions. Further, to the extent monitoring is required in an NPDES permit to assure compliance with a TMDL or with any other NPDES permit requirements, those requirements are

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				established pursuant to Water Code section 13383 and 13383.5—neither of which is subject to the restrictions of Water Code section 13267.
18.3	Southern California Gas Company	8/26/04	The applicability of CTR to storm water is not discussed and needs to be addressed before the adoption of this TMDL.	See responses to comment No. 6.4.
18.4	Southern California Gas Company	8/26/04	The occasional and episodic impairments may be due to metal automotive components (brake linings, tire manufacture, leak free automotive fittings, etc.) and due to atmospheric deposition. These need to be fully addressed and we should not shift the responsibility of these sources to MS4 and NPDES permits.	See response to comment No. 10.21.
19.1, 19.5, 19.6, and 19.8	West Coast Environmental & Engineering	8/26/04	The concentration-based load allocations for industrial and construction storm water dischargers will not be achievable because there is no practical technology that will consistently achieve CTR levels. The TMDL should be revised to ensure that BMPs are explicitly recognized as the appropriate method to meet allocations and to include a compliance schedule. The TMDL process should be an iterative process that adjusts allocations as more is known about the water quality, pollutant loads and sources and effectiveness of controls.	Concentration-based load allocations are no longer assigned to general industrial and construction storm water dischargers. In order to better allocate loading among sources, the staff report and BPA have been revised to assign mass-based waste load allocations to all storm water permittees, including the smaller general permittees. The allocations are divided among the permittees based on their percent area of the watershed. General construction and industrial storm water permittees have been given a 10-year compliance schedule to achieve wet-weather allocations and interim waste load allocations based on

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				EPA benchmarks. The BPA and staff report have been revised to reflect the expectation that permit writers will translate waste load allocations into permit limits in the form of BMPs. Permit writers must provide adequate justification and documentation to demonstrate that specified BMPs are expected to result in attainment of the waste load allocations.
19.2	West Coast Environmental & Engineering	8/26/04	Industrial and storm water dischargers should not be required to address pollutants outside of their control. The proposed TMDL does not address background concentrations of pollutants.	See response to comment No. 10.21.
19.3	West Coast Environmental & Engineering	8/26/04	Significant costs are imposed on small industrial and construction storm water discharges that will not result in significant water quality improvements. Loadings from open space and national forest areas (45% of the watershed by area) are not considered.	See responses to comment Nos. 1.40 and 17.3.
19.4	West Coast Environmental & Engineering	8/26/04	The modeling was deficient and the load allocations were not appropriately assessed.	See response to comment No. 17.7.
19.7	West Coast Environmental & Engineering	8/26/04	The TMDL should address background sources and provide for diminimus sources.	See response to comment No. 1.40.
19.9	West Coast Environmental & Engineering	8/26/04	Trading and offsets should be allowed to allow alternative cost-effective controls.	A TMDL does provide a framework to establish a meaningful trading and offset program. Any trading program would need to meet state and federal environmental justice requirements. While the current implementation does not expressly permit a

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				trading and offset program, the Regional Board may consider proposals put forward by the discharger community or any other interested person.
20.1	Glendale Galleria	8/26/04	The TMDL will impose significant costs on small and insignificant stormwater dischargers that will not lead to water quality improvements.	See response to comment No. 17.3.
20.2	Glendale Galleria	8/26/04	There are no allocations for open space and national forests, which comprise 45% of the watershed by area (industrial and construction sources are only 10% of the watershed by area).	See response to comment No. 1.40.
20.3	Glendale Galleria	8/26/04	The concentration-based allocations cannot be met by storm water dischargers.	See response to comment No. 19.1.
20.4	Glendale Galleria	8/26/04	All sources and dischargers need to be addressed fairly, with allocations made based on amount of a source's discharge.	See response to comment No. 17.3.
20.5	Glendale Galleria	8/26/04	The TMDL should be revised to ensure that BMPs are explicitly recognized as the appropriate method to meet allocations and to include a compliance schedule.	See response to comment No. 19.1.
21.1	California Small Business Alliance	8/26/04	The concentration-based load allocations for industrial and construction stormwater dischargers will not be achievable because there is no practical technology that will consistently achieve CTR levels.	See response to comment No. 19.1.
21.2	California Small Business Alliance	8/26/04	The TMDL requires industrial and stormwater dischargers to address pollutants outside of their control, i.e. background concentrations.	See response to comment No. 10.21.
21.3	California Small Business Alliance	8/26/04	The TMDL places companies involved in construction and industry at significant economic disadvantage to those companies in the rest of California.	The CTR applies to all inland surface waters in California. Further, for non-municipal storm water dischargers, federal courts have already recognized (see

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				<p><i>Defenders of Wildlife v. Browner</i>) that the Clean Water Act already requires strict compliance with quality standards. As a result, the impacts of the TMDL should be no more onerous than the remainder of the state. What is different about this TMDL is that because of the unprecedented water quality impairments in this region, the regional board was required to move quickly to address these impairments. Construction and industry should also recognize that in Southern California we uniquely benefit from our coastal environment, which relies on waters that are not toxic.</p>
21.4	California Small Business Alliance	8/26/04	TMDL modeling was deficient and the load allocations were not appropriately assessed.	See response to comment No. 17.7.
21.5	California Small Business Alliance	8/26/04	The TMDL process should be an iterative process that adjusts allocations as more is known about the water quality, pollutant loads and sources and effectiveness of controls.	See response to comment No. 19.1.
21.6	California Small Business Alliance	8/26/04	The TMDL should state that BMPs are the control approach for compliance with all stormwater waste load allocations.	See response to comment No. 19.1.
21.7	California Small Business Alliance	8/26/04	The TMDL should address background sources and provide for diminimus sources.	See response to comment No. 1.40.
21.8	California	8/26/04	An adequate compliance timeframe should be assessed and	See response to comment No. 19.1.



