RUTAN
ATTORNEYS AT LAW

Richard Montevideo
Direct Dial: (714) 662-4642
E-mail: rmontevideo@rutan.com

11/15/06 Bd Mtg Item ___
San Gabriel River TMDL
Deadline: 10/27/06 12pm

VIA OVERNITE EXPRESS AND ELECTRONIC MAIL

Ms. Song Her
Clerk to the Board
State Water Resources Control Board
1001 I Street
Sacramento, California 95814

Re: Comment Letter—San Gabriel River Metals TMDL

Dear Ms. Her:

This comment letter is being submitted on behalf of the Cities of Bellflower and Downey, along with an ad hoc coalition of Los Angeles County Cities known as the Coalition for Practical Regulation ("CPR")[1] (the Cities of Bellflower, Downey and Signal Hill, and CPR are collectively referred to herein as the "Cities"). The Cities previously submitted extensive comments and exhibits to the Los Angeles Regional Water Quality Control Board ("Regional Board") in connection with the Regional Board's adoption of the Metals TMDL for the San Gabriel River and its tributaries ("TMDL" or "Metals TMDL"). This letter and attachments shall supplement the oral and written comments previously submitted to the Regional Board, and shall address various procedural errors committed by the Regional Board in the public hearing process leading up to the Regional Board's adoption of the Metals TMDL.

---

[1] The Coalition for Practical Regulation also known as "CPR" is an ad hoc group of municipalities in Los Angeles County committed to obtaining clean water through cost-effective and reasonable storm water regulations, and consists of the following Cities: Arcadia, Artesia, Baldwin Park, Bell, Bellflower, Bell Gardens, Bradbury, Carson, Cerritos, Commerce, Covina, Diamond Bar, Downey, Gardena, Hawaiian Gardens, Industry, Irwindale, La Canada Flintridge, La Mirada, Lakewood, Lawndale, Monrovia, Montebello, Monterey Park, Norwalk, Palos Verdes Estates, Paramount, Pico Rivera, Pomona, Rancho Palos Verdes, Rosemead, Santa Fe Springs, San Gabriel, Sierra Madre, Signal Hill, South El Monte, South Gate, South Pasadena, Temple City, Vernon, Walnut, West Covina, and Whittier.

A. THE REGIONAL BOARD FAILED TO COMPLY WITH THE REQUISITE NOTICE AND HEARING REQUIREMENTS WHEN ADOPTING THE METALS TMDL.

In accordance with Public Resources Code section 21177, oral and/or written comments may be submitted on a proposed project under the California Environmental Quality Act ("CEQA") "prior to the close of the public hearing on the project." Attached hereto and marked as Exhibit "A" is a true and correct copy of a letter dated July 12, 2006, to Ms. Jenny Newman of the Regional Board, which letter contains additional CEQA comments in response to some of the Regional Board's staff's Responses to Comments circulated on July 10, 2006, just three days before the public hearing and two days before Exhibit "A" was submitted. In spite of the obligation of the Regional Board to accept all comments on this TMDL project up to the close of the public hearing, and in spite of the fact that these comments all concerned Responses to Comments circulated by the Regional Board just two days before Exhibit "A" was sent, the Regional Board Chair at the hearing refused to accept Exhibit "A" and refused to admit it into the Administrative Record.

The comments contained in Exhibit "A" show several additional defects in the CEQA analysis conducted by the Regional Board, and further confirm the need for the Regional Board to have prepared an environmental impact report ("EIR"), or the functional equivalent of an EIR, prior to approving the TMDL project. In light of the Regional Board's failure to prepare an EIR, or its functional equivalent, and to address the additional comments in Exhibit "A" submitted to it on July 12, 2006, the Regional Board abused its discretion.

Second, under Public Resources Code section 21092.5(a), the Regional Board was required to provide "at least ten days notice" of its responses to public agency comments, prior to the hearing on the Metals TMDL. Attached hereto and marked as Exhibit "B" is a true and correct copy of a second letter dated July 12, 2006 to Ms. Jenny Newman of the Regional Board, notifying the Regional Board of its obligation to provide this 10-day notice, and requesting that the public hearing on the Metals TMDL be continued until such time as the requisite notice requirements under CEQA were complied with.

At the hearing on July 13, 2006, the Board Chair, although acknowledging the Regional Boards' receipt of both Exhibits "A" and "B," refused to consider of these exhibits or to admit them into the record, and further refused to continue the hearing so as to comply with the requisite notice period under CEQA in providing responses to public agency comments.

As the Metals TMDL in question was adopted without the Regional Board providing a full and fair opportunity for the submission of comments prior to the close of the public hearing, and without said Board complying with the ten day notice requirement in responding to comments, the State Board must remand the TMDL back to the Regional Board to adequately provide the Cities and the public with sufficient time to review and comment on the Responses to Comments, and to consider the additional comments provided by the Cities prior to the close of the public hearing.

B. THE REGIONAL BOARD ABUSED ITS DISCRETION BY FAILING TO COMPLY WITH STATE AND FEDERAL LAW WHEN ADOPTING THE TMDL.

1. The Regional Board Failed to Comply With CEQA Before Adopting the TMDL.

CEQA required the Regional Board to conduct "an analysis of the reasonably foreseeable impacts of construction and maintenance of pollution control devices or mitigation measures" and to "explain the reasons for its actions to afford the public and other agencies a meaningful opportunity to participate in the environmental review process, and hold it accountable for its actions." (*City of Arcadia, et al. v. State Water Resources Control Board, et al.* (2006) 135 Cal.App.4th 1392, 1425-26 ("*City of Arcadia*").) In *City of Arcadia*, the Court invalidated the Trash TMDL for the Los Angeles River "on CEQA grounds," finding that the Boards' CEQA analysis was "inadequate," and directing that the Trash TMDL be remanded back to the Boards "for the preparation of an EIR or tiered EIR or functional equivalent." The Court held that an EIR in that case was required "since the Trash TMDL itself presents substantial evidence and a fair argument that significant environmental impacts may occur." (*Id.* at 1424.)

