

**Comment Summary and Responses**  
**Comment Deadline: January 20, 2014**  
**Basin Plan Amendment for the Los Angeles Region to Incorporate Implementation Plans**  
**for the TMDLs for Metals in the Los Cerritos Channel and for**  
**Metals and Selenium in the San Gabriel River and Impaired Tributaries**

List of Commenters:

Comment Reference	Organization	Representative
1	City of Bellflower	Jeffrey L. Stewart
2	City of Lakewood	Lisa Ann Rapp
3	Richard Watson & Associates, Inc. on behalf of the Los Cerritos Channel (LCC) Watershed Group	Richard A. Watson
4	City of South El Monte	Anthony R. Ybarra
5	City of Irwindale	William Tam
6	Lower San Gabriel River (SGR) Watershed Committee	Adriana Figueroa and Mike O'Grady
7	County of Orange, OC Public Works	Chris Crompton

Response to Comments:

No.	Author	Comment	Response
0.1	Multiple	Several of the comments submitted in opposition to the State Water Resources Control Board's (State Water Board) approval of this amendment to the Water Quality Control Plan for the Los Angeles Region to incorporate implementation plans for the TMDLs for metals in the Los Cerritos Channel and for metals and selenium in the San Gabriel River and Impaired Tributaries were either previously submitted to the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) and submitted verbatim to the State Water Board without further explanation, or were not timely raised before the Los Angeles Water Board.	The State Water Board's Notice of Opportunity to Comment concerning this Basin Plan amendment accurately informs interested persons of the procedural requirements used to implement the State Water Board's regulatory programs. According to the State Water Board's CEQA Regulations (23 Cal. Code Regs. § 3779, subd. (f)):  The state board, when considering approval of a regional board's adoption of an amendment to its

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**Comment Deadline: January 20, 2014**  
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			<p>water quality control plan or guideline, shall prescribe a comment period of not less than 30 days. The state board may refuse to accept any comments received after the noticed deadline. All comments submitted to the state board must be specifically related to the final amendment adopted by the regional board. If the regional board previously responded to the comment, the commenter must explain why it believes that the regional board's response was inadequate. The commenter must include either a statement that each of the comments was timely raised before the regional board, or an explanation of why the commenter was unable to raise the specific comment before the regional board. The state board may refuse to accept any comments that do not include such a statement. The state board is not required to consider any comment that is not in compliance with this section.</p> <p>Some comments submitted to the State Water Board were not timely raised before the Los Angeles Water Board, and did not</p>
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**Comment Deadline: January 20, 2014**  
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			<p>include an explanation of why the commenter was unable to raise the specific comment before the regional board. Where this has occurred, the comment does not comply with the above-quoted regulation.</p> <p>Several of the comments submitted to the State Water Board on this matter are also identical to a comment submitted to the Los Angeles Water Board at the time the draft version of this regulation was under Los Angeles Water Board consideration. Where a commenter has merely repeated the comment submitted below, the comment does not comply with the above-quoted regulation. During its consideration, the Los Angeles Water Board received and provided written responses to all significant comments. The Los Angeles Water Board's responses either indicated that changes would be made to the regulatory provisions or related documentation in view of the comment (in which case corresponding changes were made), or the Los Angeles Water Board's written responses indicated that changes would not be made, and the response indicated why not.</p> <p>The State Water Board cannot divine what the commenter believes has been adequately satisfied by the Los Angeles Water Board,</p>
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			nor can it determine the reason for any remaining dissatisfaction. Without that information, the State Water Board does not have a fair opportunity to understand what, if any, remaining concerns exist.
1.1	City of Bellflower	The City of Bellflower (City) appreciates the opportunity to provide comments on the amendments to the Water Quality Control Plan for the Los Angeles Region (Basin Plan) to incorporate Implementation Plans and Schedules for the Metals Total Maximum Daily Loads (TMDLs) for the Los Cerritos Freshwater Channel and the TMDLs for Metals and Selenium in the San Gabriel River and Impaired Tributaries. The City is partially in the Los Cerritos Channel Watershed and partially in the San Gabriel River Watershed. We participate actively on the Los Cerritos Channel Watershed Group and the Lower San Gabriel River Watershed Committee (Watersheds). The adoption of Implementation Plans with Implementation Schedules is essential because these TMDLs were established by the USEPA, which does not adopt implementation plans and schedules for the TMDLs that they establish. Such plans and schedules are needed for realistic implementation of TMDLs, especially complex TMDLs such as metals TMDLs where sources are both direct and indirect, and many of the sources are beyond the abilities of local governments to control.	Comment noted.
1.2	City of Bellflower	We appreciate the Regional Board's recognition of pollution prevention, including true source control, in Findings 20 and 21. Both Watersheds have concluded that the most effective strategy for addressing water quality impairments in water bodies will be one based initially on a combination of source control (especially true source control), runoff reduction, and	Comment noted.

**Comment Summary and Responses**  
**Comment Deadline: January 20, 2014**  
**Basin Plan Amendment for the Los Angeles Region to Incorporate Implementation Plans**  
**for the TMDLs for Metals in the Los Cerritos Channel and for**  
**Metals and Selenium in the San Gabriel River and Impaired Tributaries**

		soil stabilization. The Watersheds based this conclusion on the fact that if pollutants are not generated or released, they will not be available for transport to receiving waters; and, if dry-weather runoff can be eliminated or greatly reduced, a major transport mechanism will be eliminated or greatly reduced. The result of both of these measures will be that many fewer pollutants will reach the receiving waters.	
1.3	City of Bellflower	We further appreciate the provision in the Basin Plan Amendment that, subject to Executive Officer approval, if our forthcoming Watershed Management Programs (WMPs) demonstrate that control measures and BMPs will achieve wet-weather water quality-based effluent limitations (WQBELs) consistent with the schedule in Tables 7-20.2 and 7-32.2, then compliance with wet-weather WQBELs may be demonstrated by implementation of these control measures and BMPs. Our City supports the decision of the Watersheds to proceed with development of WMPs. The Reasonable Assurance Analysis required for a WMP will give us the opportunity to demonstrate that our programs of source control, runoff reduction, and soil stabilization, supplemented by LID, Green Streets, and other structural improvements, will achieve wet-weather WQBELs consistent with the schedules in Tables 7-20.2 and 7-32.2.	Comment noted.
1.4	City of Bellflower	The City supports the detailed comments submitted under separate cover by the Los Cerritos Channel Watershed Group. We urge the State Water Resources Control Board to approve the Final Basin Plan Amendment, as adopted by the Regional Board.	Comment noted.

**Comment Summary and Responses**  
**Comment Deadline: January 20, 2014**  
**Basin Plan Amendment for the Los Angeles Region to Incorporate Implementation Plans**  
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2.1	City of Lakewood	<p>I am writing on behalf of the City of Lakewood. Our City is partially in the Los Cerritos Channel Watershed and partially in the San Gabriel River Watershed. We participate actively on the Los Cerritos Channel Watershed Group (Watershed Group) and the Lower San Gabriel River Watershed Committee (Watershed Committee). We appreciated the Los Angeles Regional Water Board's willingness to move forward with amendments to the Water Quality Control Plan for the Los Angeles Region (Basin Plan) to incorporate Implementation Plans and Schedules for the Metals TMDLs for the Los Cerritos Freshwater Channel and the Total Maximum Daily Loads for Metals and Selenium San Gabriel River and Impaired Tributaries. The adoption of Implementation Plans with Implementation Schedules is essential because these TMDLs were established by USEPA and EPA does not adopt implementation plans and schedules for TMDLs that they establish. Such plans and schedules are needed for realistic implementation of TMDLs, especially complex TMDLs such as metals TMDLs where sources are both direct and indirect and many of the sources are beyond the abilities of local governments to control.</p>	Comment noted.
2.2	City of Lakewood	<p>We also appreciate the Regional Water Board's recognition of pollution prevention, including true source control, in Findings 20 and 21. Both Watersheds have concluded that the most effective strategy for addressing water quality impairments in water bodies will be one based initially on a combination of source control (especially true source control), runoff reduction, and soil stabilization. The Watersheds based this conclusion on the fact that if pollutants are not generated or released, they will not be available for transport to receiving waters, and if dry-weather runoff can be</p>	Comment noted.