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	Small Business Alliance		incorporated into permit development.	
21.9	California Small Business Alliance	8/26/04	Trading and offsets should be allowed to allow alternative cost-effective controls.	See response to comment No. 19.9.
22.1	CA Auto Dismantlers & Recyclers Alliance	8/26/04	The proposed TDML will impose significant costs on small and minor storm water dischargers and it will not result in meaningful water quality improvement.	See response to comment No. 17.3.
22.2	CA Auto Dismantlers & Recyclers Alliance	8/26/04	The TMDL assigns concentration-based allocations that will be impossible for industrial and construction dischargers to meet.	See response to comment No. 19.1.
22.3	CA Auto Dismantlers & Recyclers Alliance	8/26/04	The TMDL should be amended to ensure that BMPs are the method used to meet the TMDL allocations.	See response to comment No. 19.1.
23.1	State of CA Auto Dismantlers Association	8/26/04	The concentration-based load allocations for industrial and construction stormwater dischargers will not be achievable because there is no practical technology that will consistently achieve CTR levels.	See response to comment No. 19.1.
23.2	State of CA Auto Dismantlers Association	8/26/04	The TMDL requires industrial and stormwater dischargers to address pollutants outside of their control, i.e. background concentrations.	See response to comment No. 10.21.
23.3	State of CA Auto	8/26/04	Small and insignificant industrial and construction dischargers are being required to compensate for loadings from open space and	See response to comment No. 1.40.

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	Dismantlers Association		national forest (45% of the watershed by area).	
23.4	State of CA Auto Dismantlers Association	8/26/04	The modeling was deficient and the load allocations were not appropriately assessed.	See response to comment No. 17.7.
23.5	State of CA Auto Dismantlers Association	8/26/04	The TMDL process should be an iterative process that adjusts allocations as more is known about the water quality, pollutant loads and sources and effectiveness of controls.	See response to comment No. 19.1.
23.6	State of CA Auto Dismantlers Association	8/26/04	The TMDL should state that BMPs are the control approach for compliance with all stormwater waste load allocations.	See response to comment No. 19.1.
23.7	State of CA Auto Dismantlers Association	8/26/04	The TMDL should address background sources and provide for diminimus sources.	See response to comment No. 1.40.
23.8	State of CA Auto Dismantlers Association	8/26/04	An adequate compliance timeframe should be assessed and incorporated into permit development.	See response to comment No. 19.1.
23.9	State of CA Auto Dismantlers Association	8/26/04	Trading and offsets should be allowed to allow alternative cost-effective controls.	See response to comment No. 19.9.
24.1	Metal	8/26/04	The TMDL will impose significant costs on small storm water	See response to comment No. 17.3.

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	Surfaces, Inc.		dischargers that will not lead to water quality improvements.	
24.2	Metal Surfaces, Inc.	8/26/04	Small and insignificant industrial and construction dischargers are being required to compensate for loadings from open space and national forest (45% of the watershed by area).	See response to comment No. 1.40.
24.3	Metal Surfaces, Inc.	8/26/04	The concentration-based load allocations for industrial and construction stormwater dischargers will not be achievable.	See response to comment No. 19.1.
24.4	Metal Surfaces, Inc.	8/26/04	All sources and dischargers need to be addressed fairly, i.e. allocations made based on amount of discharge.	See response to comment No. 17.3.
24.5	Metal Surfaces, Inc.	8/26/04	The TMDL should state that BMPs are the control approach for compliance with all stormwater waste load allocations.	See response to comment No. 19.1.
25.1	Metal Finishing Association of Southern CA	8/26/04	The concentration-based load allocations for industrial and construction stormwater dischargers will not be achievable because there is no practical technology that will consistently achieve CTR levels.	See response to comment No. 19.1.
25.2	Metal Finishing Association of Southern CA	8/26/04	The TMDL requires industrial and stormwater dischargers to address pollutants outside of their control, i.e. background concentrations.	See response to comment No. 10.21.
25.3	Metal Finishing Association of Southern CA	8/26/04	Small and insignificant industrial and construction dischargers are being required to compensate for loadings from open space and national forest (45% of the watershed by area).	See response to comment No. 1.40.
25.4	Metal Finishing Association of Southern CA	8/26/04	The TMDL places companies involved in construction and industry at significant economic disadvantage to those companies in the rest of California.	See response to comment No. 21.3.
25.5	Metal	8/26/04	The modeling was deficient and the load allocations were not	See response to comment No. 17.7.

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	Finishing Association of Southern CA		appropriately assessed.	
25.6	Metal Finishing Association of Southern CA	8/26/04	The TMDL process should be an iterative process that adjusts allocations as more is known about the water quality, pollutant loads and sources and effectiveness of controls.	See response to comment No. 19.1.
25.7	Metal Finishing Association of Southern CA	8/26/04	The TMDL should state that BMPs are the control approach for compliance with all stormwater waste load allocations.	See response to comment No. 19.1.
25.8	Metal Finishing Association of Southern CA	8/26/04	The TMDL should address background sources and provide for diminimus sources.	See response to comment No. 1.40.
25.9	Metal Finishing Association of Southern CA	8/26/04	An adequate compliance timeframe should be assessed and incorporated into permit development.	See response to comment No. 19.1.
25.10	Metal Finishing Association of Southern CA	8/26/04	Trading and offsets should be allowed to allow alternative cost-effective controls.	See response to comment No. 19.9.
25.11	Metal Finishing Association of Southern CA	8/26/04	MFASC's group monitoring program has performed extremely well over the past 12 years.	Comment Noted.

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26.1	Foss Plating Company	8/26/04	The concentration-based load allocations for industrial and construction stormwater dischargers will not be achievable because there is no practical technology that will consistently achieve CTR levels.	See response to comment No. 19.1.
26.2	Foss Plating Company	8/26/04	The TMDL requires industrial and stormwater dischargers to address pollutants outside of their control.	See response to comment No. 10.21.
26.3	Foss Plating Company	8/26/04	The TMDL will impose significant costs on small and insignificant stormwater dischargers that will not lead to water quality improvements.	See response to comment No. 17.3.
26.4	Foss Plating Company	8/26/04	The modeling was deficient and the load allocations were not appropriately assessed.	See response to comment No. 17.7.
26.5	Foss Plating Company	8/26/04	The TMDL should state that BMPs are the control approach for compliance with all stormwater waste load allocations.	See response to comment No. 19.1.
26.6	Foss Plating Company	8/26/04	The TMDL should address background sources and provide for diminimus sources.	See response to comment No. 1.40.
26.7	Foss Plating Company	8/26/04	An adequate compliance timeframe should be assessed and incorporated into permit development.	See response to comment No. 19.1.
26.8	Foss Plating Company	8/26/04	Trading and offsets should be allowed to allow alternative cost-effective controls.	See response to comment No. 19.9.
27.1	CICWQ	8/26/04	The proposed BPA inappropriately applies CTR to storm water discharges. CTR criteria were not intended to apply to storm water discharges, especially those not typically subject to numeric effluent limits, such as construction sites. Compliance should be based on BMPs.	See response to comment No. 6.4.
27.2	Construction Industry Coalition on Water Quality	8/26/04	Numeric effluent limits are infeasible for construction storm water runoff. The proposed BPA provides no evidence that construction sites are a significant source of pollutants, resulting in waste load allocations for construction runoff that are arbitrary and capricious. The fact sheet	See response to comment No. 6.10. While the CTR standards are expressed in terms of dissolved metals, the TMDL targets are expressed in terms of total recoverable to