As reflected in the comments and exhibits submitted to the Regional Board, there is substantial evidence showing the existence of potentially significant adverse environmental impacts that will result to the environment if the Metals TMDL for the San Gabriel River, as proposed, is adopted. Yet, the Regional Boards' analysis contains nothing but "bare conclusions or opinions" and lacks the "detail sufficient to enable those who did not participate in this preparation to understand and to consider meaningfully the issues raised by the proposed project." (*Preservation of Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1351 ("Preservation Action Council"), quoting *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 404-405.)

In this case, the measures proposed by the Regional Board to implement the TMDL will result in potentially significant adverse impacts to the environment similar to those created by the full capture devices proposed with the invalidated Trash TMDL for the Los Angeles River. Yet, the environmental analysis conducted by the Regional Board for this Metals TMDL was plainly

nothing more than, at best, the functional equivalent of a "mitigated negative declaration." However, just as a negative declaration was inappropriate for the Trash TMDL, and given that CEQA provides a low threshold for requiring an EIR, the failure of the Regional Board to prepare an EIR or its functional equivalent, prior to adopting the subject Metals TMDL, was action contrary to law and an abuse of discretion.

2. The Regional Board Failed to Fully Consider the "Economic" Impacts of the Proposed Metals TMDL, as Required by Law.

The subject Metals TMDL is based on the United States Environmental Protection Agency's ("EPA") California Toxic Rule ("CTR"), adopted by EPA in May of 2000. In adopting CTR, EPA made various policy statements either in the Preamble to CTR, and/or in its Responses to Comments, which confirmed that EPA did not anticipate that CTR would cause significant "economic" impacts on municipalities, and further finding that municipalities would not be required to impose costly "end of pipe treatment controls" to comply with CTR's terms.

In EPA's Responses to Comments on the issue of costs, EPA confirmed it was not analyzing the cost impacts of CTR on stormwater discharges, stating:

> **"EPA believes there is inadequate information at the current time to conclude whether CTR will have any cost impact on storm water discharges. Until that information is available, it is premature to project that storm water discharges would be subject to strict numeric WQBELs and would incur any cost beyond those which they are already legally responsible under the Clean Water Act."** (See Exhibit "3" to the Cities' Comments submitted to the Regional Board, EPA's Response to CTR-013-003; emph. added.)

EPA further claimed in connection with the application of CTR to municipal wet weather discharges, that: "***EPA believes the applicability of water quality standards to storm water discharges is outside the scope of the rule,***" (Exh. "3," EPA Response to CTR-040-014b), and that the "***inclusion of end-of-pipe treatment costs for storm water are inappropriate.***" (See Exh. "3," CTR [65 Fed. Reg. 31682], and selected portions of EPA's Response to Comments thereon).

Thus, in adopting CTR, EPA expressly excluded from its "economic" analysis, the impact of CTR on municipal dischargers governed by an NPDES permit. Instead, EPA estimated the economic impacts of CTR for the entire State of California at $33.5 million (under a low scenario), and at $61 million (under a high scenario). These figures must be compared and contrasted with the Regional Board's costs of up to $1.9 billion in capital costs alone, for

compliance by the cities and Caltrans for the San Gabriel River Region only, and $205 million annually thereafter, as estimated by the Regional Board for the municipalities to achieve just 60% of the necessary reductions for the Metals TMDL.

Moreover, in a November 22, 2002 EPA Guidance Memorandum for establishing TMDLS entitled, "Establishing Total Maximum Daily Load (TMDL) Waste Load Allocation (WLAs) for NPDES Permit Requirements Based on Those WLAs" ("EPA Guidance Memo," see Exh. "2" to the Cities' Comments to the Regional Board), EPA explained that for NPDES-regulated municipal stormwater discharges, any water quality based effluent limit based on those discharges (which would include the Metals TMDL) are to be ***"in the form of BMPs, and that numeric limits would be used only in 'rare instances.'"*** (EPA Guidance Memo, Exh. "2," p. 2; emph. added.) EPA further recommended that ***"for NPDES-regulated municipal . . . discharges, effluent limits are to be expressed as Best Management Practices or other similar requirements, rather than numeric effluent limits."*** (*Id.* at 4.) According to the EPA Guidance Memo:

> If it is determined that a BMP approach (including an iterative BMP approach) is appropriate to meet the stormwater component of the TMDL, **EPA recommends that the TMDL reflect this.** (*Id.* at 5; emph. added.)

The subject Metals TMDL sets forth very specific "numeric targets" based on the "CTR criteria," with the municipal permittees being required to meet all such "numeric targets." (See Proposed Basin Plan Amendment, p. 12, "[e]ach municipality . . . will be required to meet the WLAs . . . .") Accordingly, here, the Cities are not being provided an opportunity to comply with the TMDL through an iterative BMP approach, but rather are being required to strictly comply with the numeric limits set forth in the TMDL. However, the "economic" impacts of having to strictly comply with CTR were never considered by EPA, and have not yet been analyzed by the Regional Board in connection with the Metals TMDL. As such, the requirements of State and federal law, as discussed in detail in the prior comments on this TMDL submitted to the Regional Board, have not been complied with.

To be sure that the Metals TMDL numeric limits will be imposed as strict numeric water quality standards upon the municipalities, one need only review the recent modifications made by the Regional Board to the MS4 NPDES Permit for Los Angeles County, to incorporate the Santa Monica Bay Bacteria TMDL waste load allocations. The Permit modifications approved by the Regional Board on September 14, 2006, incorporate into the Permit the strict numeric bacteria limits set forth in the Santa Monica Bay Bacteria TMDL, both as absolute "Discharge Prohibitions" under new section Part 1.B of the Permit, as well as strict numeric "limits" in the "Receiving Water Limitations," section of the Permit, with the adoption of new Part 2.5 to the

Permit (i.e., "discharges of bacteria from MS4s into the Santa Monica Bay that caused or contributed to exceedances in the wave wash of the applicable bacteria objectives").