**Comment Summary and Responses**  
**Comment Deadline: January 20, 2014**  
**Basin Plan Amendment for the Los Angeles Region to Incorporate Implementation Plans**  
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**Metals and Selenium in the San Gabriel River and Impaired Tributaries**

		eliminated or greatly reduced, a major transport mechanism will be eliminated or greatly reduced. The result of both of these measures will be that many fewer pollutants will reach the receiving waters.	
2.3	City of Lakewood	We further appreciate the provision in the Basin Plan Amendment that, subject to Executive Officer approval, if our forthcoming Watershed Management Programs (WMPs) demonstrate that control measures and BMPs will achieve wet-weather water quality-based effluent limitations (WQBELs) consistent with the schedule in Tables 7-20.2 and 7-32.2, then compliance with wet-weather WQBELs may be demonstrated by implementation of these control measures and BMPs. Our City supports the decision of the Watershed Group and the Watershed Committee to proceed with development of WMPs. The Reasonable Assurance Analysis required for a WMP will give us the opportunity to demonstrate that our programs of source control, runoff reduction, and soil stabilization, supplemented by LID, Green Streets, and other structural improvements, will achieve wet-weather water WQBELs consistent with the schedules in Tables 7-20.2 and 7-32.2.	Comment noted.
2.4	City of Lakewood	The City of Lakewood supports the detailed comments submitted under separate cover by the Los Cerritos Channel Watershed Group. We made similar comments supporting the Basin Plan Amendment to the Los Angeles Regional Water Board, and urge you to approve the Final Basin Plan Amendment adopted by the Los Angeles Regional Water Quality Control Board.	Comment noted.

**Comment Summary and Responses**  
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**Metals and Selenium in the San Gabriel River and Impaired Tributaries**

3.1	LCC Watershed Group	I am writing on behalf of the Los Cerritos Channel Watershed Group (Watershed Group). We appreciated the Los Angeles Regional Water Board's willingness to move forward with the proposed amendments to the Water Quality Control Plan for the Los Angeles Region (Basin Plan) to incorporate an Implementation Plan for the Los Cerritos Channel TMDLs for Metals. Members of the Watershed Group particularly appreciated staffs working with our representatives and participating in a meeting with our Watershed Group. Staff understood that implementation plans with implementation schedules are needed for realistic implementation of complex TMDLs such as our metals TMDLs, where sources are both direct and indirect and many of the sources are beyond the abilities of local governments to control. We previously made similar comments supporting the Basin Plan Amendment to the Los Angeles Regional Water Board.	Comment noted.
3.2	LCC Watershed Group	The Watershed Group also appreciates the recognition of pollution prevention, including true source control, in Findings 20 and 21. The Watershed Group has concluded that the most effective strategy for addressing water quality impairments in the Los Cerritos Channel Watershed is one built on a foundation of source control (especially true source control), runoff reduction, and soil stabilization. The Watershed Group wants to first eliminate or greatly reduce pollutants and greatly reduce urban runoff. The result of both of these measures will be that many fewer pollutants will need to be removed from MS4 discharges prior to the discharges reaching the receiving waters. The Watershed Group plans to back up source control and urban runoff reductions with capture and infiltration, capture and use, and treatment control measures.	Comment noted.



**Comment Summary and Responses**  
**Comment Deadline: January 20, 2014**  
**Basin Plan Amendment for the Los Angeles Region to Incorporate Implementation Plans**  
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**Metals and Selenium in the San Gabriel River and Impaired Tributaries**

3.3	LCC Watershed Group	Our source control efforts will initially focus on copper and zinc. The legislature specifically recognized the difficulty with controlling a critical source of copper when it passed SB 346, which the Governor signed into law on September 25, 2010. This milestone piece of legislation phases out copper in brake pads over a period of years with an initial regulatory milestone having occurred on January 1, 2014 and two key copper reduction milestone dates of January 1, 2021 and January 1, 2025. Full implementation of this legislation is expected to remove approximately 61% of the copper from urban runoff in metropolitan Los Angeles area watersheds.	Comment noted.
3.4	LCC Watershed Group	Unfortunately, similar legislation does not exist to control zinc, which is almost ubiquitous in the urban environment because galvanized metal is so widely used. However, one major source may be able to be controlled through implementation of the Safer Consumer Product Regulations adopted last year by the California Department of Toxic Substances Control (DTSC). Developing a similar control measure for zinc in tires (a major source of zinc) will require time because DTSC is given one year to develop a Priority Work Plan and then three additional years to develop the initial Priority Products list, which is to be limited to no more than five (5) Priority Products in prescribed categories. However, a petition process is part of the regulations, and the Watershed Group will be supporting use of the Safer Consumer Product Regulations process to greatly reduce the zinc oxide content of rubber tires. We may need the help of this Board and the Los Angeles Regional Water Board to help make sure that DTSC gives high priority to addressing this widespread water pollution problem. We believe this is the appropriate way to address the zinc problem because it is	This comment was previously made to the Los Angeles Water Board. The State Water Board agrees with the Los Angeles Water Board's response to comment 12.4, which states:  The Regional Board acknowledges that implementation of the Safer Consumer Product Regulations is one way of controlling the zinc contribution from tires. Assuming it takes one year to develop a Priority Work Plan, and three additional years to develop the initial Priority Products list, the Regional Board find that MS4 and Caltrans storm water permittees will still be able to meet the final WLA in 2026. The Regional Board supports the addition of zinc in tires to the Priority

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**Comment Deadline: January 20, 2014**  
**Basin Plan Amendment for the Los Angeles Region to Incorporate Implementation Plans**  
**for the TMDLs for Metals in the Los Cerritos Channel and for**  
**Metals and Selenium in the San Gabriel River and Impaired Tributaries**

		a long-term solution and not dependent on the variable effectiveness of structural BMPs and the continued effective maintenance of these BMPs.	Products list, and will help as appropriate and needed.
3.5	LCC Watershed Group	The Watershed Group appreciates the provision in the Basin Plan Amendment that, subject to Executive Officer approval, if we demonstrate as part of a Watershed Management Program (WMP) that control measures and BMPs will achieve wet-weather water quality-based effluent limitations (WQBELs) consistent with the schedule in Table 7-32.2, the compliance with wet-weather water quality-based effluent limitations may be demonstrated by implementation of these control measures and BMPs. The Watershed Group has decided to proceed with development of a WMP. The Reasonable Assurance Analysis required for a WMP will give us the opportunity to demonstrate that our program of source control, runoff reduction, and soil stabilization, supplemented by LID, Green Streets, and other structural improvements, will achieve wet-weather WQBELs consistent with the schedule in Table 7-32.2.	Comment noted.
3.6	LCC Watershed Group	We appreciate the opportunity to submit these commits and urged the State Water Board to approve the Basin Plan Amendment adopted by the Los Angeles Regional Water Board.	Comment noted.
4.1	City of South El Monte	The City of South El Monte is pleased to submit to you comments for the State Water Resources Control Board's consideration regarding the <i>Implementation Plans and Schedules for the Los Cerritos Channel Metals TMDL and the San Gabriel River and Impaired Tributaries Metals and Selenium TMDL</i> ("implementation plans"). The City made "timely" comments in connection with the final version of the implementation plans proposed as a basin plan amendment.	Comment noted. However, the State Water Board disagrees that the City's comments to the State Water Board were all "timely" raised to the Los Angeles Water Board. Upon review of the written comments submitted to the Los Angeles Water Board and the transcript for the Los Angeles Water Board's hearing to adopt the implementation plans, it

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**Basin Plan Amendment for the Los Angeles Region to Incorporate Implementation Plans**  
**for the TMDLs for Metals in the Los Cerritos Channel and for**  
**Metals and Selenium in the San Gabriel River and Impaired Tributaries**

		The comments were submitted in writing to the Los Angeles Regional Board prior to its public hearing convened on June 6, 2013, as well as in a presentation during the public hearing. Although the Regional Board responded to the comments, they were inadequate or incorrect for reasons that are more particularly described herein.	appears that at least one of the City's comments to the State Water Board were not timely raised to the Los Angeles Water Board, as indicated below.
4.2	City of South El Monte	<p><b>Summary</b>  The City requests the State Board to either dismiss or postpone adoption of the implementation plans. This request is made in consideration of the following:</p> <ol style="list-style-type: none"> <li>1. The implementation plan is based on a TMDL adopted by USEPA that exceeds limitations imposed by the 303(d) list by extending reaches that are impaired to both upstream and downstream reaches that are non-impaired. This requirement is not authorized under federal or state law.</li> <li>2. The implementation plan is based on a TMDL that requires compliance with both wet and dry weather waste load allocations. Federal regulations supported by State Board water quality orders only require compliance with "ambient" standards, not wet weather ones.</li> <li>3. The implementation plan is based on a TMDL that requires municipal permittee compliance with non-point sources. Municipal permittees are only required to comply with MS4 point sources.</li> <li>4. The Los Angeles County MS4 permit is currently under administrative challenge. The permit includes the San Gabriel River and Coyote Creek TMDLs which, along with</li> </ol>	See responses to detailed comments below.