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			for 99-08-DQW states that there is little evidence of pollutants present in storm water discharges from construction sites other than sediment, TSS and turbidity. EPA has also concluded that construction sites are not thought to be important sources of metal contamination. We are unaware that the Regional Board undertook any analysis that demonstrated a reasonable potential for construction site pollutants to cause or contribute to an excursion of water quality standards for metals. Nearly all metals that are associated with construction site discharges are generally tightly bound to suspended sediment, while the biologically toxic effects of heavy metal contamination have been associated with the dissolved fraction. Existing erosion control practices are required to reduce or prevent suspended sediment and erosion particles from reaching downstream waters.	address the potential for transformation between the total recoverable and the dissolved metals fraction.
27.3	Construction Industry Coalition on Water Quality	8/26/04	The Regional Board has failed to adequately comply with sections 13241 and 13242 of the California Water Code.	See responses to comment Nos. 6.11 and 6.14.
27.4	Construction Industry Coalition on Water Quality	8/26/04	The proposed BPA violates CEQA on two grounds: 1)The initial study/checklist prepared by the Regional Board is deficient and inadequately identifies potential significant impacts of the Proposed Amendment: and 2) the Regional Board failed to prepare and adopt the functional equivalent of and Environmental Impact Report or at a minimum a mitigated negative declaration despite the fact that the project will have significant environmental impacts.	See response to comment Nos. 2.23 and 6.21.
27.5	Construction Industry Coalition on Water Quality	8/26/04	The proposed Amendment specifies metals waste load allocations for reaches that are not on the 303(d) list.	See response to comment No. 1.1.

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27.6	Construction Industry Coalition on Water Quality	8/26/04	In some cases the TMDL develops allocations for reaches listed as impaired even though available data is inadequate to support the underlying listing. This is inconsistent with the NRC's recommendations to Congress, stating listings should be evaluated for appropriateness and consistency prior to TMDL development.	See responses to comment Nos. 1.1 and 2.3.
28.1	Building Industry Association of San Diego et al.	8/26/04	The TMDL inappropriately applies CTR water quality objectives to stormwater-EPA never intended for CTR criteria to be applied through permit limits to storm water discharges, and the state SIP for CTR clearly states that the SIP does not apply to stormwater. Furthermore, neither the state and federal apply CTR limits in their general stormwater permits.	See responses to comment Nos. 6.4 and 16.11.
28.2	Building Industry Association of San Diego et al.	8/26/04	The CEQA economic analysis fails to take into account land costs for public dischargers to implement BMPs, essentially ignores compliance costs for POTWs and private dischargers and does not evaluate the impacts on the local economy.	See response to comment No. 6.16.
28.3	Building Industry Association of San Diego et al.	8/26/04	The TMDL fails to provide a reasonable assurance that its implementation will result in significant improvements in water quality, or in attainment of water quality standards.	The TMDL is specifically designed to achieve water quality standards. Technical aspects of the TMDL document that the metals loading that occur in wet and dry weather and the reductions necessary to achieve federal water quality standards. Because the TMDL is reduction based (i.e., it focuses on reducing the metals loading), it by definition provides a framework for attaining water quality standards. The implementation period has been structured to provide sufficient time for these

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				activities to occur. While the staff anticipate that BMPs may be sufficient to achieve water quality standards for many dischargers, the implementation period provides time for treatment technologies to be used, if subsequently found to be necessary.
28.4	Building Industry Association of San Diego et al.	8/26/04	There are deficiencies in both dry and wet weather modeling. Although the models used were scientifically valid, their utility is severely hampered by a lack of data and by inadequate calibration and validation. It seems that the modeling was not even used to develop allocations.	See response to comment No. 6.37.
28.5	Building Industry Association of San Diego et al.	8/26/04	The modeling did not consistently or accurately reproduce the hydrologic behavior of the watershed, such that the modeling cannot be used to determine the impacts of the TMDL or of the implementation measures proposed. There are also inconsistencies between the mass- and concentration-based waste load allocations, such that water quality standards may not be attained through their implementation.	See response to comment No. 6.40.
28.6	Building Industry Association of San Diego et al.	8/26/04	Allocations should not be assigned for storm water discharges. Rather, reliance on a BMP-based approach would be most appropriate for these highly variable, intermittent, and complex wet weather flows.	See response to comment No. 1.3.
28.7	Building Industry Association of San Diego et al.	8/26/04	The TMDL improperly holds dischargers accountable for sources beyond their control or influence such as aerial deposition and background levels.	See response to comment No. 10.21.



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28.8	Building Industry Association of San Diego et al.	8/26/04	The TMDL fails to address how the concentration-based allocations will be implemented in NPDES permits-it is difficult to envision a method that does not impose the concentration-base allocations as numeric limits in NPDES permits.	See response to comment No. 1.3.
28.9	Building Industry Association of San Diego et al.	8/26/04	Industrial storm water dischargers likely cannot consistently meet the proposed concentration-based load allocations given the substantial variability of storm water volume and pollutant loading.	See response to comment No. 19.1.
28.10	Building Industry Association of San Diego et al.	8/26/04	No de-listing was done for reaches where the data do not support listing.	See response to comment No. 2.3.
28.11	Building Industry Association of San Diego et al.	8/26/04	Allocations were inappropriately developed for reaches that are not listed.	See response to comment No. 1.1.
28.12	Building Industry Association of San Diego et al.	8/26/04	The TMDLs were developed with limited stakeholder involvement from the discharger community, counter to SWRCB draft guidance for TMDL development.	See responses to comment Nos. 6.a. and 10.22.
28.13	Building Industry Association of	8/26/04	The TMDL does not propose a watershed improvement action plan that treats dischargers equitably-rather, small and large dischargers should receive similar compliance schedules, BMPs should be specified as the	The implementation section of the proposed BPA and staff report have been revised to clarify how waste load