The referenced "applicable bacteria objectives" appear in the new Part 2.5 of the Permit, and are to include both the "single sample and geometric mean bacteria objectives set to protect the water contact recreation (Rec-1) beneficial use, as set forth in the Basin Plan" (footnoted in the NPDES Permit as being in accordance with the Santa Monica Beaches Bacteria TMDL's Coordinated Shoreline Monitoring Plan dated April 7, 2004.) It is also important to note that new Part 2.5 of the MS4 Permit falls outside of the iterative BMP process provided for in the Permit. (A copy of the relevant portions of the modified Permit terms from the Regional Board's September 14, 2006 decision on the Permit Reopener are attached hereto and marked as Exhibit "C.")

The incorporation of the Bacteria waste load allocations into the Permit was performed by the Regional Board on September 14, 2006, just two months after said Board's approval of the subject Metals TMDL. The Permit Reopener for the Bacteria TMDL is, thus, clear evidence that the Regional Board intends on imposing the waste load allocations contained in the subject Metals TMDL as strict numeric limits on the municipalities under the Discharge Prohibitions section of Part 1 of the Permit, as well as under the Receiving Water Limitations section under Part 2 of the Permit but outside of the iterative process.

Yet, not surprisingly, there has been no "economic" analysis by the Regional Board, of strictly complying with such numeric limits, i.e., the Metals TMDL WLAs. Further, EPA, as discussed above, similarly never considered the "economic" impacts of municipalities having to strictly comply with the numeric limits set forth in CTR. Instead, EPA refused to analyze the "economic" impacts of CTR on municipalities, in light of its position that the applicability of water quality standards to storm water discharges was outside the scope of the Rule (CTR), and its belief it was premature to project that storm water discharges would be subject to strict numeric limits or would incur "any costs beyond those which they are already legally responsible under the Clean Water Act." (Exh. "3" to Cities' Comments to the Regional Board, EPA Response to CTR – 040-014b.) As no agency has yet conducted the requisite "economic" analysis, there has been no compliance with Water Code sections 13000, 13240, and 13241, or the economic and fiscal analysis provisions under federal law.

For example, as discussed in the comments submitted to the Regional Board, the Regional Board failed to consider the "land acquisition" and relocation costs for displaced property owners, costs that are reasonably foreseeable and that will very likely result from the TMDL Project. As described in Exhibit "54" submitted to the Regional Board, this cost figure for residential property alone is estimated at approximately ***$6 billion***. (See Exh. 54 to Cities' Comments to the Regional Board, "Impacts on Housing from the Metals TMDL for the San

Gabriel River," dated June 14, 2006, prepared by the Gateway Cities Council of Governments). Further, the $6 billion figure does not include the cost of acquiring commercial and/or industrial property to install the structural BMPs in non-residential areas, estimated in the Comments submitted to the Regional Board to cost an additional ***$2.4 billion***, bringing the total land acquisition and relocation costs ignored by the Regional Board up to approximately ***$8.4 billion***.

The failure of EPA, and now the Regional Board, to consider the economic impacts of complying with these standards, combined with the failure of both the State and Regional Boards to consider such "economic" impacts at the time the water quality standards were adopted, with both Boards consistently contending that such economic analysis need only be conducted at the time that the water quality standards are first adopted, is nothing short of the "unseemly bureaucratic bait-and-switch" gamesmanship condemned by Justice Brown in her concurring opinion in the case of *Burbank v. SWRCB* (2005) 35 Cal.4th, 613. In *Burbank*, Justice Brown commented on the Regional Board's tactics, labeling them "bait and switch," and asserting the Regional Board appeared to be playing a game of "gotcha."

> For example, as the trial court found, the Board did not consider costs of compliance when it initially established its basin plan, and hence the water quality standards. The Board thus failed to abide by the statutory requirements set forth in Water Code section 13241 in establishing its basin plan. Moreover, the Cities claim that the initial narrative standards were so vague as to make a serious economic analysis impracticable. Because the Board does not allow the Cities to raise their economic factors in the permit approval stage, they are effectively precluded from doing so. **As a result, the Board appears to be playing a game of "gotcha" by allowing the Cities to raise economic considerations when it is not practical, but precluding them when they have the ability to do so.** (*Id.* at 632, J. Brown, concurring.)

Justice Brown also concluded that the last time the narrative water quality objectives for "toxicity" contained in the Basin Plan were reviewed and modified was in 1994, a fact not denied by the Regional Board, and went on to state:

> **Accordingly, the Board has failed its duty to allow public discussion – including economic considerations – at the required intervals when making its determination of proper water quality standards.**
>
> **What is unclear is why this process should be viewed as a contest. State and local agencies are presumably on the same**

> **side. The costs will be paid by taxpayers and the Board should have as much interest as any other agency in fiscally responsible environmental solutions.**
>
> . . .
>
> **In light of the Board's initial failure to consider costs of compliance and its repeated failure to conduct required triennial reviews, the result here is an unseemly bureaucratic bait-and-switch that we should not endorse.** (*Id.* at 632-33, J. Brown concurring.)

Justice Brown concluded her comments by stating that the Regional Board's actions in that case: "***makes me wanna holler and throw up both my hands.***" (*Id.* at 634.) The Board's continued unwillingness to consider the Water Code section 13241 factors and section 13000 policies similarly makes the Cities "wanna holler and throw up [their] hands," as the Board has consistently refused to give genuine consideration to the real "economic" impacts the subject TMDL will have on the public and the municipalities.

The Regional Board's steadfast refusal to properly and fully consider the true "economic" impacts of its decision is particularly troubling, given the clear evidence that the issue of "economics" has never been considered in the establishment of the existing water quality standards, and particularly, in connection with the strict application of such water quality standards to urban runoff and storm water. (*See Burbank v. SWRCB, supra,* 35 Cal.4th 613, 623 [noting that the trial court "found no evidence that the Los Angeles Regional Board had considered economic factors" when it adopted the Basin Plan.) The TMDL must be remanded back to the Regional Board for a complete "economic" analysis as required by law.

3. The Proposed Metals TMDL Imposes Strict Numeric Limits Which Are Not Reasonably Achievable and Which Are Thus Contrary to State and Federal Law

As is evidenced from the language in the Basin Plan Amendment approved by the Regional Board in connection with its adoption of the subject Metals TMDL, as well as from the recent action of the Regional Board in amending the existing municipal NPDES Permit for Los Angeles County to require strict compliance with the waste load allocations in the Bacteria TMDL in Santa Monica Bay, with the subject Metals TMDL, the Regional Board is seeking to impose strict numeric metal limits on municipalities with its adoption of the TMDL.