**Comment Summary and Responses**  
**Comment Deadline: January 20, 2014**  
**Basin Plan Amendment for the Los Angeles Region to Incorporate Implementation Plans**  
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**Metals and Selenium in the San Gabriel River and Impaired Tributaries**

		<p>other TMDLs, are being challenged because of the reasons stated herein: (1) they extend into reaches that are not 303(d) listed as impaired; and (2) they require compliance with dry weather and wet weather standards, the latter of which is not required under federal or state law. The City therefore asks the State Board to defer deciding on the implementation plans until it resolves the administrative challenge.</p>	
4.3	City of South El Monte	<p>• <b>Authentic TMDLs Are Limited to the 303(d) List</b></p> <p>It should be obvious that if a pollutant is not 303(d) listed it is not subject to a TMDL. However, in its comments the Regional Board essentially defended its policy of extending reaches that are 303(d) listed for pollutant(s) to reaches that are not 303(d) listed for the same pollutant because to do otherwise would be contrary to the thrust of the Clean Water Act. This, of course, is mere administrative opinion with no factual basis in law. If the CWA intended to prevent water quality issues for unimpaired reaches it would have said so. And if the Regional Board's policy is based on its interpretation of the CWA then why is there need for a 303(d) list? The Regional Board cannot "wish it" onto the 303(d) simply because it wants to. The Regional Board is acting in an arbitrary and capricious manner here.</p> <p>Further, there is no evidence proffered by the Regional Board that any of the reaches not 303(d) listed would be impaired by any of the metals pollutants in the future. In fact, based on the Regional Board SWAMP data there were no ambient exceedances for lead in any reach of the San Gabriel River with the exception of copper for Walnut Creek.<sup>1</sup> Reach 2 of</p>	<p>A similar comment questioning the application of the TMDLs to some jurisdictions was previously made to the Los Angeles Water Board. The State Water Board agrees with the Los Angeles Water Board that this comment pertains to the TMDLs themselves, and not the implementation plans, and are therefore outside the scope of this action. Please see response to comment 0.1 above, and the Los Angeles Water Board's response to comment 6.1, which states, in part:</p> <p>Comments pertaining to the responsible jurisdictions assigned WLAs in the TMDL are outside the scope of this action. The Notice of Public Hearing and Opportunity to Comment clearly stated that written and oral comments are limited only to the proposed implementation plans for the TMDLs and that comments on the TMDLs</p>

**Comment Summary and Responses**  
**Comment Deadline: January 20, 2014**  
**Basin Plan Amendment for the Los Angeles Region to Incorporate Implementation Plans**  
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**Metals and Selenium in the San Gabriel River and Impaired Tributaries**

	<p>the San Gabriel River is listed for lead apparently because of a mass emissions station exceedance detected during wet weather. Beyond this there are no ambient exceedances recorded for Coyote Creek. Coyote Creek is 303(d) listed for copper, lead, and zinc based on wet weather monitoring from mass emissions stations operated by the County of Los Angeles Department of Works at Mass Emissions Station F354-R. Nevertheless an exceedance for wet weather cannot be used to justify the application of a TMDL to any reach (see explanation below).</p> <p>Further, there is no urgency to extend a TMDL for an impaired reach to a non-impaired reach. A reach may not be impaired due to a variety of reasons. It may be located, as in the case of reaches in the Upper San Gabriel River, in a low urbanized area. Or an impairment may not exist because of permittee efforts in implementing effective stormwater management program plans. Another fact that the Regional Board overlooks is that the purpose of a TMDL, which is a "super" water quality standard, is to restore the beneficial use of a receiving water. If restoration is not required then why compel a permittee to comply with an illegitimate TMDL?</p> <p>To assert that a problem "may" arise in a non-impaired reach, without any scientific justification, constitutes "wishful thinking" and would require permittees to spend money needlessly on a non-existent problem. Further, effective outfall monitoring, which is a long-over due MS4 permit requirement, should provide an effective means of determining if there is a problem looming for a metal constituent in any of the reaches. It would also enable</p>	<p>themselves, which were previously established by U.S. EPA, are outside the scope of the hearing and will not be considered nor responded to. Because U.S. EPA-established TMDLs do not contain implementation plans, the purpose of this amendment is to incorporate implementation plans and schedules into the Basin Plan to allow responsible jurisdictions time to achieve the assigned WLAs in the U.S. EPA-established TMDLs. The technical portions of the U.S. EPA-established TMDLs are not being considered by the Regional Board.</p> <p>The Regional Board will nevertheless respond to this comment on the U.S. EPA-established TMDL.</p> <p>As detailed throughout the San Gabriel River Metals TMDL, the TMDL is established for impaired waters or for tributaries that cause or contribute to impairments in downstream, listed water bodies. The TMDL finds that when flows exceed the 90th percentile at the USGS gauge station above the</p>
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**Comment Deadline: January 20, 2014**  
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**for the TMDLs for Metals in the Los Cerritos Channel and for**  
**Metals and Selenium in the San Gabriel River and Impaired Tributaries**

		<p>permittees, through the iterative process, to address exceedances early-on, thereby preempting a reach from becoming impaired.</p> <p>-----</p> <p><sup>1</sup>SWAMP data generated in 2005 reported single ambient exceedance for copper in Walnut Creek of 9.88 ug/1, slightly above the California Toxics Rule "ambienr limit of 9.4 ug/1. The source of the exceedance appears to be Puddingstone Reservoir, which is a non-point source for these constituents.</p>	<p>Whittier Narrows Dam in Reach 3, there is sufficient flow to exceed the Dam's capacity, thereby connecting the upper watershed above the Dam with the lower watershed and Reach 2, where the lead impairment exists. Thus responsible jurisdictions in the upper San Gabriel River watershed are assigned WLAs in wet weather to address the impairment in Reach 2 downstream.</p> <p>The commenter's suggestion that TMDLs should only be developed for 303(d) listed segments is contrary to the thrust of the Clean Water Act, as it would require all water bodies to become impaired before they could be protected. It would also prevent coordinated control of water quality problems. Most importantly, it may prevent the attainment of water quality standards in impaired water bodies if the upstream sources of the impairment could continue. This latter point is especially true of persistent elements, such as the metals addressed by this TMDL.</p> <p>Thus, the Clean Water Act and its implementing regulations require that TMDLs</p>
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**Comment Summary and Responses**  
**Comment Deadline: January 20, 2014**  
**Basin Plan Amendment for the Los Angeles Region to Incorporate Implementation Plans**  
**for the TMDLs for Metals in the Los Cerritos Channel and for**  
**Metals and Selenium in the San Gabriel River and Impaired Tributaries**

			<p>include an assignment of wasteload allocation and load allocations to all sources of the impairing constituents (40 CFR § 130.7(c)(1)).</p> <p>The State Water Board also disagrees that the potential for a non-impaired reach to become impaired constitutes "wishful thinking." Such a concept is contrary to the Los Angeles Water Board's mission to "preserve and enhance the water quality of the Los Angeles Region" and the State Water Board's mission to "preserve, enhance, and restore the quality of California's water resources" The Water Boards certainly do not "wish" for waters to become impaired.</p>
4.4	City of South El Monte	<p><b>• TMDL Compliance is Limited to Ambient Standards and Does Not Include Wet Weather Standards</b></p> <p>The Regional Board, in its comments, clings to the notion that wet weather waste load allocations must be complied with. It has said that the waste load allocation ("WLA)" assigned to affected cities <i>in wet weather, and achievement of the WLA must be demonstrated under those conditions.</i> It provided no legal justification for this view.</p> <p>Wet weather standards are not recognized under federal or state law. This was affirmed by the State Board in water quality order 2001-15. In response to a petitioner's claim that State law requires the adoption of wet weather water quality</p>	<p>A similar comment regarding compliance with wet-weather wasteload allocations was previously made to the Los Angeles Water Board. The State Board agrees with the Los Angeles Water Board that this comment pertains to the assigned wasteload allocations in the TMDLs themselves, and not the implementation plans, and are therefore outside the scope of this action. Please see response to comment 0.1 above, and the Los Angeles Water Board's response to comment 6.1, which states, in part:</p> <p style="text-align: center;">Comments pertaining to the</p>

