1. Ray Tahir, TECS Environmental (on behalf of the Cities of Compton, Gardena, San Fernando and South El Monte)
2. Joyce Dillard

No.	Commenter	Comment	Response
1.1	TECS Environmental	**I. TMDLs Are Under MS4 Permit Challenge** As you are aware the current Los Angeles County MS4 Permit is under legal challenge from the cities of Gardena, Duarte, and Huntington Park. Others may join as well. Included in that challenge is opposition to the TMDLs as water quality based effluent limitation requirements (WQBELs) and waste load allocation (WLA) limitations in receiving waters. It is noted that Chapter 4 contains references to WQBELs and to the NPDES Permit Writers Manual. It is not clear, however, if these revised provisions apply to MS4 Permits. Request: Could Regional Board Staff clarify that the WQBELs referenced in Chapter 4 apply to MS4 Permits?	Water quality-based effluent limitations (WQBELs) are discussed in the section entitled "Developing NPDES Permit Requirements", subsection "Effluent Limitations." MS4 permits are NPDES permits, so much of this section is already applicable to MS4 permits. In addition, in the subsection entitled "Municipal Separate Storm Sewer System Permits," it is already made clear that WQBELs are applicable to MS4 permits as follows: …MS4 permits include "receiving water limitations" (i.e., pollutant-specific, numeric water quality thresholds that must be attained in waterbodies) and requirements that MS4 discharges do not cause or contribute to exceedances of these receiving water limitations, and *also include water quality-based effluent limitations consistent with the assumptions and requirements of available wasteload allocations* assigned to MS4 discharges, contained in TMDLs. [*Emphasis added*] Legal challenges by the cities of Gardena and Duarte to the current Los Angeles County MS4 Permit is outside the scope of the proposed Basin Plan amendment. (Note that Huntington Park is no longer a party to the litigation.)
1.2	TECS	**II. Mixing Zones/Dilution Credit**	The discussion of mixing zones in Chapter 4 provides

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<tr><td></td><td>Environmental</td><td>Page 24 of the Chapter 4 revision references mixing zones and dilution credits does not specify that the mixing zone applies to an ambient (dry weather) waterbody, as does USEPA's NPDES Writers Manual
<table><tr><td>Mixing Zone</td><td>An area where an effluent discharge undergoes initial dilution and is extended to cover the secondary mixing in the <u>ambient</u> waterbody. A mixing zone is an allocated impact zone where water quality criteria can be exceeded as long as acutely toxic conditions are prevented.</td></tr></table></td><td>information on mixing zones as a potential tool for permitted discharges to achieve compliance with water quality objectives. It is unclear whether the commenter is concerned that the Basin Plan doesn't use the term "ambient waterbody," or that it doesn't refer to "dry weather" as the critical condition. The mixing zone discussion in the revised chapter presents specific requirements for mixing zones in rivers and streams, lakes or reservoirs, and the ocean. It is clear that the Basin Plan is referring to those types of ambient waterbodies. Also, while dry weather may be considered the critical time period in many instances, it is important that any mixing zone study also consider wet weather, since there could be other sources of pollutants to the waterbody during the wet weather period. Thus, the Basin Plan language doesn't equate "dry weather" with "ambient condition," as doing so would inappropriately limit the scope of the evaluation.</td></tr>
<tr><td>1.3</td><td>TECS Environmental</td><td>III. Water Quality Based Effluent Limitations (WQBELs)