The Basin Plan Amendment approved by the Regional Board, for example, provides that: (1) "Each municipality and permittee will be required to meet the WLAs shared by the MS4 and

Caltrans Permittees at the designated TMDL effectiveness monitoring points" (Basin Plan Amendment, p. 12); and (2) "Each NPDES Permit assigned a WLA shall be reopened or amended at reissuance in accordance with applicable laws, to incorporate effluent limitations that implement the applicable WLAs as permit requirements" (Basin Plan Amendment, p. 9).

Further the Regional Board's Staff Report confirms that the only flexibility provided to the municipalities in complying with the TMDL is in the ***measures*** that may be used to achieve compliance, but provides no flexibility in actually achieving compliance, i.e., there is no flexibility in meeting the numeric metal limits, as the Staff Report makes clear that the wasteload allocations are to be "achieved." (Staff Report, p. 53.)

Further, from the recent Permit Reopener approved by the Regional Board on September 14, 2006, amending the existing 2001 Municipal NPDES Permit to incorporate into the Permit the waste load allocations for the Bacterial TMDL (see Exhibit "C"), it is apparent that the Metals TMDL will be strictly incorporated into the Permit by the Regional Board, as both a set of "Discharge Prohibition" and strict numeric effluent limits under the "Receiving Water Limitations" section of the Permit. As discussed in the previous Comments submitted to the Regional Board, and below, imposing such strict numeric requirements upon the municipalities is not only contrary to State and federal law, it is similarly contrary to the conclusions of the Numeric Limits Panel's Report commissioned by the State Board.

First, federal law does not require that municipalities strictly comply with numeric limits in a TMDL. In EPA's November 22, 2002 Policy Memo (Exh. "3" to Cities' Comments to the Regional Board), EPA confirmed that municipalities are not required to strictly comply with TMDLs, as they are not required to strictly comply with numeric limits:

> EPA expects that most WQBELs [water quality based effluent limits] for NPDES-regulated municipal and small construction storm water discharges will be in the form of BMPs, **and that numeric limits will be used only in rare instances**.
>
> When a non-numeric water quality based effluent limit is imposed, the permit's administrative record, including the fact sheet when one is required, needs to support that the BMPs are expected to be sufficient to implement the WLA in the TMDL. (*Id.* at p. 2; emph. added.)
>
> * * *
>
> EPA's policy recognizes that because storm water discharges are due to storm events that are highly variable in frequency and duration and are not easily

> characterized, **only in rare cases will it be feasible or appropriate to establish numeric limits for municipal and small construction storm water discharges.** (*Id.* at p. 4; emph. added.)
>
> * * *
>
> Under certain circumstances, BMPs are an appropriate form of effluent limits to control pollutants in storm water. See 40 C.F.R. § 122.44(k)(2) & (3). If it is determined that a BMP approach (including an iterative BMP approach) is appropriate to meet the storm water component of the TMDL, **EPA recommends that the TMDL reflect this.** (*Id.* at p. 5; emph. added.)

In *Defenders of Wildlife v. Browner*, 191 F.3d 1159 (9th Cir. 1999) ("*Defenders*"), a group of environmental organizations challenged EPA's decision to issue a municipal NPDES Permit because of its failure to require the cities in that case to strictly comply with water quality standards. (*Id.* at 1161.) Rather than requiring strict compliance, EPA instead required that the cities comply with a series of "best management practices," concluding that such BMPs were sufficient to insure compliance with the State's water quality standards. (*Id.*) On the precise issue raised in the *Defenders* case on whether the Clean Water Act ("CWA") required municipalities to strictly comply with water quality standards, the *Browner* Court held that: "Congress did not require municipal storm sewer discharges to strictly comply with 33 U.S.C. § 1311(b)(1)(C)." (*Id.* at 1166.)

Similarly, the plain language of the Clean Water Act does not require municipalities to strictly comply with water quality standards, and instead only imposes a "maximum extent practicable" standard upon storm water and urban runoff discharges. (See 33 U.S.C. § 1342(b)(3)(B)(iii).)

Moreover, in State Board Order No. WQ2001-15, this Board confirmed its policy that municipalities are not required to strictly comply with water quality standards, instead finding that:

> Compliance is to be achieved over time, through an iterative approach requiring improved BMPs. As pointed out by the Browner court, there is nothing inconsistent between this approach and the determination that the clean water act does not mandate strict compliance with water quality standards. **Instead, the iterative approach is consistent with U.S. EPA's general approach to storm water regulation, which relies on BMPs instead of numeric effluent limitations.** (See State Board Order No. 2001-15. Exh. "24," to Cities' Comments to the Regional Board, p. 7; emph. added.)

* * *

> **We will generally not require "strict compliance" with water quality standards through numeric effluent limitations and we will continue to follow an iterative approach, which seeks compliance over time.** The iterative approach is protective of water quality, but at the same time considers the difficulties of achieving full compliance through BMPs that must enforced throughout large and medium municipal storm sewer systems. (Id. at 8; emph. added.)

In addition, the State Board recently convened a panel of recognized experts to address whether or not it is feasible to develop numeric limits for storm water permits, including municipal storm water permits. In September of 2005, this Panel heard presentations and testimony from various regional board representatives, including the Los Angeles Regional Board, along with testimony from the regulated and the environmental communities. This Panel then issued a report in June of 2006, which Report concluded that ***"it is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban discharges."*** (Storm Water Panel Recommendations for the California State Water Resources Control Board, The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated With Municipal, Industrial, and Construction Activities, June 19, 2006, attached as Exhibit "D" to these Comments, p. 8.)

Moreover, in accordance with EPA's statements in connection with the adoption of CTR, it is further clear that with respect to CTR specifically, that EPA is not requiring municipalities to strictly comply with the numeric objectives set forth in CTR. To the contrary, CTR provides that it contains "no federal mandates" for state, local, or tribal government or the private sector. (65 Fed. Reg. 31682, 31708.) In fact, rather than imposing a federal mandate, and requiring the State of California to apply the CTR limits as strict water quality standards on municipalities, EPA indicated the opposite:

> EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This rule establishes ambient water quality criteria which, by themselves do not directly impact any entity. The State will implement these criteria by insuring that NPDES permits result in discharges that will meet these criteria. **In so doing, the State will have considerable discretion.**
>
> . . .