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	San Diego et al.		appropriate control mechanism for storm water dischargers, and monitoring and compliance requirements should be established. Most importantly, TMDL goals for dischargers should be established only when there exists a sufficient and defensible scientific and technical basis.	allocations will be translated into NPDES permits. The revised BPA and staff report reflect the expectation that storm water permit writers will translate waste load allocations into permit limits in the form of BMPs. Permit writers must provide adequate justification and documentation to demonstrate that specified BMPs are expected to result in attainment of the waste load allocations. General construction and industrial storm water permittees have been given a 10-year compliance schedule to achieve wet-weather allocations and interim waste load allocations based on EPA benchmarks. The proposed BPA has been revised to state that compliance schedules may allow up to 5 years within NPDES permit cycles.
28.14	Building Industry Association of San Diego et al.	8/26/04	The SIP does not apply to regulation of stormwater discharges and was not intended to be applied without consideration of dilution or as never-to-be exceeded values. Further, in adopting the CTR, EPA intended to allow periodic exceedances of CTR criteria. The application of CTR to stormwater in the metals TMDL is inappropriate.	See response to comment Nos. 6.4 and 16.11.
28.15	Building Industry Association of San Diego et al.	8/26/04	The TMDL overreaches its authority in establishing waste load allocations for reaches that are not on the 303(d) list.	See response to comment No. 1.1.

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28.16	Building Industry Association of San Diego et al.	8/26/04	In some cases the TMDL develops allocations for reaches listed as impaired even though available data are inadequate to support such a listing. The data for the Burbank Western Channel are inadequate to support a cadmium listing.	See response to comment No. 2.3.
28.17	Building Industry Association of San Diego et al.	8/26/04	The economic analysis in the TMDL is deficient on several counts. First, the estimated costs of structural BMPs neglect the cost of land that would be required to implement the BMPs. Second, conventional structural BMPs may be inadequate to consistently achieve CTR limitations, in which case more expensive treatment options-such as reverse osmosis (RO)- would need to be considered, pushing costs far beyond those estimated in the TMDL. Third, the analysis makes no effort to evaluate the impact of the TMDL on the local economy through loss of jobs caused by increased costs of compliance and increased taxes and assessments for local residents and businesses.	See response to comment No. 6.16.
28.18	Building Industry Association of San Diego et al.	8/26/04	The concentration-based waste load allocations in the TMDL for facilities and operations under an NPDES permit will impose permit conditions that cannot be consistently complied with under all conditions likely to be encountered. We do not believe that current technology for the control of storm water can, on a consistent basis, discharge storm water with pollutants at CTR levels due to the highly variable nature of storm water.	See response to comment No. 19.1.
28.19	Building Industry Association of San Diego et al.	8/26/04	NPDES permittees will be required to spend significant amount of money, even though it will likely make little difference in improving water quality in the short-term. The TMDL acknowledges that industrial and construction NPDES permit holders comprise about 10% of the land use in the watershed, while the National Forest and open space is about 44% and other urban uses are 46% of the watershed.	See response to comment No. 1.40.

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			Several major sources of metals, such as aerial deposition, affect all of these land uses.	
28.20	Building Industry Association of San Diego et al.	8/26/04	The TMDL provides non-NPDES regulated storm water discharges a 15-year compliance schedule to meet allocations as proposed. However, no compliance schedule has been included for other sources such as industrial activities.	General construction and industrial storm water permittees have been given a 10-year compliance schedule to achieve wet-weather allocations and interim waste load allocations based on EPA benchmarks.
28.21	Building Industry Association of San Diego et al.	8/26/04	In some cases, actions that would most directly and thoroughly reduce metals concentrations in the river, such as the development of alternative brake pad materials, are beyond the regulatory control of the agencies responsible for implementing the TMDL.	See response to comment No. 10.21.
28.22	Building Industry Association of San Diego et al.	8/26/04	The dry-weather modeling followed a generally defensible approach and seemed to be based on a reasonable quantity of calibration and validation data. However, the model calibration and validation were improperly presented. The hydrologic calibration and validation suggest that the model is not able to reproduce dry weather flow rates in a precise way; the model tends to predict high and not average or median dry weather flows. The water quality calibration and validation suggest that the model is not able to reproduce dry weather concentrations of copper or zinc in a precise way.	See response to comment No. 6.38.
28.23	Building Industry Association of San Diego et al.	8/26/04	The wet weather modeling generally followed sound engineering methodology. However, the wet weather model is inconsistent in its ability to reproduce observed annual and monthly flow volumes. The model is unable to adequately reproduce observed hydrologic and water quality conditions on the time scale of individual storm events for tributary reaches. Some data are inappropriately presented on logarithmic scales, disguising significant disparities between model	See response to comment No. 6.39.

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			results and observed data. EMCs may be an inappropriate measure of compliance since compliance will likely be based on grab samples, not a time-averaged mean concentration over the course of the event.	
28.24	Building Industry Association of San Diego et al.	8/26/04	It appears that the dry and wet weather modeling described in the TMDL staff report were not utilized in the development of load and waste load allocations. Wet weather load allocations at the primary compliance point (Los Angeles River at Wardlow) seem to consist simply of the modeled flow for a given storm event multiplied by the CTR concentration.	See response to comment No. 6.40.
28.25	Building Industry Association of San Diego et al.	8/26/04	The TMDL makes the assumption that loads from non-urban areas in the watershed-such as Angeles National Forest and open areas of the Santa Monica Mountains- would be insignificant under both dry weather and wet weather conditions (p.58, 61). However, no data are used to support this assumption, and data from another study seems call this assumption into question.	See response to comment No. 1.40.
28.26	Building Industry Association of San Diego et al.	8/26/04	In summary, there are serious shortcomings in the TMDL and accompanying documentation. Data are lacking, the modeling has significant uncertainties, and the load allocation are inappropriate and inconsistent. In fact the TMDL recognizes these and other deficiencies by stating that it is expected the TMDL will be reopened sometime in the future as more data and the better science are developed.	See responses to comment Nos. 10.13, 16.3 and 17.8
29.1	California Council for Environmental and Economic Balance	8/26/04	A more thorough economic analysis must be performed. The TMDL does not consider the costs of treatment technologies that may be necessary to achieve applicable CTR values on a consistent basis, under all storm conditions. Without a more thorough analysis, full considerations cannot be given to factors such as use attainability, technical achievability, equity, or whether costs are commensurate with benefits.	See responses to comment Nos. 1.16, 6.16, 6.14, and 13.10.