Revised Chapter 4 references NPDES Permit Effluent Limitations. However, it is not clear which NPDES Permits are affected: general permits, POTW permits, or MS4 Permits. Clarification is required because MS4 Permits are not subject to CWA §301 (USC 33, §1311). This was established by *the 9th Circuit Court in Defenders of Arizona Wildlife v. Browner* in 1999 and more recently in *Maryland Department of the Environment et al. v. Anacostia Riverkeeper et. al.* in 2015. In light of the latter decision it could be</td><td>Chapter 4 of the Basin Plan includes general descriptions of the implementation programs and strategies designed to achieve and maintain the water quality necessary to support beneficial uses of the Los Angeles Region's waterbodies. It is not intended to include detailed descriptions or explanations of permitting requirements; these are included in the NPDES permits, including the fact sheets. Such requirements are made based on the type of discharge, the condition of the receiving water, and pursuant to applicable federal and state laws and policies.</td></tr>
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		concluded that WQBELs are no longer an MS4 Permit requirement because water quality standards (including TMDLs) only require compliance through 402(p)(3)(B)(iii)/1342(p)(3)(B)(iii) – viz., that controls that reduce pollutant discharges to the maximum extent practicable (MEP). Even if WQBELs were to apply to MS4s, they would have to be subject to a Reasonable Potential Analysis (RPA) as described in the NPDES Permit Writers Manual. The first step in performing the RPA is to determine if outfall discharges exceed ambient (dry weather) water quality standards. And, in any case, WQBELs would have to be translated into Best Management Practices (BMPs) to meet ambient water quality standards in receiving waters. Those BMPs would then be subject to an iterative process in keeping with WQO 99-05 and USEPA policy. Request: If MS4s are subject to WQBELs please specify in the revised Chapter that they must be based on excursions above <u>ambient</u> water quality standards and TMDLs. And that BMPs should address the pollutant concentration that has exceeded the standard/TMDL as opposed to requiring BMPs to address the entire numeric pollution target (Waste Load Allocations for TMDLs). Further, the Regional Board cannot impose "more stringent" effluent limitations expressed as WQBELs because the	See response to Comment No. 1.1. Effluent limitations are applicable to all NPDES permits, whether they are individual or general. The Regional Water Board agrees that MS4 permits are not subject to Clean Water Act section 301(b)(1)(C), and has not asserted the contrary in the proposed chapter update. Rather, effluent limitations in MS4 permits are established pursuant to Clean Water Act section 402(p)(3)(B) and, where applicable, section 303(d). Clean Water Act section 402(p)(3)(B) states, in part, that MS4 permits "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, *and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants*." (emphasis added). Such controls can therefore appropriately include technology and/or water-quality based controls (e.g., WQBELs), as well as numeric and non-numeric effluent limitations. Neither of the court cases cited by the commenters preclude the Regional Water Board from imposing WQBELs on MS4 dischargers. Further, for WQBELs based on TMDL wasteload allocations applicable to MS4 dischargers, no reasonable potential analysis is required. As the commenters are aware, this was recently confirmed by the State Water Resources Control Board in Order WQ 2015-0075 pertaining to challenges of the 2012 Los Angeles County MS4 Permit. Likewise, the commenters offer no support for their

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		aforementioned court decisions have eliminated such limitations.	position that WQBELs "must be based on excursions above ambient water quality standards and TMDLs." Water quality standards are set to protect a waterbody under all condition – wet and dry weather. Accepting the commenter's interpretation of the Clean Water Act's MS4 permit requirements would undermine one of the primary objectives of the MS4 permitting program, which is to protect waterbodies from impacts due to stormwater discharges from MS4s. Excluding evaluation of stormwater discharges against WQBELs under wet weather conditions would preclude an assessment of the impacts on receiving waters during storm events – a key waterbody condition that is addressed by MS4 permits.
1.4	TECS Environmental	**IV. Compliance with Water Quality Control (Basin) Plans** The revised Chapter indicates that water quality control plans require compliance. The current basin plan makes no such reference. A plan is a document that guides dischargers towards the achievement of an end. It cannot or should not be an end of itself. Request: Eliminate any reference to complying with water quality control plans but instead require compliance with applicable federal and state regulations.	It is not clear which section(s) of the revised chapter the commenter is referring to. There is no mention of compliance with the water quality control plan (Basin Plan) itself. The Basin Plan is generally not self-implementing. This means that, with the exception of prohibitions of discharge, the Regional Water Board does not directly enforce the Basin Plan. Basin Plans must designate the beneficial uses to be protected against water quality degradation, water quality objectives, and a program of implementation needed for achieving water objectives. A program of implementation for achieving water quality objectives must include, at a minimum: (a) a description of the nature of actions which are necessary to achieve the objectives, including recommendations for appropriate action by any public or private entity; (b) a time schedule for the