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**Comment Deadline: January 20, 2014**  
**Basin Plan Amendment for the Los Angeles Region to Incorporate Implementation Plans**  
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**Metals and Selenium in the San Gabriel River and Impaired Tributaries**

		<p>standards, the State Board found:</p> <p><i>This contention is clearly without merit. There is no provision in state or federal law that mandates adoption of separate water quality standards for wet weather conditions.<sup>2</sup></i></p> <p>It should be noted that water quality standards also include TMDLs, which are ambient standards. Although there are numerous sources that point to water quality standards as being ambient standards, perhaps the most conspicuous is CFR 40, 122.44(d)(1)(iii):</p> <p><i>When the permitting authority determines ... that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable <u>ambient concentration</u> of a State numeric criteria within a State water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.</i></p> <p>A USEPA commissioned report also notes:</p> <p><i>... EPA is obligated to implement the Total Maximum Daily Load (TMDL) program, the objective of which is attainment of <u>ambient water quality standards through the control of both point and nonpoint sources of pollution.</u><sup>3</sup></i></p> <p>USEPA defines ambient water quality as the:</p> <p><i>Natural concentration of water quality constituents prior to</i></p>	<p>responsible jurisdictions assigned WLAs in the TMDL are outside the scope of this action. The Notice of Public Hearing and Opportunity to Comment clearly stated that written and oral comments are limited only to the proposed implementation plans for the TMDLs and that comments on the TMDLs themselves, which were previously established by U.S. EPA, are outside the scope of the hearing and will not be considered nor responded to. Because U.S. EPA-established TMDLs do not contain implementation plans, the purpose of this amendment is to incorporate implementation plans and schedules into the Basin Plan to allow responsible jurisdictions time to achieve the assigned WLAs in the U.S. EPA-established TMDLs. The technical portions of the U.S. EPA-established TMDLs are not being considered by the Regional Board.</p> <p>In addition, in response to the comment that MS4 dischargers would have to demonstrate compliance with dry-weather standards using wet-weather monitoring, the Los Angeles Water Board further stated in its response to</p>
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**for the TMDLs for Metals in the Los Cerritos Channel and for**  
**Metals and Selenium in the San Gabriel River and Impaired Tributaries**

		<p><i>mixing of either point or nonpoint source load of contaminants. Reference ambient concentration is used to indicate the concentration of a chemical that will not cause adverse impact to human health.</i><sup>4</sup></p> <p>Various agencies engaged in water quality monitoring all conduct ambient water quality monitoring during dry weather. These include but are not limited to the State's Surface Water Ambient Monitoring Program (SWAMP), Southern California Coastal Water Research Project, and the Council for Watershed Health.</p> <p>Further, according to federal stormwater regulations, compliance with TMDLs and other water quality standards is determined by measuring stormwater discharges from the outfall. Ambient standards, which are amply discussed in numerous USEP A guidance documents, are "referents." Given that there is no such thing as a wet weather standard and that ambient standards have been set to protect or, in the case of TMDLs, restore the health of a receiving water and its beneficial uses, then it stands to reason that compliance for an MS4 must be determined by comparing outfall stormwater discharges with ambient (dry weather) referent standards. Unfortunately, the Regional Board does not accept this view but instead clings to the notion that WLAs apply to wet weather.</p> <p>And while the Regional Board concedes that compliance may be demonstrated at the outfall, if there are no violations, staff has asserted that a violation can only be avoided if there are</p>	<p>comment 6.1:</p> <p>The commenter's assertion that compliance with a TMDL is determined by stormwater discharge monitoring at the outfall, measured against an ambient (dry weather) standard is not correct. The WLA assigned to Glendora applies in wet weather, and achievement of the WLA must be demonstrated under those conditions. Second, the TMDL Implementation Plan before the Regional Board explicitly states, "MS4 Permittees and Caltrans may be deemed in compliance with WQBELs if they demonstrate that: (1) there are no violations of the WQBEL at the Permittee's applicable MS4 outfall(s); (2) there are no exceedances of the receiving water limitations in the receiving water at, or downstream of, the Permittee's outfalls; or (3) there is no direct or indirect discharge from the Permittee's MS4 to the receiving water during the time period subject to the WQBEL."</p> <p>Thus, the Los Angeles Water Board clarified that the TMDL requires demonstration of</p>
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**Comment Summary and Responses**  
**Comment Deadline: January 20, 2014**  
**Basin Plan Amendment for the Los Angeles Region to Incorporate Implementation Plans**  
**for the TMDLs for Metals in the Los Cerritos Channel and for**  
**Metals and Selenium in the San Gabriel River and Impaired Tributaries**

		<p>no exceedances detected by outfall monitoring. In other words, staff is of the opinion that the iterative process does not apply to the stormwater management program plan which is the essential compliance determinant for MS4 permits issue in California. This MS4 permit issue is under administrative challenge.</p> <p>-----</p> <p><sup>2</sup> <i>State Water Resources Control Board Order WQ 2001-15, In the Matter of the Building Industry Association of San Diego County and Western Petroleum States Association</i>, page 10.</p> <p><sup>3</sup> <i>Assessing the TMDL Approach to Water Quality Management Committee to Assess the Scientific Basis of the Total Maximum Daily Load Approach to Water Pollution Reduction, Water Science and Technology Board, National Research Council</i>, page 12.</p> <p><sup>4</sup>See USEPA Glossary and Acronyms - Water (<a href="http://water.epa.gov/scitech/datait/tools/lwarsss/glossary.cfm">http://water.epa.gov/scitech/datait/tools/lwarsss/glossary.cfm</a>).</p>	<p>compliance with wet-weather allocations using wet-weather monitoring.</p> <p>Lastly, contrary to the commenter’s assertion, water quality standards are not “ambient standards.” Water quality standards apply year-round, in all weather. The EPA-established TMDLs contain separate numeric targets for wet and dry weather based on different conditions in wet and dry weather to ensure that water quality standards are attained year round. Further, wet weather monitoring (i.e., wet weather in-stream monitoring) is fundamentally necessary to assist in the evaluation of the effects of <i>storm water</i> discharges on in-stream water quality. Wet weather receiving water monitoring is also necessary to assess trends in the effect of storm water discharges on in-stream water quality over time as permittees implement additional and/or enhanced storm water control measures. Ambient monitoring conducted under the Surface Water Ambient Monitoring Program (SWAMP) does not support the types of evaluation necessary to determine compliance by specific dischargers with their assigned TMDL allocations or to determine the discrete impacts of discharges on receiving water quality and attainment of TMDL numeric targets.</p>
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**Comment Summary and Responses**  
**Comment Deadline: January 20, 2014**  
**Basin Plan Amendment for the Los Angeles Region to Incorporate Implementation Plans**  
**for the TMDLs for Metals in the Los Cerritos Channel and for**  
**Metals and Selenium in the San Gabriel River and Impaired Tributaries**