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29.2	California Council for Environmental and Economic Balance	8/26/04	The TMDL should specify that CTR allocations for storm water will be translated into iterative BMP requirements and implemented through NPDES permits.	See response to comment No. 1.3.
29.3	California Council for Environmental and Economic Balance	8/26/04	The TMDL should ensure that the implementation plan and actions are flexible and should allow for an iterative BMP process for storm water discharges.	See response to comment No. 1.3.
29.4	California Council for Environmental and Economic Balance	8/26/04	The scientific basis of the TMDL's implementation plan should be subject to external peer review.	See response to comment No. 1.26.
29.5	California Council for Environmental and Economic Balance	8/26/04	The TMDL should incorporate alternative compliance methodologies such as pollutant trading.	See response to comment No. 19.9.
30.1	Heal the Bay	8/26/04	A discussion of detection levels (DLs) and how these affect the apparent number of exceedances of CTR criteria is essential in the data review section. Values that were below detection levels were counted as zeros. If detection levels were greater than CTR criteria, then every measurement counted a "zero" could in fact be an exceedance of CTR criteria. This analysis was provided in the Ballona Creek Metals TMDL but is not even mentioned in this section of the LA River TDML. The analysis of LACDPW storm water data requires further explanation in	It is possible that values that were below detection levels could be exceedances of the CTR criteria. This is briefly discussed in the data review section for cadmium and lead (detection levels were not and issue for copper or zinc). Even with this complication, the data review section confirms dry weather lead impairments in

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			general.	the listed reaches and finds impairments in additional reaches. The most recent data for cadmium are based on detection limits below CTR criteria and contain no exceedances. The dry-weather impairments for cadmium could therefore not be confirmed. The discussion of storm water data has been expanded the staff report. The storm water data review confirm wet-weather impairments for all metals. A summary has been added to the staff report explaining the results of the data review and for which reaches TMDLs are developed and for which reaches waste load allocations are developed to meet downstream TMDLs.
30.2	Heal the Bay	8/26/04	Figure 3 shows median, minimum and maximum values of metals collected from January 2002 to May 2003 by the City of LA's Watershed Monitoring Program (WMP). The figure is provided to illustrate the variability of metals in the system, but there is no indication of frequency of sampling or number of samples. There should also be a reference to Figure 1 where the sampling stations for the City's WMP are shown.	The staff report has been revised to state that samples were collected monthly for a total of 17 samples at each station. There is now a reference to the figure illustrating locations of the WMP stations (Figure 2).
30.3	Heal the Bay	8/26/04	The analysis of hardness data (p.27) needs to be clarified. Were the hardness data collected by LWA during dry weather only? Table 8 summarizes hardness data from LWA and LACDPW. These data should be either dry-or wet-weather, but should not be combined. Please clarify this analysis.	The Larry Walker study collected both dry- and wet-weather hardness data, but only dry-weather data was used in developing dry-weather targets. The caption for Table 8 (Table 3-1 in the revised report) states

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				that the hardness data in the table was collected during dry-weather. Please note that the staff report has been revised to include the Larry Walker study in the reference section.
30.4	Heal the Bay	8/26/04	Considering that the 10 <sup>th</sup> percentile values for hardness are often substantially lower than the median values, dry-weather targets based on the median hardness will lead to acute toxicity to aquatic organisms at time of low hardness. Using the median hardness value could allow each metal to be present up to <i>half the time</i> at levels that are toxic to aquatic life, while still complying with the TMDL. This would fail to protect aquatic life in the river is and unacceptable in waterbodies designated with multiple aquatic life beneficial uses. We urge the RWQCB to use 10 <sup>th</sup> percentile hardness values to calculate the dry-weather numeric targets.	The chronic criteria were calculated using the 50 <sup>th</sup> percentile hardness values because the chronic criteria are based on long term exposures. This is consistent with SIP method for choosing translator values.
30.5	Heal the Bay	8/26/04	A better explanation is needed for the partitioning factors selected as conversion factors for copper in certain reaches of the LA River. How did LWA re-analyze the data ‘to account for the partitioning of the copper between the dissolved and particulate range’? This is exactly what the regression analyses should do. The regression analyses showed there was no relationship between particulate and dissolved copper in reach 4( $r^2+0.2$ ), but the LWA re-analysis showed a relationship and resulted in conversion factors of 0.74 and 0.92 for chronic and acute criteria. What are the strengths of the relationships calculated by LWA? An explanation of the re-analysis, and some such measure of the statistical significance of the propose relationships, such as an $r^2$ value, must be provided to show that these relationships are valid. Otherwise the default conversion factors (0.96) from CTR must	The staff report has been revised to better describe the development of the translator. After a regression analysis showed that there was poor correlation between dissolved and total metals, LWA used partition coefficient modeling to calculate a translator that accounted for TSS, as allowed by the SIP. In this approach, the translator is the dissolved fraction (fd) calculated using a site a specific partition coefficient (Kp) and TSS, where $fd = 1/(TSS \times Kp + 1)$ . This is in accordance with EPA guidance entitled ‘The Metals



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			be used.	Translator: Guidance for Calculating a Total Recoverable Permit Limit from a Dissolved Criterion. EPA 823-B-96-007. LWA proposed a $K_d = 20,000$ for Glendale, which provided the best fit for the data and a $K_d = 10,000$ for Tillman, which was a conservative estimate. They used median and 10th percentile TSS values to calculate the chronic and acute translators, respectively.
30.6 and 30.14	Heal the Bay	8/26/04	Please clarify, in the second paragraph on p. 31, that the calculated conversion factors for lead, and for copper in reaches other than reaches 4 and 5, were not used because the relationships between dissolved and particulate concentrations were not statistically significant in a pairwise regression. This is different from rejecting them in order to build in a conservative assumption and apply it to the margin of safety as stated in this paragraph.	Using the CTR default conversion factors is still a conservative assumption. Evaluation of the WMP data compared to the default conversion factor showed that the default conversion factor over estimates the fraction of metal in the dissolved form. When measured values of dissolved metals were plotted against measured values of total metals, most of the measured values fell below the line CTR-based trend lines of $y = 0.96x$ for copper and $y = 0.79x$ for lead.
30.7	Heal the Bay	8/26/04	We applaud the Regional Board's decision to defer consideration of site-specific objectives based on the biotic ligand model until at least the USEPA and Regional Board approve this method.	Comment noted.
30.8	Heal the Bay	8/26/04	In setting the wet-weather numeric target, the median hardness value is used, with the dubious explanation that "it is representative of average storm conditions." (See p. 32) A median certainly is not an average, let alone the 10 <sup>th</sup> percentile hardness value recommended in the SIP.	The SIP does not directly recommend that the 10 <sup>th</sup> percentile of the hardness data be used to calculate acute criteria. As noted in response to comment No. 1.19, the staff