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			actions to be taken; and (c) a description of surveillance to be undertaken to determine compliance with objectives. (Water Code § 13242). The Regional Water Board implements the Basin Plan, and water quality objectives specifically, through waste discharge requirements, cleanup actions, and other programs. (See, e.g., Water Code §§ 13263 and 13377 (waste discharge requirements shall implement water quality control plans). Both the 1994 version of the Basin Plan and the proposed administrative update of Chapter 4 present and discuss implementation programs and strategies designed to achieve and maintain the water quality necessary to support beneficial uses of the Los Angeles Region's water bodies. These include, but are not limited to, discharge permits, Clean Water Act section 401 water quality certifications, discharge prohibitions, conditional waivers, and site cleanup activities. The revised chapter contains several instances where compliance with these programs are appropriately discussed.
1.5	TECS Environmental	**V. The Need for Basin Plan Amendment Workshops** The complexity of the proposed Basin Plan amendment and its impact on dischargers seems to warrant several workshops to enable Regional Board staff to explain the Basin Plan amendments and provide ample opportunity for public review	The proposed Basin Plan amendment is non-regulatory in nature and involves an administrative update to the existing discussions of the Regional Water Board's programs in the Basin Plan. The intent of the proposed amendment is purely to provide more current information. There are no new regulatory provisions/requirements associated with this

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		and comment. All stakeholders and impacted parties should be notified, including general permit holders. Please note that Lyris notices announcing the Basin Plan amendments were not sent out to many impacted parties. Request: Consider convening additional Basin Plan workshops.	amendment. Its only impact to the regulated community and other stakeholders and interested persons is the increased utility of the Basin Plan. As the proposed update is not complex and does not add new regulatory requirements, a workshop was not warranted for the proposed amendment. In addition, notices for the hearing on the proposed amendment were published in the Los Angeles Times and Ventura County Star on March 22, 2016. On the same day, the tentative resolution, proposed updates to Chapter 4 and the beneficial use tables in Chapter 2, and the draft staff reports were made available on the Regional Water Board's website, and a notice was emailed to the Regional Water Board's region-wide mailing list for Basin Plan amendments. The public had ample opportunity for review and comment during the 45-day public review and comment Finally, while the Regional Water Board makes every effort to ensure that interested persons are kept informed of its proposed actions, it is ultimately the responsibility of stakeholders and interested persons to subscribe to the Regional Water Board's mailing lists.
2.1	Joyce Dillard	You state the Surface Water Programs are: - Control of Point Source Pollutants - Control of Nonpoint Source Pollutants - Restoration of Impaired Surface Waters - Drought/Salinity Loading Issues	The MS4 permitting program regulates storm water and non-stormwater discharges of pollutants through the MS4, which is a point source, to receiving waters. The Non-Point Source program regulates discharges of pollutants that are conveyed over the land and through the ground from more diffuse sources that are

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		Under Municipal Separate Storm Sewer System Permits, Phase 1 you state: *Since approximately 2010, the program has evolved to support more customized, holistic watershed-based strategies driven by waterbody-specific desired water quality outcomes (e.g., TMDLs).* ***Additionally, the stormwater program is increasingly providing opportunities to utilize stormwater as a local resource, particularly to augment local water supplies.*** *Low impact development and green infrastructure techniques are increasingly used as tools to both address the water quality concerns of stormwater as well as water supply and open space needs of communities in the Region. The goal is to capture the water that runs off non-permeable surfaces such as concrete and asphalt and use it, for example, to water landscape and gardens on the same plot of land from which it would otherwise flow away.* ***Local groundwater supplies are replenished, too,*** *and the amount of pollutants that flow into the Region's waterbodies is reduced.* You state: *The key objectives of MS4 permits are to effectively prohibit non-stormwater discharges through MS4s to the region's waterways; to reduce the discharge of pollutants in stormwater to the maximum extent practicable (MEP); and to implement other pollutant controls as necessary to*	not channeled to a waterbody through a discrete conveyance, as well as irrigation. They are separate programs designed to reduce pollutant loading to receiving waters from different sources. These programs are adequately explained in the proposed chapter update.

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		achieve water quality standards. To achieve these objectives, section 402(p) of the federal Clean Water Act and implementing regulations7 require that NPDES permits for MS4 discharges include: *(1) requirements necessary to achieve water quality standards;* *(2) effluent limitations consistent with the assumptions and requirements of available wasteload allocations from TMDLs applicable to the discharges;* *(3) a requirement to effectively prohibit non-stormwater discharges into the MS4 8;* Footnote 8 states: *Federal regulations define stormwater as "storm water runoff, snow melt runoff, and surface runoff and drainage" (40 C.F.R. § 122.26(b)(13)). While "surface runoff and drainage" is not defined in federal law, US EPA's preamble to the federal regulations demonstrates that the term is related to precipitation events such as rain or snowmelt (55 Fed. Reg. 47990, 47995-96 (Nov. 16, 1990)).* *Generally, the Regional Water Board uses the terms non-stormwater discharge and urban runoff to refer to non-precipitation related runoff.* ***The distinction is important from a regulatory standpoint because federal regulations require that non-stormwater discharges are effectively prohibited in the context of stormwater NPDES***	