> Under the CWA water quality standards program, States must adopt water quality standards for their waters that must be submitted to EPA for approval.
>
> . . .
>
> Thus, under the CWA, EPA's promulgation of water quality criteria or standards establishes standards that the State, in turn, implements through the NPDES permit process. **The State has considerable discretion in deciding how to meet the water quality standards and in developing discharge limits as needed to meet the standards**. In circumstances where there is more than one discharger to a water body that is subject to water quality standards or a criteria, a State also discretion in deciding on the appropriate limits for the different dischargers. While the State's implementation of federally-promulgated water quality criteria or standards may result indirectly in new or revised discharge limits for small entities, the criteria or standards themselves do not apply to any discharger, including small entities.
>
> Today's rule, as explained above, does not itself establish any requirements that are applicable to small entities. As a result of EPA's actions here, the State of California will need to ensure that permits it issues include limits as necessary to meet the water quality standards established by the criteria in today's rule. **In so doing, the State will have a number of discretionary choices associated with permit writing**. While California's implementation of today's rule may ultimately result in some new or revised permit conditions for some dischargers, including small entities, EPA's action today does not impose any of these as yet unknown requirements on small entities.

(65 Fed. Reg. 31682, 31708-709; emph. added.)

EPA also confirmed that CTR is not a "federal requirement" by its comment in its separate economic analysis of CTR, where it stated that "***the State of California has 'significant flexibility and discretion***' as to how it chooses to implement the CTR within the NPDES permit program." (Exh. "39" to Cities' Comments to the Regional Board, *Economic Analysis of the California Toxic Rule,* October 1999, prepared for EPA, p. ES-2.) EPA concluded that CTR was not to have a direct effect on NPDES sources not typically subject to numeric water quality based effluent limits or urban runoff, and that "***compliance with water quality standards***

through the use of best management practices (BMPs) is appropriate." (65 Fed. Reg. 31682, 31703.)

Still additional statements by EPA confirm that municipalities are not required to strictly comply with the CTR numeric objectives, and thus that the subject Metals TMDL should not impose strict numeric limits upon the municipalities. In its Response to Comments to CTR, EPA stated that:

> **EPA believes that the CTR language allows for the practice of applying the maximum extent practicable standard to MS4 permits, along with best management practices (BMP) as effluent limits to meet water quality standards where infeasible or insufficient information exists to develop WQBELS.** (Exh. "3," CTR-040-004; emph. added.)

In addition, in comments by EPA to address concerns over compliance with a "zero" Trash TMDL for the Los Angeles River, EPA recognized that there are other means of implementing TMDLs, other than through NPDES Permits, concluding that TMDLS "may be implemented through permits for point sources (including municipal storm water discharges in the Los Angeles area), ***as well as through other federal, state, and local regulations, ordinances, or voluntary incentive-based programs."*** (See Exh. "E" hereto, a letter dated July 31, 2002 from the EPA Administrator, Christine Todd Whitman, to the Honorable Stephen Horn, with attached "Detailed Responses to Concerns Raised by Congressman Horn, the Coalition for Practical Regulation, and the City of Signal Hill, California," p. 1 thereto.)

In light of the flexibility EPA has recognized exists for implementing TMDLs through means other than by incorporation into an NPDES Permit, and given the Numeric Limit Panel's conclusions, as well as the State Board's policy as is set forth in Order WQ 2001-15 (to not require that municipalities strictly comply with water quality standards), the Cities assert that the best approach for the implementation of the subject TMDL is through a Memorandum of Understanding ("MOU") between the affected Cities and the State and Regional Boards. Such MOU would outline the various implementation measures to be implemented to comply with the TMDL finally adopted, along with a time frame for implementation, as well as other measures which the Boards and the Cities agree to collectively undertake to address non-point source discharges of metals, e.g., atmospheric deposition. The Metals TMDL should, moreover, "reflect" the fact that it will be implemented through an MOU or other appropriate means, through reasonable, MEP-compliant BMPs, and other than through the incorporation and strict compliance with its waste load allocations via amendment to the Municipal NPDES Permit.

In addition to federal law and policy, California Water Code sections 13000, 13240 and 13241 only authorize the Boards to regulate water quality to "obtain the highest water quality

which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible," and require that the Boards, when adopting water quality objectives, to consider whether the water quality conditions "***could reasonably be achieved.***" The Regional Board conducted no such analysis when it adopted the subject Metals TMDL, and failed to determine whether, in fact, strictly complying with the waste load allocations "could reasonably be achieved" or whether they were "reasonable" in light of the water quality conditions in question. Thus, requiring strict compliance with the waste load allocations in the Metals TMDL is contrary to law and an abuse of discretion.

Accordingly, any attempt to amend the existing Permit to include the waste load allocations in the subject Metals TMDL either as strict Receiving Water "limits" or as a "Discharge Prohibitions" in the MS4 Permit, as was done with the Bacteria TMDL, would be an abuse of discretion. As discussed, imposing any kind of numeric limit on municipalities is not authorized by federal law, and State law requires a further "economic" and "reasonableness" analysis before such limits may be imposed.

Moreover, federal law does not authorize imposing such a "Discharge Prohibition" on municipalities to prohibit the existence of any particular metal pollutant (or any other pollutant) that finds its way into urban runoff. Rather, the Discharge Prohibition section of the Permit is to only require municipalities to effectively prohibit "illicit discharges." (See 40 CFR § 122.26(d)(2)(i)(B).) Such an attempt to recharacterize urban runoff as a "Discharge Prohibition" and to thereafter subject the municipalities to violations and fines because of the existence of metals in runoff, is turning the requirements concerning "illicit discharges" on their head.