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				<p>report has been revised to read, “methods similar to the SIP procedures for choosing translator values are used to choose the percentile hardness values in calculating dry-weather targets.” For dry weather, this method was used, but because of the variability in hardness values during wet weather, the 10th percentile of hardness data would not accurately represent the hardness values during storm water conditions. Instead, the 50th percentile of the hardness values is used in calculating the wet weather numeric targets. The staff report has been revised for clarification and to remove the word “average.”</p>
30.9	Heal the Bay	8/26/04	<p>The wet-weather numeric targets calculated using the 10<sup>th</sup> percentile hardness values are substantially lower than those calculated using the median hardness value. The wet-weather targets are based on acute toxicity levels, which are much higher than chronic toxicity levels, and will lead to lethal wet-weather toxicity in the river <i>up to half the time</i> during storms. This will fail to protect aquatic life from the toxic effects of metals in stormwater runoff. The use of acute targets, and the median hardness data are combined “double-whammy” to aquatic life and there is no justification for providing such minimal protection of beneficial uses in the LA River. The 10<sup>th</sup> percentile hardness values should be used to calculate the wet-weather numeric targets.</p>	<p>Due to the brief nature of storms in the LA River watershed, the acute criteria, which are based on a shorter exposure time, are more applicable. See also response to comment No. 30.8.</p>
30.10 and	Heal the Bay	8/26/04	<p>The draft TMDL proposed using site-specific conversion factors for copper, lead and zinc for the entire LA River. The calculated</p>	<p>The literature supports the assumption that a greater percentage of metals is in the total</p>

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30.15			<p>conversion factors have <math>r^2</math> values of 0.69 and 0.61 for copper and zinc respectively, which are not generally considered statistically significant. The <math>r^2</math> for lead is higher (0.98) but the sample size for lead was only 13, which is likely too small to provide a robust statistical analysis. Therefore in all three cases, the conservative choice would be to use the CTR default conversion factors. Site-specific conversion factors are statistically unsound and must not be used.</p>	<p>form during wet weather and justifies the use of translators based on the ratio of dissolved to total concentrations.</p>
30.11	Heal the Bay	8/26/04	<p>The WLAs for the minor and general NPDES permits in the watershed, for which flow data are insufficient to calculate mass-based loads, are expressed as concentrations of total metals. We will have no way of determining whether the combined loads from all the minor and general NPDES permittees exceed the dry-weather loading capacity allocated to “stormwater and other permittees.” This must be clarified and a means of reliably determining (measure discharge flows) total loads from “other permittees” must be included in the TMDL.</p>	<p>The staff report and BPA have been revised to assign mass-based waste load allocations to the general industrial and construction storm water permittees for the purposes of better allocating the loading capacity. Based on a review of discharge monitoring reports for the other permittees, it is not possible to assign mass-based allocations based on their variable intermittent flows. While the combined loads of the other permittees are unknown, the overall TMDL effectiveness will be known based on the monitoring conducted by the MS4 and Caltrans permittees.</p>
30.12	Heal the Bay	8/26/04	<p>The wet-weather allocations illustrate the problem with developing a water column TMDL for metals in isolation from a sediment TMDL for metals. As written in the draft TMDL, the wet-weather allocations for POTWs are concentration-based, and the mass based limits will not apply when in-stream flows exceed the design capacities of the treatment plants. This may allow in-stream water quality standards for the various metals to be met, but it ignores the total mass loading of</p>	<p>This TMDL was developed to address metals impairments in the water column. The fact that there are load-based allocations under all conditions for the MS4 permittees and under most conditions for the POTWs reflects the acknowledgement of the upcoming</p>

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			metals to the system. This is irresponsible given the toxic conditions in estuarine sediments, and the acknowledged need to develop a sediment TMDL for toxicity at a later date.	sediment TMDL and the link between metals concentrations in the water column and in the sediments of the estuary. The reconsideration of this TMDL will occur after the development of the Long Beach Harbor sediment toxicity TMDL, which is due in 2008. The waste load allocations in this TMDL may require re-evaluation based on the findings of the sediment TMDL.
30.13	Heal the Bay	8/26/04	The draft TMDL explains that there is no historical modeling and therefore no calculation of required load reductions for cadmium because the data review ‘indicated that there was little evidence of wet-weather exceedances’. This is based entirely on the problematic assumption, discussed above, that undetectable levels of cadmium were below the CTR criterion. The modeling should be conducted using cadmium concentrations set at equal to, or at least half of, the detection limits whenever detection limits were higher than CTR criteria and required load reductions should be set based on that modeling.	The wet-weather waste load allocation for each metal is equal to the load capacity curve (also represented as an equation in the revised TMDL). The load reductions are calculated to assist permittees with implementation but are not required by the proposed TMDL. Permittees must demonstrate that the in-stream pollutant concentrations or loads are meeting the concentration- or load-based waste load allocations based on the load capacity curves.
30.16	Heal the Bay	8/26/04	An explicit margin of safety must be applied to the numeric targets to provide at least a 10% margin of safety.	TMDLs may include implicit and/or explicit margins of safety. The proposed metals TMDLs apply an implicit margin of safety through several conservative assumptions made in calculating the numeric target.
30.17	Heal the Bay	8/26/04	Ten to 15 years is a very long time to meet water quality standards. The	The staff report and BPA have been revised

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			<p>implementation schedule should require, as the first major milestone, that 50% of the total <i>developed</i> land shall achieve dry-weather compliance, and 25% of the total <i>developed</i> land shall achieve wet-weather compliance. This avoids giving credit for compliance in open space areas which are largely non-contributors of metals.</p>	<p>to reflect this change.</p>
30.18	Heal the Bay	8/26/04	<p>The first milestone of 50% dry-weather compliance and 25% wet-weather compliance for total developed areas should be achieved at 5 years after the effective date of the TMDL. The re-opener is schedule at 6 years, and it only makes sense to re-evaluate the TMDL immediately after the first milestones are reached, rather than in the very same year they are required.</p>	<p>Due to the nature of the waste load allocations and the implementation schedule for the MS4 and Caltrans permittees, the first compliance deadline is not proposed to occur prior to the reconsideration. The proposed metals TMDL is different from the Trash TMDL, in which permittees are required to achieve percent reductions in trash until the final allocation is met. The final allocations for trash are not likely to change in the reconsideration. It is possible for the metals allocations to change in the reconsideration of the proposed metals TMDL. Furthermore, the percent-based reductions in the metals TMDL are area-based. The implementation schedule still requires compliance with the final waste load allocation in each percentage area. Permittees could potentially be required to meet waste load allocations in year 5 that could increase a year later based on the results of special studies. Please note that the</p>