4.5	City of South El Monte	<p><b>• Non-Point Source TMDL Compliance</b></p> <p>The implementation plan specifies non-point source compliance that includes atmospherically deposited metals. It also includes copper, zinc, and lead from Puddingstone Reservoir which are 303(d) listed as non-point sources. The City has noted in its previous comments to the Regional Board that it cannot be subject to a nonpoint source TMDL. According to the <i>Clean Water Act Handbook</i>:</p> <p style="padding-left: 40px;"><i>Congress defines a point source as "any discernible, confined and discrete conveyance ... from which pollutants are or may be discharged. It stands to follow that anything that is not a point-source and yet conveys pollutants to our nation 's water is a non-point source ... A point source is generally a discharge from a pipe or similar conveyance. A nonpoint source is diffuse runoff and as described by the United States Environmental Protection Agency (EPA) "is caused by rainfall or snowmelt moving over and through the ground carrying natural and human made pollutants into lakes, rivers, and streams, wetlands, estuaries, other coastal waters, and ground water. " Atmospheric deposition and hydrologic modification are also sources of nonpoint source pollution.<sup>5</sup></i></p> <p>From this it should be obvious that a non-point TMDL does not apply to an MS4 point source. Also, point sources are only subject to waste load allocations; non-point sources are subject to load allocations. Therefore, the City should not be subject to any loading that is atmospherically-related or related to any other non-point source.</p>	<p>A similar comment regarding the responsibility for controlling pollutants associated with atmospheric deposition was previously made to the Los Angeles Water Board. The State Water Board agrees with the Los Angeles Water Board that this comment pertains to the assigned WLAs in the TMDLs themselves, and not the implementation plans, and are therefore outside the scope of this action. Please see response to comment 0.1 above, and the Los Angeles Water Board's response to comment 6.3, which states:</p> <p style="padding-left: 40px;">Comments pertaining to the responsible jurisdictions assigned WLAs and Las in the TMDL are outside the scope of this action. The Notice of Public Hearing and Opportunity to Comment clearly stated that written and oral comments are limited only to the proposed implementation plans for the TDMLs and that comments on the TMDLs themselves, which were previously established by U.S. EPA, are outside the scope of the hearing and will not be considered nor responded to. Because U.S. EPA-established TMDLs do not contain implementation plans, the purpose</p>
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**Comment Summary and Responses**  
**Comment Deadline: January 20, 2014**  
**Basin Plan Amendment for the Los Angeles Region to Incorporate Implementation Plans**  
**for the TMDLs for Metals in the Los Cerritos Channel and for**  
**Metals and Selenium in the San Gabriel River and Impaired Tributaries**

		<p>The Regional Board attempts to evade comment on this issue by seeking refuge in the argument that State Board public hearing comments are <i>limited to the proposed implementation plans for the TMDLs and that comments on the TMDLs, which were previously established by USEPA are outside the scope of the hearing.</i> The City's comments are connected to the implementation of a USEPA adopted TMDL through an MS4 permit, as regulatory requirement - not the TMDL as a non-regulatory planning tool. The permit requires USEPA TMDLs to comply with BMPs, as is the case with the Caltrans MS4 permit. However, once made into a basin plan amendment, the TMDL will become a regulatory requirement that is binding on affected permittees through the permit and will require absolute compliance with TMDL numeric targets by any means necessary or, through a watershed management or enhanced watershed management program approach. Regardless of what option the City avails itself of permittees should not be required to comply with any non-point source TMDL through the MS4 permit because it would be extra-legal.</p> <p>-----  <sup>5</sup>See the <i>Clean Water Act Handbook, Second Edition</i>, page 192.</p>	<p>of this amendment is to incorporate implementation plans and schedules into the Basin Plan to allow responsible jurisdictions time to achieve the assigned WLAs in the U.S. EPA established TMDLs. The technical portions of the U.S. EPA-established TMDLs are not being considered by the Regional Board.</p> <p>The Regional Board will nevertheless respond to this comment on the U.S. EPA-established TMDL.</p> <p>Although municipalities may not have direct control over indirect atmospheric deposition, they do have control over infrastructures that facilitate pollutant runoff and discharge to the MS4 system and other surface waters. In addition, research suggests that re-suspended road dust is the primary source of atmospheric deposition of metals. It then follows that roads within the cities are the primary source of the metal-laden particulates that comprise the</p>
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**Comment Summary and Responses**  
**Comment Deadline: January 20, 2014**  
**Basin Plan Amendment for the Los Angeles Region to Incorporate Implementation Plans**  
**for the TMDLs for Metals in the Los Cerritos Channel and for**  
**Metals and Selenium in the San Gabriel River and Impaired Tributaries**

			majority of atmospheric deposition loading. Nonetheless, the Regional Board, State Board, and Air Resources Board have begun to address the issues and will develop appropriate policies or take other actions. The Regional Board is committed to working with stakeholders to analyze recent studies and to further characterize the source and control measures. In response to comments, the Regional Board agrees to add certain elements from State Board Resolution 2008-046 regarding air deposition to the Resolution adopting the Basin Plan amendments. See [Los Angeles Water Board] response to comment 12.6.
4.6	City of South El Monte	<p><b>• State Board Should Not Approve the Implementation Plan or Delay Such Approval Until After It Resolves the Administrative Petitions Challenging the MS4 Permit</b></p> <p>Many of the requirements contained in the implementation plan are under administrative petition. They include the legal validity of requiring: (1) compliance with wet weather waste load allocations in the receiving water; (2) compliance with non-ambient standards; (3) compliance with non-point source TMDLs; (4) denying the iterative process for the</p>	<p>The State Water Board disagrees that it should not approve the implementation plans or delay approval until after it resolves the petitions challenging the Los Angeles County MS4 permit.</p> <p>First, see response to comment 0.1. This comment was not timely raised before the Los Angeles Water Board adopted the implementation plans. The commenter has</p>

**Comment Summary and Responses**  
**Comment Deadline: January 20, 2014**  
**Basin Plan Amendment for the Los Angeles Region to Incorporate Implementation Plans**  
**for the TMDLs for Metals in the Los Cerritos Channel and for**  
**Metals and Selenium in the San Gabriel River and Impaired Tributaries**

		<p>stormwater management program; and (5) compliance with limitations on nonstormwater discharges from the MS4. If the State Board finds merit in any of these petition arguments and the implementation plan is adopted before hand, a revision of the implementation plan through a re-opener is likely to be needed.</p> <p>It should also be noted that the implementation plan as proposed by the Regional Board is unnecessary. The plan could take the form of the one proposed by Caltrans.</p>	<p>also not explained why it was unable to raise this comment before the Los Angeles Water Board. The State Water Board notes that the Los Angeles Water Board adopted the Los Angeles County MS4 Permit in November 2012, which is at least seven months before it adopted the implementation plans in June 2013. In addition, petitions challenging the Los Angeles County MS4 Permit were filed in December 2012.</p> <p>Second, as noted in responses to comments 4.3, 4.4, and 4.5 above, many of the comments raised to the State Water Board by the commenter pertain to the TMDLs themselves, and not the implementation plans, and are therefore outside the scope of this action.</p> <p>Third, none of the contentions raised in the petitions challenging the Los Angeles County MS4 Permit specifically concern the implementation plans addressed by this action. This is due to the fact that the Los Angeles Water Board adopted the Los Angeles County MS4 Permit in November 2012 and the implementation plans in June 2013. Accordingly, while the Los Angeles County MS4 Permit included effluent limitations consistent with the wasteload allocations in the USEPA-adopted TMDLs,</p>
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**Comment Summary and Responses**  
**Comment Deadline: January 20, 2014**  
**Basin Plan Amendment for the Los Angeles Region to Incorporate Implementation Plans**  
**for the TMDLs for Metals in the Los Cerritos Channel and for**  
**Metals and Selenium in the San Gabriel River and Impaired Tributaries**

			<p>provisions implementing the implementation plans themselves were not included since the implementation plans had not yet been adopted by the Los Angeles Water Board.</p> <p>Lastly, to the extent that contentions raised in the petitions concern the implementation plan, the State Water Board will address such contentions when it acts on the petitions later this year.</p>
4.7	City of South El Monte	In closing, the City is grateful for the opportunity to comment on this very important matter.	Comment noted.
5.1	City of Irwindale	The City of Irwindale is pleased to submit to you comments for the State Water Resources Control Board's consideration regarding the <i>Implementation Plans and Schedules for the Los Cerritos Channel Metals TMDL and the San Gabriel River and Impaired Tributaries Metals and Selenium TMDL</i> ("implementation plans"). The City made "timely" comments in connection with the final version of the implementation plans proposed as a basin plan amendment. The comments were submitted in writing to the Los Angeles Regional Board prior to its public hearing convened on June 6, 2013, as well as in a presentation during the public hearing. Although the Regional Board responded to the comments, they were inadequate or incorrect for reasons that are more particularly described herein.	Comment noted. However, the State Water Board disagrees that the City's comments to the State Water Board were all "timely" raised to the Los Angeles Water Board. Upon review of the written comments submitted to the Los Angeles Water Board and the transcript for the Los Angeles Water Board's hearing to adopt the implementation plans, it appears that at least one of the City's comments to the State Water Board were not timely raised to the Los Angeles Water Board, as indicated below.
5.2	City of Irwindale	<p><b>Summary</b></p> <p>The City requests the State Board to either dismiss or postpone adoption of the implementation plans. This request is made in consideration of the following:</p>	See response to comment 4.2 above.