Section 1342(p)(3)(B)(ii) of the Clean Water Act provides, in relevant part, as follows:

> Permits for discharges from municipal storm sewers –
>
> ...
>
> (ii) shall include a requirement to **effectively prohibit non-stormwater discharges** into the storm sewers;

The regulations to the CWA (consistent with this language in the Clean Water Act), provide that municipal permittees are to have adequate legal authority to, among other things: "Prohibit through ordinance, order or similar means, ***illicit discharges*** to the municipal separate storm sewer." (40 CFR § 122.26(d)(2)(i)(B).) The term "***illicit discharge***" is defined in the regulations to mean: "any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES Permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from firefighting activities." (40 CFR § 122.26(b)(2).)

In light of the language under the CWA, as well as the regulations concerning "illicit discharges," the "Discharge Prohibition" section of a municipal NPDES Permit is only to be a requirement for municipalities to "effectively prohibit non-stormwater discharges into the MS4," i.e., to prohibit illicit discharges. It is, therefore, a misuse of the Discharge Prohibition section of a municipal NPDES Permit to require municipalities to eliminate the existence of any particular pollutant that may arise from the environment. Such a use of the "Discharge Prohibition" section of the MS4 Permit is a misapplication of the CWA and its regulations, and is contrary to law.

The subject Metals TMDL should be remanded back down to the Regional Board to incorporate appropriate language within the TMDL Basin Plan Amendment, as well as the Staff Report, to make clear that strict compliance with the wasteload allocations will not be required and to clarify that compliance may be achieved through the use of iterative BMPs. Further, the State Board should provide direction to the Regional Board that any wasteload allocation within the Metals TMDL should not be translated into a "Discharge Prohibition" within the municipalities municipal NPDES Permit.

4. The Proposed Metals TMDL Improperly Assigns Responsibility for Atmospheric Deposition to the Municipalities.

In a recent letter submitted by the State Board to EPA, the State Board stressed that "atmospheric deposition" was a significant source of pollutants in California waters. In an April 14, 2006, letter from the State Board to EPA, this Board stated:

> **There is strong support from the regulative community affected by TMDLs to establish atmospheric deposition load allocations in the TMDLs that affect them. At present we are struggling to identify the exact contribution of atmospheric deposition for inclusion in the TMDLs we are developing.** (See Exh. "57" to Cities' Comments to the Regional Board, p. 4; emph. added.)

The State Board letter then goes on to request that EPA not adopt rule changes that could result in increased atmospheric deposition, with the State Board expressing concern that the State Board ***"will not be able to fully address . . . impaired water bodies until the component of atmospheric deposition is understood and quantified."*** (*Id.*, emph. added.)

In adopting the Metals TMDL for the San Gabriel River, the Regional Board took the position that atmospheric deposition, once it is deposited on city streets, sidewalks, and public

and private lands, etc., becomes the obligation of the municipalities to address.[2] This position is clearly contrary to the approach proposed by the State Board in connection with its communication to EPA, and given the significant problems created by atmospheric deposition, as recognized by all parties, the subject TMDL should be remanded back down to the Regional Board so as to properly characterize atmospheric deposition as a non-point source, and to exclude it from the municipalities' responsibilities. (Also see, Exhibits "F" and "G" hereto, respectfully, which are transcripts from the State Board's workshop (October 5, 2005) and formal hearing (October 20, 2005), approving the Metals TMDL for the Los Angeles River, wherein the State Board members consistently express concerns over holding municipalities responsible for atmospheric deposition, a source over which they have no control.)

Moreover, the Municipal Permit adopted by the Santa Ana Regional Water Quality Control Board for the northern portion of the County of Orange expressly recognizes that Municipal Permittees are not responsible for pollutants caused by aerial deposition:

> **The permittees may lack legal jurisdiction over storm water discharges into their systems** from some State and Federal facilities, utilities and special districts, Native American tribal lands, waste water management agencies and other point and non-point source discharges otherwise permitted by the Regional Board. The Regional Board recognizes that the permittees should not be held responsible from such facilities and/or discharges. **Similarly, certain activities that generate pollutants present in storm water runoff may be beyond the ability of the permittees to eliminate. Examples of these include operation of internal combustion engines, atmospheric disposition, brake pad wear, tire wear and leaching of naturally occurring minerals from local geography.**

(See Exh. 61 to Cities' Comments to the Regional Board, California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2002-0010, p.6, Finding 16 [emph. added].)

Further, reports on atmospheric deposition issued by EPA support the characterization of atmosphere deposition as a non-point source. In its Frequently Asked Questions About Atmospheric Deposition (Exh. "33" to Cities' Comments to the Regional Board), EPA stated: "***It is often difficult to make a direct connection between emissions of any pollutant at one***

---

[2] In the Basin Plan Amendment adopted by the Regional Board, the Regional Board asserts that: "Once metals are deposited on land under the jurisdiction of a storm water Permittee, they are within a Permittee's control and responsibility." Also see, Regional Board Staff Report, p. 26, where Regional Board Staff stated that: "The loading of metals associated with indirect atmospheric deposition are accounted for in the estimates of the storm water loading."

location and deposition at another. Emissions from a particular source may spread over a wide area and deposit in several watersheds. In addition, deposition rates in any watershed are probably ***due to a large number of sources and a variety of meteorological patterns***." (Exh. "33" to Cities' Comments to the Regional Board, p. 6; emph. added.)

Additional evidence that atmospheric deposition should not be considered a point source to be assigned to municipalities as a part of their waste load allocation, is contained in the State Board's "Total Maximum Daily Loads (TMDL) Questions & Answers" taken from its website. (See Exh. "G" attached hereto.) In response to the question: **"What is the difference between point and nonpoint sources of pollution and how does this relate to TMDLs?"** the State Board answered as follows:

> A: Point sources release pollutants from discrete conveyances, such as a discharge pipe from a factory and are defined in statute. Nonpoint sources release pollutants from landscape scale features and include such features as parking lot runoff, agricultural field runoff, and dust and **air pollution from human activities [considered everything that is not covered under the point source definition].** TMDLs must allocate loads for both point and nonpoint sources. (See Exh. "H," p. 1, bolding added, bracketed portion in original.)

Thus, the State Board has clearly recognized that "dust and air pollution from human activities" is a "nonpoint" source of pollutants and should, therefore, not be the responsibility of the municipalities. The Regional Board's attempt to hold the municipalities responsible for metal pollutants that arise from "atmospheric deposition" was an abuse of discretion.