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		permits. You state in Control of Nonpoint Source Pollutants: ***NPS pollution accounts for more than 76% of the impaired waterbodies in California.*** *The goal of the NPS Program is to prevent nonpoint source pollution from impacting California's waterbodies, which support a diversity of beneficial uses.* *The State Water Board and the nine Regional Water Boards together with the California Coastal Commission are the lead State agencies for implementing the NPS program through the* ***Plan for California's Nonpoint Source Pollution*** ***Control Program*** *(NPS Program Plan). US EPA approved the State's NPS Program Plan on July 17, 2000. The NPS Program Plan complies with the requirements of CWA section 319 and section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA).* ***The NPS Program Plan satisfies the CWA section 319 requirements for "an upgraded program" and the CZARA requirements for a coastal nonpoint pollution control program to be submitted jointly by the State Water Board and the California Coastal Commission.*** *The NPS Program Plan achieves this goal by providing a single unified, coordinated statewide approach to dealing with NPS pollution structured*	

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		around 61 management measures (MMs). MMs serve as general goals for the control and prevention of polluted runoff. Site-specific management practices (MPs) are then used to achieve the goals of each management measure. ***Implementation of MMs occurs using an iterative program process.*** *The program process includes: (1) assessing NPS Program activities; (2) targeting efforts; (3) planning activities based on NPS Program goals and objectives; (4) coordinating the efforts of federal, State, and local agencies and stakeholders; (5) implementing coordinated actions; (6) tracking and monitoring the results of implemented actions; and (7) reporting on NPS Program results. The NPS Program Plan includes annual, biennial, and five-year reporting cycles and the use of Internet-based interactive information tools to ensure program accountability. The NPS Program Plan is designed to be flexible and adaptable over time.* *To obtain federal approval of the NPS Program Plan, the State Water Board was required to provide assurances that it has the legal authority to implement and enforce the NPS Program Plan.* ***In 2004, the State Water Board adopted the*** ***Policy for the Implementation and Enforcement of the Nonpoint Source Pollution Control Program (NPS Implementation and Enforcement Policy).*** *The NPS Implementation and Enforcement Policy explains how the NPS Program Plan will be implemented and enforced and, in so doing, fulfills the requirements of*	

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		California Water Code section 13369(a)(2)(B). COMMENTS: We do not see the nexus of the two plans, as applied, in explanation of the permitting programs. We do not see any consistency across permits. You fail to explain how the permits differ in execution.	
2.2	Joyce Dillard	You state: *The NPS Implementation and Enforcement Policy explains how the mandates and authorities, provided by the Water Code, are used to implement and enforce the NPS Program Plan. The mandates and authorities include:* - *Planning authority to designate beneficial uses of the waters of the State, establish water quality objectives to protect those uses, and develop* - *implementation programs to meet water quality objectives and maintain and/or restore designated beneficial uses;* - *Administrative permitting authority in the form of waste discharge requirements, waivers of waste discharge requirements, and basin plan prohibitions; and* - *Enforcement options to ensure that dischargers comply with permitting requirements.* *The policy also provides a bridge between the*	Non-stormwater discharges from the MS4 are not nonpoint sources and the NPS policy does not apply to those discharges. Therefore, it is not appropriate to discuss the NPS program within the MS4 context.

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		NPS Program Plan and the State Water Board's Water Quality Enforcement Policy. ***(See Chapter 5 for a description of the State's Water Quality Enforcement Policy.)*** *The information provided in the NPS Implementation and Enforcement Policy is designed to assist all responsible and/or interested parties in understanding how the State's NPS water quality control requirements will be implemented and enforced. Implementation programs for NPS pollution control may be developed by the Regional Water Board, the State Water Board, an individual discharger, or by or for a coalition of dischargers in cooperation with a third-party representative, organization, or government agency.* COMMENTS: Non stormwater discharges are prohibited in the context of stormwater NPDES permits, as stated previously, yet the Technical Advisory Committee's report on Urban Runoff states; *The TAC recommends that control of urban runoff pollution is primarily the responsibility of local government and that each local government in California should have a comprehensive program to control pollution from these sources.* *The TAC further recommends that the Regional Water Quality Control Boards (RWQCBs) oversee the efforts by local government.* *The TAC recommends three enforcement options*	