**Comment Summary and Responses**  
**Comment Deadline: January 20, 2014**  
**Basin Plan Amendment for the Los Angeles Region to Incorporate Implementation Plans**  
**for the TMDLs for Metals in the Los Cerritos Channel and for**  
**Metals and Selenium in the San Gabriel River and Impaired Tributaries**

		<ol style="list-style-type: none"> <li>1. The implementation plan is based on a TMDL adopted by USEPA that exceeds limitations imposed by the 303(d) list by extending reaches that are impaired to both upstream and downstream reaches that are non-impaired. This requirement is not authorized under federal or state law.</li>   <li>2. The implementation plan is based on a TMDL that requires compliance with both wet and dry weather waste load allocations. Federal regulations supported by State Board water quality orders only require compliance with "ambient" standards, not wet weather ones.</li>   <li>3. The implementation plan is based on a TMDL that requires municipal permittee compliance with non-point sources. Municipal permittees are only required to comply with MS4 point sources.</li>   <li>4. The Los Angeles County MS4 permit is currently under administrative challenge. The permit includes the San Gabriel River and Coyote Creek TMDLs which, along with other TMDLs, are being challenged because of the reasons stated herein: (1) they extend into reaches that are not 303( d) listed as impaired; and (2) the require compliance with dry weather and wet weather standards, the latter of which is not require under federal or state law. The City therefore asks the State Board to defer deciding on the implementation plans until it resolves the administrative challenge.</li> </ol>	
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**Comment Summary and Responses**  
**Comment Deadline: January 20, 2014**  
**Basin Plan Amendment for the Los Angeles Region to Incorporate Implementation Plans**  
**for the TMDLs for Metals in the Los Cerritos Channel and for**  
**Metals and Selenium in the San Gabriel River and Impaired Tributaries**

5.3	City of Irwindale	<p>• <b>Authentic TMDLs Are Limited to the 303(d) List</b></p> <p>If a pollutant is not 303(d) listed, then it is not subject to a TMDL. However, in its comments the Regional Board essentially defended its policy of extending reaches that are 303(d) listed for pollutant(s) to reaches that are not 303(d) listed for the same pollutant because to do otherwise would be contrary to the thrust of the Clean Water Act. We are concerned that this is mere administrative opinion as the CWA does not state the intention to prevent water quality issues for unimpaired reaches. It is our belief that the Regional Board should not be interpreting the CWA but following the CWA approved 303(d) list? The Regional Board should go through the proper, legal steps should it wish to extend reaches that are not 303(d) listed.</p> <p>Further, there is no evidence proffered by the Regional Board that any of the reaches not 303(d) listed would be impaired by any of the metals pollutants in the future. In fact, based on the Regional Board SWAMP data there were no ambient exceedances for lead in any reach of the San Gabriel River with the exception of copper for Walnut Creek.<sup>1</sup> Reach 2 of the San Gabriel River is listed for lead apparently because of a mass emissions station exceedance detected during wet weather. Beyond this there are no ambient exceedances recorded for Coyote Creek. Coyote Creek is 303( d) listed for copper, lead, and zinc based on wet weather monitoring from mass emissions stations operated by the County of Los Angeles Department of Works at Mass Emissions Station F354-R. Nevertheless an exceedance for wet weather cannot be used to justify the application of a TMDL to any</p>	See response to comment 4.3 above.
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**Comment Summary and Responses**  
**Comment Deadline: January 20, 2014**  
**Basin Plan Amendment for the Los Angeles Region to Incorporate Implementation Plans**  
**for the TMDLs for Metals in the Los Cerritos Channel and for**  
**Metals and Selenium in the San Gabriel River and Impaired Tributaries**

		<p>reach (see explanation below).</p> <p>Further, there is no urgency to extend a TMDL for an impaired reach to a non-impaired reach. A reach may not be impaired due to a variety of reasons. It may be located, as in the case of reaches in the Upper San Gabriel River, in a low urbanized area. Or an impairment may not exist because of permittee efforts in implementing effective stormwater management program plans. Another fact that the Regional Board overlooks is that the purpose of a TMDL, which is a "super" water quality standard, is to restore the beneficial use of a receiving water. If restoration is not required then why compel a permittee to comply with an illegitimate TMDL?</p> <p>To assert that a problem "may" arise in a non-impaired reach, without any scientific justification, constitutes "wishful thinking" and would require permittees to spend money needlessly on a non-existent problem. Further, effective outfall monitoring, which is a long-over due MS4 permit requirement, should provide an effective means of determining if there is a problem looming for a metal constituent in any of the reaches. It would also enable permittees, through the iterative process, to address exceedances early on, thereby preempting a reach from becoming impaired.</p> <p>-----</p> <p><sup>1</sup> SWAMP data generated in 2005 reported single ambient exceedance for copper in Walnut Creek of 9.88 ug/, slightly above the California Toxics Rule limit of 9.4 ug/l. The source of the exceedance appears to be Puddingstone Reservoir, which is a non-point source for these constituents.</p>	
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**Comment Summary and Responses**  
**Comment Deadline: January 20, 2014**  
**Basin Plan Amendment for the Los Angeles Region to Incorporate Implementation Plans**  
**for the TMDLs for Metals in the Los Cerritos Channel and for**  
**Metals and Selenium in the San Gabriel River and Impaired Tributaries**

5.4	City of Irwindale	<p>• <b>TMDL Compliance is Limited to Ambient Standards and Does Not Include Wet Weather Standards</b></p> <p>The Regional Board, in its comments, clings to the notion that wet weather waste load allocations must be complied with. It has said that the waste load allocation ("WLA") assigned to affected cities <i>in wet weather, and achievement of the WLA must be demonstrated under those conditions</i>. It provided no legal justification for this view.</p> <p>Wet weather standards are not recognized under federal or state law. This was affirmed by the State Board in water quality order 2001-15. In response to a petitioner's claim that State law requires the adoption of wet weather water quality standards, the State Board found:</p> <p style="padding-left: 40px;"><i>This contention is clearly without merit. There is no provision in state or federal law that mandates adoption of separate water quality standards for wet weather conditions.</i><sup>2</sup></p> <p>It should be noted that water quality standards also include TMDLs, which are ambient standards. Although there are numerous sources that point to water quality standards as being ambient standards, perhaps the most conspicuous is CFR 40, 122.44( d)(l )(iii):</p> <p style="padding-left: 40px;"><i>When the permitting authority determines ... that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a State numeric criteria within a State water quality standard for an individual</i></p>	See response to comment 4.4 above.
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**Comment Summary and Responses**  
**Comment Deadline: January 20, 2014**  
**Basin Plan Amendment for the Los Angeles Region to Incorporate Implementation Plans**  
**for the TMDLs for Metals in the Los Cerritos Channel and for**  
**Metals and Selenium in the San Gabriel River and Impaired Tributaries**

		<p><i>pollutant, the permit must contain effluent limits for that pollutant.</i></p> <p>A USEPA commissioned report also notes:</p> <p><i>... EPA is obligated to implement the Total Maximum Daily Load (TMDL) program, the objective of which is attainment of ambient water quality standards through the control of both point and nonpoint sources of pollution.<sup>3</sup></i></p> <p>USEPA defines ambient water quality as the:</p> <p><i>Natural concentration of water quality constituents prior to mixing of either point or nonpoint source load of contaminants. Reference ambient concentration is used to indicate the concentration of a chemical that will not cause adverse impact to human health.<sup>4</sup></i></p> <p>Various agencies engaged in water quality monitoring all conduct ambient water quality monitoring during dry weather. These include but are not limited to the State's Surface Water Ambient Monitoring Program (SWAMP), Southern California Coastal Water Research Project, and the Council for Watershed Health.</p> <p>Further, according to federal stormwater regulations, compliance with TMDLs and other water quality standards is determined by measuring stormwater discharges from the outfall. Ambient standards, which are amply discussed in numerous USEPA guidance documents, are "referents." Given that there is no such thing as a wet weather standard and that ambient standards have been set to protect or, in</p>	
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**Comment Summary and Responses**  
**Comment Deadline: January 20, 2014**  
**Basin Plan Amendment for the Los Angeles Region to Incorporate Implementation Plans**  
**for the TMDLs for Metals in the Los Cerritos Channel and for**  
**Metals and Selenium in the San Gabriel River and Impaired Tributaries**