Still more evidence that atmospheric deposition is, by definition, a "non-point source" is Exhibit "I," which is a discussion of TMDL definitions taken from EPA Region 7's website. In Exhibit "I", EPA Region 7 specifically defines "Atmospheric Deposition" as a "Non-Point Source" (NPS), stating "Atmospheric deposition, hydromodification, and habitat alteration are also sources of NPS pollution." (Exh. "I," p. 4, under heading "Non-Point Source.")

The net effect of improperly allocating atmospheric deposition pollutants as "point source" pollutants, as opposed to "non-point source" pollutants, is to shift the obligation and the cost of addressing such pollutants from the State down to the municipal storm water permittees. If atmospheric deposition were to be treated as it should be, i.e., as a "non-point source", then the either the State Board, the Regional Board or the California Air Resources Board would be obligated to address this source of pollutants through the State's Non-Point Source Management Program. (See 33 U.P.S.C. § 1329; 40 C.F.R. 130.6(c)(4); Water Code § 13369.)

Moreover, federal grants may be available to address such a "non-point source" of pollution. (See 33 U.S.C. § 1329(h).) By failing to treat atmospheric deposition as a non-point source, the Regional Board has created no regulatory or financial incentive for itself to develop a program to combat this problem of aerial pollution. In the past, the State Board's approach to addressing water quality pollutants has been to address it at the source, rather than treating it after it has entered the environment. And from the State Board hearings on the Los Angeles River Metals TMDL (see Exhibits "F" and "G" hereto), this clearly remains its policy. The attempt by the Regional Board to obligate the municipalities to address atmospheric deposition, rather than addressing it at its source, is thus contrary to applicable State and federal policy, as well as State and federal law.

Finally, attached are two reports entitled "Copper Sources in Urban Runoff and Shoreline Activities," dated November, 2004 (Exhibit "J"), and "Copper Management Strategy Development Resources, Final," dated September, 2006 (Exhibit "K"), which the Cities request be reviewed by the State Board before adopting the subject Metals TMDL. Both of these reports analyze the sources of copper into San Francisco Bay, showing significant copper emissions through atmospheric deposition, as well as various other sources of copper over which municipalities have little or no control.

The subject Metals TMDL should be remanded back to the Regional Board with direction to allocate atmospheric deposition as a non-point source of pollutants, and to eliminate atmospheric deposition from the municipalities' responsibility, with further direction for the Regional Board to work with Air Resources Board and EPA to address atmospheric deposition through the Non-Point Source Management Program.

5. <u>The Proposed Metals TMDL Approved By the Regional Board Is Otherwise Contrary to State and Federal Law and Should Not Be Approved By This Board</u>.

For the reasons discussed in previous comments submitted by the Cities to the Regional Board, as supported by the exhibits submitted therewith, including the following reasons, the subject Metals TMDL should be remanded back down to the Regional Board for the adoption of a TMDL that is consistent with State and federal law:

(a) Water Code sections 13000, 13240 and 13241 were not complied with, as required, in developing the Metals TMDL.

(b) The TMDL arbitrarily imposes a dry weather WLA for San Gabriel River Reach 1 on storm water permittees.

(c) The Metals TMDL is contrary to law as it wrongly applies to unlisted waters, unidentified waters, and inimpaired waters.

(d) The Metals TMDL is improper as it is not suitable for calculation and is not an actual "daily" loads as required by federal law.

(e) The Regional Board failed to utilize a "Translator" in establishing the TMDL.

(f) The Metals TMDL is contrary to the law since the Regional Board has failed to fully and properly determine the loading capacity of the water bodies to which the TMDLs applies.

(g) The Regional Board failed to include an implementation plan for nonpoint sources in the Metals TMDL.

(h) The Metals TMDL is contrary to law as it imposes waste load allocations for metal impairments based on "potential" uses of the subject water bodies, and not on the "uses to be made" of the water bodies.

(i) The Metals TMDL imposes monetary requirements on the Cities without compliance with the cost benefit requirements under the Porter Cologne Act, Water Code sections 13165, 13225 AND 13267, and the CWA.

(j) The Metals TMDL is improper as local agencies have not been fully consulted and there has been a lack of intergovernmental coordination as required by law (see 40 C.F.R. 130.4 and Water Code §§ 13240 and 13144).

(k) The Metals TMDL will result in unfunded mandates in violation of the California constitution and other State and federal laws.

(l) The Metals TMDL is overly technical, ambiguous, and impossible to understand, and contrary to the Administrative Procedures Act.

C. CONCLUSION.

For the foregoing reasons, and as the Regional Board improperly excluded relevant evidence and/or Comments to the TMDL, and failed to provide adequate notice as required by law, i.e., denied the Cities a fair hearing, and given that the Regional Board failed to comply with CEQA and otherwise abused its discretion in adopting the TMDL, the Cities respectfully request that the subject TMDL not be approved, and that it instead be returned to the Regional Board for

further consideration and resubmission to the State Board, in accordance with the requirements of law. (See Water Code § 13245.)

Thank you for your consideration of these Comments and accompanying exhibits.

Respectfully submitted,

RUTAN & TUCKER, LLP

Richard Montevideo

RM:jb
Enclosures

(1) List of Exhibits provided to Regional Board on June 19, 2006
(2) List of Exhibits, and Exhibits "A" – "K" included with these Comments.