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				reconsideration of the TMDL has been rescheduled to occur in year 5, while the first compliance milestone for the MS4 and Caltrans permittees remains at year 5.
30.19	Heal the Bay	8/26/04	The first paragraph on p. 11 of the draft TMDL should clarify that the D.C. Tillman WRP discharges to reach 4, which is impaired by lead. The paragraph currently reads as though the Tillman plant discharges to reach 5 which is upstream of reach 4 and is not listed for any metal impairment.	The staff report has been revised to state that Tillman discharges to Reaches 4 and 5. Tillman discharges directly to Reach 4 and indirectly through a recreation and wildlife lake to Reach 5.
30.20	Heal the Bay	8/26/04	In the second paragraph on p. 13 please clarify the flow measurements. The mean monthly dry-weather contributions of POTWs are stated, followed by the median flow for the LA River over a 12-year period. Is this the dry-weather median flow, or is this the median of all flows including storms over the 12 years?	As reported on page 13 (page 12 in the revised draft), 145 cfs is the median of all flows, including storm flows. Please note that this is not the flow used to determine the dry-weather loading capacity. The dry-weather loading capacity is calculated for low flows (when flow in the river is less than 500 cfs). The critical dry-weather flow is equal to the median dry-weather non-POTW flow (34 cfs) plus the design capacity of the treatment plants (169 cfs).
31.1	Wynn Miller	8/26/04	The Regional Board must set meaningful limits on the accumulation of toxic heavy metals in the water and sediment of the LA River.	See response to comment No. 30.12.
32.1, 32.2, 32.3, and 32.4	Department of Water and Power	8/26/04	The reliance upon infiltration trenches must be carefully considered and should not be a proposed BMP for the entire region as they may have adverse impacts upon the receiving groundwater quality. Infiltration conflicts with determinations made by the Watermaster's office regarding San Fernando Valley. Infiltrating urban runoff to	See responses to comment Nos. 13.5 and 2.23.

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			groundwater may conflict with the State's Anti-Degradation Policy" should the transfer of pollutants occur. While the water quality of the Los Angeles River is of utmost importance, it cannot come at the expense of the quality of our ground waters.	
33.1	California Manufacturers & Technology Association	8/26/04	The proposed TMDL does not provide for the use of an iterative BMP process for industrial NPDES permit holders. Because the TMDL does not include a process for how to translate the concentration-based allocations into permit conditions, it must be assumed that concentration-based allocations will become numeric end-of-pipe limits. There is currently no technology that can consistently meet discharge limits at CTR levels.	See response to comment No. 17.3.
33.2	California Manufacturers & Technology Association	8/26/04	The CEQA economic analysis is extremely deficient because it did not include any economic analysis for industrial discharges with NPDES permits. Further, it does not address the regional economic impacts.	See response to comment No. 6.16.
34.1	City of Monterey park	8/27/04	The proposed TMDL places an undue level of responsibility on local jurisdictions to remove pollutants that are beyond their regulatory control, such as metals in brake pads, fuel, and tires, and from aerial deposition.	See response to comment No. 10.21.
34.2	City of Monterey park	8/27/04	No assimilative capacity study or study of natural sources was conducted.	The assimilative capacity of the river was assessed by calculating the loading capacity of the river during dry and wet weather. The staff report and proposed BPA have been revised to include load allocations for open space and direct air deposition. See also response to comment No. 1.40.
34.3	City of Monterey park	8/27/04	Allocations have been inappropriately established for portions of the watershed not identified on the 303(d) list. Instead of accounting for	See response to comment No. 1.1. MS4 permittees will allocate responsibility for

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			cities that have less metal loading, all parties will be held equally responsible. The TMDL does not address unregulated industries, which the TMDL states are a significant source of metals.	their combined waste load allocations in the implementation plan. The TMDL does not state that unregulated industries are a significant source of metals. All potential sources (including nonpoint sources) have been assigned a waste load allocation in the revised BPA.
34.4	City of Monterey park	8/27/04	The TMDL inappropriately applies CTR to storm water, contrary to EPA's record adopting CTR and the SIP.	See response to comment Nos. 6.4 and 16.11.
34.5	City of Monterey park	8/27/04	Implementation costs are underestimated as they do not include the cost of land purchases or the possibility that additional treatment devices will be needed to meet CTR standards. This contradicts EPA's recommendation that cities concentrate on low cost controls such as efficient street sweeping, public education, business inspections, and exiting storm water programs.	Since the Regional Board cannot prescribe the method of achieving compliance with the TMDL, the cost analysis is provided as a general estimate of the costs of selected structural and non-structural BMPs. The staff report clearly states the assumptions made for the cost analysis. An estimation of the costs associated with land acquisition or treatment devices would be speculative. The staff report provides an analysis of size constraints for each type of structural BMP considered (see Appendix III), which could be used to estimate land acquisition costs. The implementation section of the staff report discusses and recommends low-cost source control measures in addition to structural treatment devices.
34.6	City of Monterey park	8/27/04	The economic analysis was inadequate as impacts from new taxes and assessments, diversion of funds from other City services, financial	See response to comment No. 6.16.