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		to ensure that each local government have an effective program--a general National Pollutant Discharge *Elimination System (NPDES) storm water permit, an individual NPDES storm water permit, or a Porter-Cologne Section 13225(c) report. Since larger cities and some urbanized counties already are permitted through the NPDES municipal storm water program, the TAC recommends that the RWQCBs coordinate with all the remaining cities and counties to develop enforceable, comprehensive programs.* *It is recommended that State Water Resources Control Board (SWRCB), working with the RWQCBs, develop a model storm water program so that smaller local governments can more readily adopt a program.* The recommendation should have been disregarded. The liabilities have been transferred to the local governments via the MS4 permit. The NPS program requires that Management Measure implementation uses an iterative program process. This process is not discussed in the context of Chapter 4.	
2.3	Joyce Dillard	The Interagency Coordinating Committee (IACC) of the NPS Program and its 28 member agencies meetings and decisions are not available to the public. We find no active website for that particular committee. Caltrans is a member agency and a	We assume the commenter is referring to the Non-Point Source Interagency Coordinating Committee (IACC) Marinas and Recreational Boating Workgroup, which is coordinated by the California Coastal Commission. The workgroup addresses water quality

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		permittee under the MS4 permit. This is a Conflict of Interest.	issues for marinas and recreational boating, with the goal of developing partnerships among state, federal, and local agencies responsible for addressing NPS pollution related to boating and marinas. The IACC's website is located here: http://www.coastal.ca.gov/nps/nps-boating.html The commenter does not explain why she believes Caltrans' participation in the IACC Workgroup and Caltrans being subject to a MS4 permit is a conflict of interest. Without an explanation, the Board cannot respond to this comment. However, we note, as previously explained in response to Comment No. 2.1, that the Board's MS4 program and the NPS program are separate programs designed to reduce pollutant loading to receiving waters from different sources.
2.4	Joyce Dillard	Only two watersheds show on the Waterboard's website: - Calleguas Creek Watershed - Los Angeles River Reach 3 What is the status of review for the other watersheds in relationship to the EPA Strategic Plan?	The Regional Water Board does not understand this comment or whether it relates to the proposed action. The Regional Water Board therefore cannot respond to this comment. We note, however, that an electronic version of the Basin Plan is on the Regional Water Board's website, which identify the various watersheds in the Los Angeles Region.
2.5	Joyce Dillard	Nonpoint Source Annual Report for State Fiscal Year 2013-2014 states little in relationship to this Chapter. We also see no Implementation Plan discussed for the years 2014-2020 in this	The updated Chapter 4 text has been revised to reflect the 2014-2020 Nonpoint Source Implementation Plan.

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		Chapter.	
2.6	Joyce Dillard	You fail to address the voluntary program of Enhanced Watershed Management Programs including its relationship to the NPS Program and the Technical Advisory Committee's Urban Runoff recommendation.	See response to Comment No. 2.2. Permittees participating in an Enhanced Watershed Management Program (EWMP) do so pursuant to the County of Los Angeles and/or City of Long Beach MS4 permits. Permittees are not required to address nonpoint source discharges in their EWMPs.
2.7	Joyce Dillard	Local Governments may or may not be water suppliers.	Comment noted.
2.8	Joyce Dillard	You fail to address Proposition 218 in relationship to stormwater and the Citizens' right to vote.	A discussion of Proposition 218 or a citizen's right to vote is outside the scope of the Board's proposed administrative update to the Basin Plan.
2.9	Joyce Dillard	Groundwater Programs fail to address the stormwater capture that is not considered recycled water but is used for irrigation due to the MS4 permitting.	Groundwater programs are not geared to address stormwater re-use for irrigation. Such a use is overseen by the NPDES program as a water reclamation project.
2.10	Joyce Dillard	You fail to address legal ownership rights of groundwater and the complexities involved in liabilities and in responsibilities, both adjudicated and non-adjudicated.	The Regional Water Board does not have jurisdiction over legal ownership rights of groundwater. The Regional Water Board is tasked with the protection and/or restoration of water quality in surface and ground waters. Issues related to water rights and groundwater adjudication are within the purview of the State Water Resources Control Board and local agencies, among others.