		<p>the case of TMDLs, restore the health of a receiving water and its beneficial uses, then it stands to reason that compliance for an MS4 must be determined by comparing outfall stormwater discharges with ambient (dry weather) referent standards. Unfortunately, the Regional Board does not accept this view but instead clings to the notion that WLAs apply to wet weather.</p> <p>And while the Regional Board concedes that compliance may be demonstrated at the outfall, if there are no violations, staff has asserted that a violation can only be avoided if there are no exceedances detected by outfall monitoring. In other words, staff is of the opinion that the iterative process does not apply to the stormwater management program plan which is the essential compliance determinant for MS4 permits issue in California. This MS4 permit issue is under administrative challenge.</p> <p>-----</p> <p><sup>2</sup><i>State Water Resources Control Board Order WQ 2001-15, In the Matter of the Building Industry Association of San Diego County and Western Petroleum States Association, page 10.</i></p> <p><sup>3</sup><i>Assessing the TMDL Approach to Water Quality Management Committee to Assess the Scientific Basis of the Total Maximum Daily Load Approach to Water Pollution Reduction, Water Science and Technology Board, National Research Council, page 12.</i></p> <p><sup>4</sup>See USEPA Glossary and Acronyms- Water (<a href="http://water.epa.gov/scitech/ldataitools/warssslglossary.cfm">http://water.epa.gov/scitech/ldataitools/warssslglossary.cfm</a>).</p>	
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**Comment Summary and Responses**  
**Comment Deadline: January 20, 2014**  
**Basin Plan Amendment for the Los Angeles Region to Incorporate Implementation Plans**  
**for the TMDLs for Metals in the Los Cerritos Channel and for**  
**Metals and Selenium in the San Gabriel River and Impaired Tributaries**

5.5	City of Irwindale	<p>• <b>Non-Point Source TMDL Compliance</b></p> <p>The implementation plan specifies non-point source compliance that includes atmospherically deposited metals. It also includes copper, zinc, and lead from Puddingstone Reservoir which are 303(d) listed as non-point sources. The City has noted in its previous comments to the Regional Board that it cannot be subject to a non-point source TMDL. According to the <i>Clean Water Act Handbook</i>:</p> <p><i>Congress defines a point source as "any discernible, confined and discrete conveyance ... from which pollutants are or may be discharged. <u>It stands to follow that anything that is not a point source and yet conveys pollutants to our nation 's water is a non-point source</u> ... A point source is generally a discharge from a pipe or similar conveyance. A nonpoint source is <u>diffuse runoff</u> and as described by the United States Environmental Protection Agency (EPA) "is caused by rainfall or snowmelt moving over and through the ground carrying natural and human made pollutants into lakes, rivers, and streams, wetlands, estuaries, other coastal waters, and ground water. " <u>Atmospheric deposition</u> and hydrologic modification are also sources of nonpoint source pollution.<sup>5</sup></i></p> <p>From this it should be obvious that a non-point TMDL does not apply to an MS4 point source. Also, point sources are only subject to waste load allocations; non-point sources are subject to load allocations. Therefore, the City should not be subject to any loading that is atmospherically-related or related to any other non-point source.</p>	See response to comment 4.5 above.
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**Comment Summary and Responses**  
**Comment Deadline: January 20, 2014**  
**Basin Plan Amendment for the Los Angeles Region to Incorporate Implementation Plans**  
**for the TMDLs for Metals in the Los Cerritos Channel and for**  
**Metals and Selenium in the San Gabriel River and Impaired Tributaries**

		<p>The Regional Board attempts to evade comment on this issue by seeking refuge in the argument that State Board public hearing comments are <i>limited to the proposed implementation plans for the TMDLs and that comments on the TMDLs, which were previously established by USEPA are outside the scope of the hearing.</i> The City's comments are connected to the implementation of a USEPA adopted TMDL through an MS4 permit, as regulatory requirement- not the TMDL as a non-regulatory planning tool. The permit requires USEPA TMDLs to comply with BMPs, as is the case with the Caltrans MS4 permit. However, once made into a basin plan amendment, the TMDL will become a regulatory requirement that is binding on affected permittees through the permit and will require absolute compliance with TMDL numeric targets by any means necessary or, through a watershed management or enhanced watershed management program approach. Regardless of what option the City avails itself of permittees should not be required to comply with any non-point source TMDL through the MS4 permit because it would be extra-legal.</p> <p>-----  <sup>5</sup>See the <i>Clean Water Act Handbook, Second Edition</i>, page 192.</p>	
5.6	City of Irwindale	<p><b>• State Board Should Not Approve the Implementation Plan or Delay Such Approval Until After It Resolves the Administrative Petitions Challenging the MS4 Permit</b></p> <p>Many of the requirements contained in the implementation plan are under administrative petition. They include the legal validity of requiring: (I) compliance with wet weather waste</p>	See response to comment 4.6 above.

**Comment Summary and Responses**  
**Comment Deadline: January 20, 2014**  
**Basin Plan Amendment for the Los Angeles Region to Incorporate Implementation Plans**  
**for the TMDLs for Metals in the Los Cerritos Channel and for**  
**Metals and Selenium in the San Gabriel River and Impaired Tributaries**

		load allocations in the receiving water; (2) compliance with non-ambient standards; (3) compliance with non-point source TMDLs; (4) denying the iterative process for the stormwater management program; and (5) compliance with limitations on non-stormwater discharges from the MS4. If the State Board finds merit in any of these petition arguments and the implementation plan is adopted before hand, a revision of the implementation plan through a re-opener is likely to be needed. It should also be noted that the implementation plan as proposed by the Regional Board is unnecessary. The plan could take the form of the one proposed by Caltrans.	
5.7	City of Irwindale	In closing, the City is grateful for the opportunity to comment on this very important matter.	Comment noted.
6.1	Lower SGR Watershed Committee	The Lower San Gabriel River Watershed Committee, comprised of agencies tributary to Reach 1 and 2 and portions of Reach 3 of the San Gabriel River, held its regular meeting on January 16, 2014. At this meeting, the committee voted in favor of expressing <b>support</b> of the adoption and approval of the Implementation plan and schedule for the San Gabriel River (and as several agencies are also in the Los Cerritos Channel drainage area, support of that implementation plan and schedule as well).	Comment noted.
6.2	Lower SGR Watershed Committee	The adoption of Implementation Plans with Implementation Schedules is essential because these TMDLs were established by USEPA and EPA does not adopt implementation plans and schedules for TMDLs that they establish. Such plans and schedules are needed for realistic implementation of TMDLs, especially complex TMDLs such as metals TMDLs where	Comment noted.



**Comment Summary and Responses**  
**Comment Deadline: January 20, 2014**  
**Basin Plan Amendment for the Los Angeles Region to Incorporate Implementation Plans**  
**for the TMDLs for Metals in the Los Cerritos Channel and for**  
**Metals and Selenium in the San Gabriel River and Impaired Tributaries**

		sources are both direct and indirect and many of the sources are beyond the abilities of local governments to control.	
6.3	Lower SGR Watershed Committee	The Lower San Gabriel River Watershed Committee also appreciates recognition of pollution prevention, including true source control, in Findings 20 and 21. Both Watersheds have concluded that the most effective strategy for addressing water quality impairments in water bodies will be one based initially on a combination of source control (especially true source control), runoff reduction, and soil stabilization. The Watersheds based this conclusion on the fact that if pollutants are not generated or released, they will not be available for transport to receiving waters, and if dry-weather runoff can be eliminated or greatly reduced, a major transport mechanism will be eliminated or greatly reduced. The result of both of these measures will be that many fewer pollutants will reach the receiving waters.	Comment noted.
6.4	Lower SGR Watershed Committee	The Lower San Gabriel River Watershed Committee further appreciates the provision in the Basin Plan Amendment that, subject to Executive Officer approval, if our forthcoming Watershed Management Programs (WMPs) demonstrate that control measures and BMPs will achieve wet-weather water quality-based effluent limitations (WQBELs) consistent with the schedule in Tables 7-20.2 and 7-32.2, then compliance with wet-weather WQBELs may be demonstrated by implementation of these control measures and BMPs. The Reasonable Assurance Analysis required for a WMP will give us the opportunity to demonstrate that our programs of source control, runoff reduction, and soil stabilization, supplemented by LID, Green Streets, and other structural improvements, will achieve wet-weather water WQBELs consistent with the schedules in Tables 7-20.2 and 7-32.2.	Comment noted.