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			constraints in raising funds were not addressed.	
35.1	All Metals Processing	8/27/04	There is no currently practical technology that can meet the proposed CTR levels for storm water discharges.	See response to comment No. 19.1.
35.2	All Metals Processing	8/27/04	The TMDL requires industrial and storm water discharges to address pollutants outside of their control and background concentrations are not addressed.	See response to comment No. 10.21.
35.3	All Metals Processing	8/27/04	The TMDL imposes significant costs on small and insignificant discharges that will not result in significant water quality improvements. The TMDL does not even consider loadings from nearly 45% of the watershed.	See responses to comment Nos. 1.40 and 17.3.
35.4	All Metals Processing	8/27/04	The modeling was deficient and the load allocations were not appropriately done.	See responses to comment Nos. 17.7 and 17.8.
35.5	All Metals Processing	8/27/04	The implementation plan should include an iterative BMP process and an adequate timeframe for compliance.	See response to comment No. 19.1.
35.6	All Metals Processing	8/27/04	The TMDL should allow for pollutant trading and offsets.	See response to comment No. 19.9.
36.1, 36.2, and 36.3	Metal Recyclers Storm Water Monitoring Group	8/27/04	The proposed TMDL imposes significant and unnecessary costs on industrial storm water permittees. The implementation of the TMDL will result in concentration-based limits based on CTR which are not consistently achievable using conventional BMPs and will require additional costly monitoring.	See response to comment No. 19.1.
37.1	City of Alhambra et al.	8/26/04	It should be noted for the record that the City of Alhambra requested a 90-day extension to the comment period, to which there was no response. The comment deadline provides inadequate notice.	See response to comment No. 6.a.
37.2	City of Alhambra et al.	8/26/04	The proposed TMDL may only be applied to navigable waters of the United States.	Navigable waters has been broadly construed by USEPA and federal courts. Navigable waters includes the waters

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				tributary thereto, and the TMDL does not address any water bodies that are not tributary to the Los Angeles River. Moreover, the Ninth Circuit has construed “navigable waters” to extend to ephemeral water bodies that flow to navigable waters. Under the most conservative reading, all the waters regulated by this TMDL are tributary to the Pacific Ocean and subject to regulation under the Clean Water Act.
37.3	City of Alhambra et al.	8/26/04	The proposed TMDL may only be applied to a federally-listed water body.	See response to comment 1.1.
37.4	City of Alhambra et al.	8/26/04	The costs analyses in the TMDL staff report bear no indication of costs of the costs of acquisition or reallocation of the use of real property on which structural BMPs are to be installed.	See response to comment No. 34.5.
37.5	City of Alhambra et al.	8/26/04	A meaningful study of the assimilative capacity of the river has not been conducted.	See response to comment No. 34.2
37.8	City of Alhambra et al.	8/26/04	The proposed TMDL inappropriately applies CTR to storm water discharges.	See response to comment No. 6.4.
37.9	City of Alhambra et al.	8/26/04	The proposed TMDL specifies metals waste load allocations for reaches not on the 303(d) list, contrary to 40 CFR § 130.7(c)1.	See response to comment 1.1.
37.10	City of Alhambra et al.	8/26/04	The requirement to submit a monitoring plan in 120 days is too short.	See response to comment No. 1.11.
37.11, 37.12, and 37.13	City of Alhambra et al.	8/26/04	The CEQA checklist fails to adequately address the numerous “yes” and “maybe” responses and there is evidence in the record to support a fair argument that the TMDL would cause an adverse environmental impact. The statements in the CEQA checklist that a separate CEQA	See response to comment No. 2.23.

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			review process will be required violates CEQA’s mandate that a lead agency must realize the entire project. The checklist does not meet the requirements of a mitigated negative declaration because neither the checklist nor the staff report sets forth mitigation measures.	
37.14 and 37.15	City of Alhambra et al.	8/26/04	The proposed amendment violates CWC § 13241 because it fails to include a “description of the nature of actions that are necessary to achieve the objectives...” The proposed amendment violates CWC § 13241’s requirement to consider, <i>inter alia</i> , “economic considerations” when establishing water quality objectives in Basin Plans.	See response to comment No. 6.14.
37.16	City of Alhambra et al.	8/26/04	There are significant questions as to how water-quality samples are taken, processed and analyzed in the studies cited to justify vacuum street sweepers; an on-going study by the USGS hopes to clear some of these issues.	Comment noted.
38.1	Chris Albrecht	8/27/04	The Regional Board must set meaningful limits on the accumulation of toxic heavy metals in the water and sediment of the LA River.	See response to comment No. 30.12.
39.1	Sustainable Conservation/ Brake Pad Partnership	9/1/04	The potential implementation strategy that “permittees could sponsor legislative actions with state and federal agencies to pursue the development of alternative materials for brake pads” could undermine the efforts of the Brake Pad Partnership. The Board should recommend participation in the Brake Pad Partnership, a multstakeholder effort in the San Francisco Bay as a potential implementation strategy.	The staff report has been revised to remove the suggestion that permittees work with state and federal agencies to pursue alternative brake pad materials. The revised staff report acknowledges the efforts of the Brake Pad Partnership.
40.1	TECs Environmental (Cities of Azusa et al.)	9/1/04	The potential implementation strategy does not identify a reasonable compliance plan. MS4 permittees do not possess the legal authority to adopt legislation requiring alternative brake pad material. Several of the structural BMPs discussed were not included in the CEQA evaluation nor the cost analysis. The design capacity of the BMPs does not address the critical condition (high weather flows). Diversion and treatment does not address the fact that most MS4 permissess do not have	See responses to comment Nos. 1.30, 2.23, and 11.4.

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			facilities to treat storm water.	
40.2	TECs Environmental (Cities of Azusa et al.)	9/1/04	The cost analysis does not discuss a feasible method of compliance. The construction of new facilities as part of the IRP was not included in the analysis. The modeling report states that the type of soil found over the basin is not suitable for groundwater recharge of infiltration. The use of sand filters requires special treatment and disposal.	See response to comment No. 6.16.
40.3	TECs Environmental (Cities of Azusa et al.)	9/1/04	The environmental checklist fails to properly consider the impacts of reasonably foreseeable compliance activities as it only considers the impacts of the compliance plan discussed in the staff report.	See response to comment No. 2.23.
40.4	TECs Environmental (Cities of Azusa et al.)	9/1/04	The deadlines for the compliance report and special studies should be moved to 6 years after the effective date of the MOU to allow for consideration of reductions in metals caused by compliance with the TMDL by the non-municipal storm water permittees.	See response to comment No. 1.32.
40.5	TECs Environmental (Cities of Azusa et al.)	9/1/04	The staff report erroneously assumes that all urban runoff is completely covered under the MS4 permits. Sources such as copper from brakes, zinc from tires, and lead from gasoline are beyond the control of the MS4 permittees.	See responses to comment Nos. 1.40 and 10.21.
40.6	TECs Environmental (Cities of Azusa et al.)	9/1/04	The TMDL does not consider sediment transport in the river. The systematic removal of sediment will produce a sediment starved condition of river flows, which will scour the soft bottom portion of the river and destroy the vegetation and habitat for benthic organisms and cause resuspension of previous pollutants.	See response to comment No. 8.3.
41.1	Heal the Bay members form letter		The Regional Board must set meaningful limits on the accumulation of toxic heavy metals in the water and sediment of the LA River.	See response to comment No. 30.12.