**Comment Summary and Responses**  
**Comment Deadline: January 20, 2014**  
**Basin Plan Amendment for the Los Angeles Region to Incorporate Implementation Plans**  
**for the TMDLs for Metals in the Los Cerritos Channel and for**  
**Metals and Selenium in the San Gabriel River and Impaired Tributaries**

6.5	Lower SGR Watershed Committee	Similar comments supporting the Basin Plan Amendments were previously made to the Los Angeles Regional Water Board, and urge you to approve the Final Basin Plan Amendment adopted by the Los Angeles Regional Water Quality Control Board.	Comment noted.
7.1	OC Public Works	<p>The County of Orange, OC Public Works, has reviewed the proposed amendment to the Water Quality Control Plan for the Los Angeles Region, adopted on June 6, 2013 by the Regional Water Quality Control Board- Los Angeles Region (Los Angeles Regional Board), to incorporate an Implementation Plan for Total Maximum Daily Loads for Metals and Selenium in the San Gabriel River and Impaired Tributaries (TMDL).</p> <p>Protection and restoration of all of our coastal resources is an important objective which we share with the State Water Resources Control Board. Our coastal resources are precious to the residents of Orange County, and efforts to protect them are appreciated. As a participant in the San Gabriel River Regional Monitoring Program, we are actively engaged with other watershed stakeholders to implement a comprehensive watershed monitoring program.</p>	Comment noted.
7.2	OC Public Works	We offer the following comments on the proposed Implementation Plan, which center on the jurisdiction of the Los Angeles Regional Board to act within Orange County. While the San Gabriel River watershed lies mostly within Los Angeles County, about half of the Coyote Creek subwatershed, which is tributary to the San Gabriel River, lies in Orange County and is under the jurisdiction of the Regional Water Quality Control Board- Santa Ana Region (Santa Ana	See response to comment 0.1. The commenter did not timely raise these concerns to the Los Angeles Water Board prior to its adoption of the implementation plans, which would be the most appropriate and effective forum to present comments concerning a proposed amendment to the Basin Plan. The commenter has also not explained why it was unable to raise these

**Comment Summary and Responses**  
**Comment Deadline: January 20, 2014**  
**Basin Plan Amendment for the Los Angeles Region to Incorporate Implementation Plans**  
**for the TMDLs for Metals in the Los Cerritos Channel and for**  
**Metals and Selenium in the San Gabriel River and Impaired Tributaries**

	<p>Regional Board). Prior to TMDL adoption and during the public comment period, OC Public Works raised the issue of jurisdiction, which was addressed in the TMDL adopted by the Los Angeles Regional Board. However, jurisdiction over Coyote Creek is not similarly addressed in the Implementation Plan.</p> <p>1) The Implementation Plan should explicitly recognize that part of the Coyote Creek subwatershed lies outside of the jurisdiction of the Los Angeles Regional Board and is therefore not bound by its decisions. Any and all implementation activities, if deemed necessary, should be incorporated into the Orange County Stormwater Permit at the sole discretion of the Santa Ana Regional Board.</p> <p>2) Under the proposed Implementation Plan, compliance can be demonstrated by showing either no violations of water quality-based effluent limits in receiving waters or at outfalls or by showing no discharge to receiving waters. Another option is to submit and implement a watershed management plan, subject to Executive Officer approval, that shows planned Best Management Practices (BMPs) will achieve wet weather water quality-based effluent limits. For the part of the Coyote Creek subwatershed that lies in Orange County, the Implementation Plan should explicitly state that the watershed management plan will be subject to approval by the Executive Officer of the Santa Ana Regional Board.</p> <p>3) The Implementation Plan allows that the monitoring program for the Los Angeles County Stormwater Permit should suffice for the required TMDL monitoring program.</p>	<p>comments before the Los Angeles Water Board.</p> <p>The State Water Board, however, notes that, while the County of Orange is not located within the jurisdictional boundaries of the Los Angeles Water Board, the Los Angeles Water Board may regulate any discharges that could affect the quality of the waters within its region. (Cal. Wat. Code § 13260(a)(1)). As the commenter notes, a large majority of the San Gabriel River watershed lies within the Los Angeles Water Board's jurisdiction. Much of the Coyote Creek subwatershed, which is an upstream tributary to the San Gabriel River, also lies within the Los Angeles Water Board's jurisdiction. Thus, discharges to Coyote Creek within the County of Orange could affect the quality of the waters within the County of Los Angeles. In the TMDL, USEPA assigns dry weather and wet weather allocations to both point and non-point sources in Coyote Creek because Coyote Creek is impaired and it also drains to the San Gabriel River. Therefore, discharges originating within the County of Orange may cause or contribute to exceedances of water quality standards in both Coyote Creek and the San Gabriel River.</p> <p>Both the Los Angeles and Santa Ana Water</p>
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**Comment Summary and Responses**  
**Comment Deadline: January 20, 2014**  
**Basin Plan Amendment for the Los Angeles Region to Incorporate Implementation Plans**  
**for the TMDLs for Metals in the Los Cerritos Channel and for**  
**Metals and Selenium in the San Gabriel River and Impaired Tributaries**

		<p>Similarly, the monitoring program for the Orange County Stormwater Permit should suffice for the required TMDL monitoring program. Any enhanced monitoring activities beyond those already required in the Orange County Stormwater Permit should be at the sole discretion of the Santa Ana Regional Board.</p> <p>4) Any stormwater permit compliance schedules for Orange County should be those specified by the Santa Ana Regional Board, which is expected to adopt a new MS4 permit for north Orange County in 2014.</p>	<p>Boards are required to incorporate the requirements of the TMDL into NPDES permits that it issues. Pursuant to 40 CFR section 122.44(d)(1)(vii)(B), the permitting authority shall ensure that effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of <i>any available</i> waste load allocation for the discharge <i>prepared by the State and approved by USEPA</i> pursuant to 40 CFR section 130.7 (emphasis added). The regulation does not limit those effluent limitations that must be included in NPDES permits to limitations implemented by the Regional Water Board issuing the NPDES permit. Therefore, any NPDES permit issued by the Los Angeles or Santa Ana Water Board must incorporate all applicable TMDLs, including the San Gabriel River Metals and Selenium TMDL.</p> <p>Notwithstanding the above, for matters that are subject to regulation by more than one regional water board, Water Code section 13228 provides a process whereby one regional board may designate another regional board to regulate certain discharges. Such a designation is conditioned on the affected person or entity submitting a written request to all affected</p>
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**Comment Summary and Responses**  
**Comment Deadline: January 20, 2014**  
**Basin Plan Amendment for the Los Angeles Region to Incorporate Implementation Plans**  
**for the TMDLs for Metals in the Los Cerritos Channel and for**  
**Metals and Selenium in the San Gabriel River and Impaired Tributaries**

			<p>regional boards, and all affected regional boards agreeing in writing to the designation. For example, the Cities of Claremont and Pomona raised similar concerns in 2012 in regards to the Los Angeles County MS4 Permit and the Santa Ana Water Board's Middle Santa Ana River Bacteria TMDL. Upon request by the Cities of Claremont and Pomona, the Los Angeles and Santa Ana Water Boards entered into an agreement designating the Santa Ana Water Board to regulate the Cities of Claremont and Pomona's MS4 discharges for compliance with the Middle Santa Ana River Bacteria TMDL. Accordingly, if the commenter is concerned with dual and/or possibly conflicting regulation by both the Los Angeles and Santa Ana Water Board for the TMDL, the State Water Board encourages the commenter to contact the Los Angeles and Santa Ana Water Boards to see whether the commenter's concerns could be addressed through a designation agreement.</p>
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