LIST OF ALL EXHIBITS SUBMITTED TO REGIONAL BOARD ON JUNE 19, 2006, IN SUPPORT OF RUTAN & TUCKER COMMENTS ON PROPOSED METALS TMDL FOR SAN GABRIEL RIVER

DESCRIPTION	EXHIBIT NO.
Guidance for Developing TMDLs in California, EPA Region 9, January 7, 2000.	1
EPA Guidance Memo, Subject: Establishing Total Maximum Daily Load (TMDL) Waste Load Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on those WLAs, November 22, 2002.	2
The California Toxics Rule (65 Fed. Reg. 31682 et seq.), and Selected Portions of EPA's Response to Comments Thereon.	3
A Memorandum from Sheila K. Vassey, Senior Staff Counsel, Office of Chief Counsel, to Stefan Lorenzato, Subject: Economic Considerations in TMDL Development and Basin Planning, with enclosed Memorandum from William R. Attwater, Office of Chief Counsel, State Water Resources Control Board, Subject: Guidance on Consideration of Economics in the Adoption of Water Quality Objectives.	4
Judgment, Writ of Mandate, and Statement of Decision in *Cities of Arcadia et al. v. State Water Resources Control Board, et al.*, San Diego Superior Court, Case No. GIC 803631.	5
Policy for Implementation of Toxics Standards of Inland Surface Waters, Enclosed Bays, and Estuaries of California [State Implementation Plan].	6
Assessing the TMDL Approach to Water Quality Management, National Research Council, September, 2001.	7

LIST OF ALL EXHIBITS SUBMITTED TO REGIONAL BOARD ON JUNE 19, 2006, IN SUPPORT OF RUTAN & TUCKER COMMENTS ON PROPOSED METALS TMDL FOR SAN GABRIEL RIVER

DESCRIPTION	EXHIBIT NO.
Memorandum from the Office of the Chief Counsel, State Water Resources Control Board, Subject: Definition of "Maximum Extent Practicable," dated February 11, 1993.	8
Declaration of Susan Paulsen, with attached Report entitled "*A Review of the Los Angeles Basin Plan Administrative Record*," dated February 2003.	9
Social-Economic Factors and Environmental Justice Impacts of the Metals TMDL for the Los Angeles River, Gateway Cities Council of Governments, August 2004.	10
Impacts on Housing of the Metals TMDL for the Los Angeles River, Gateway Cities Council of Governments, August 2004.	11
An Economic Impact Evaluation of Proposed Storm Water Treatment for Los Angeles County, University of Southern California, School of Engineering and School of Policy, Planning and Development, November 2002.	12
Financial and Economic Impacts of Storm Water Treatment Los Angeles County NPDES Permit Area, Stanley R. Hoffman Associates, November, 1998.	13
Costs of Storm Water Treatment for the Los Angeles NPDES Permit Area, Brown & Caldwell, June, 1998.	14
Costs of Water Treatment for California Urbanized Areas, Brown & Caldwell, October, 1998.	15
Letter from Mr. Gerald Greene of the City of Downey and Mr. Eduard Schroder of TECS Environmental, Subject: Los Angeles River Metals TMDL CEQA Analysis, August 25, 2004.	16
Analysis of the TMDL for Metals on the Los Angeles River and Tributories with Emphasis on Implementation, Richard Watson & Associates, Inc., August, 2004.	17

LIST OF ALL EXHIBITS SUBMITTED TO REGIONAL BOARD ON JUNE 19, 2006, IN SUPPORT OF RUTAN & TUCKER COMMENTS ON PROPOSED METALS TMDL FOR SAN GABRIEL RIVER

DESCRIPTION	EXHIBIT NO.
The Master Environmental Impact Report, Los Angeles County Drainage Area Project, December 19, 1994.	18
City of Los Angeles Notice of Preparation of Draft Environmental Impact Report and Initial Study for the Integrated Resources Plan.	19
The Impacts of Atmospheric Deposition in the Los Angeles River Watershed, Richard Watson & Associates, Inc., August 2004.	20
43 Fed. Reg. 60662, et seq.	21
The Twenty Needs Report: How Research Can Improve the TMDL Program, by U.S. EPA, July 2002.	22
Where Air and Water Meet -- Atmospheric Deposition to the Pacific Coast, Workshop Report 2000, by ESA Science Office, 2000.	23
Deposition of Air Pollutants to the Great Waters, EPA Third Report to Congress, June 2000.	24
Executive Order S-2-03 by the Governor of the State of California	25
Cover letter and Opinion of Dr. Robert Patterson, Psy.D., on the Readability Estimates of the TMDL Staff Report and Basin Plan Amendment	26
U.S. EPA's Non-point Source News – Notes entitled "Brake Manufacturers Look at Pollution from Copper Brake Pads," September 1998.	27
Diffuse Sources of Environmental Copper in the United States, by Parametrix, Inc. and Meridian Environmental, Inc., D-Squared A-Consulting, 2003.	28

LIST OF ALL EXHIBITS SUBMITTED TO REGIONAL BOARD ON JUNE 19, 2006, IN SUPPORT OF RUTAN & TUCKER COMMENTS ON PROPOSED METALS TMDL FOR SAN GABRIEL RIVER

DESCRIPTION	EXHIBIT NO.
Draft Strategy for Developing TMDLs and Attaining Water Quality Standards in the Los Angeles Region, California Regional Water Quality Control Board, State Water Resources Control Board, U.S. Environmental Protection Agency – Public Review Draft, December 2002.	29
Total Maximum Daily Load Development for Total Mercury in the Ochlockonee Watershed, EPA Region 4, February 28, 2002.	30
Mercury TMDLs for Little River and Catahoula Lake Watershed, U.S. EPA Region 6, February 2003	31
The Columbia Slough TMDL	32
Frequently Asked Questions Asked About Atmospheric Deposition – A Handbook for Watershed Managers, EPA, September 2001.	33
NPDES Storm Water Cost Survey, Brian K. Currier, Joseph M. Jones, and Glenn L. Moelle, California University, Sacramento, dated January 2005; (Appendix H: *Alternative Approaches to Storm Water Quality Control*, Joseph S. Divinney, Sheldon Kamieniecki and Michael Strenstrom, University of Southern California, Center of Sustainable Cities, dated 2004.)	34
Review of NPDES Storm Water Cost Survey, Including Appendix H: Alternative Approaches to Storm Water Quality Control	35
Addendum to August 2004 Analysis of the TMDL for Metals on the Los Angeles River and Tributaries with Emphasis on Implementation, by Richard Watson & Associates Inc. May 2005.	36
A Guide to Consideration of Economics under the California Porter-Cologne Act, Report by David Sunding and David Zilberman, University of California, Berkeley, March 31, 2005	37

LIST OF ALL EXHIBITS SUBMITTED TO REGIONAL BOARD ON JUNE 19, 2006, IN SUPPORT OF RUTAN & TUCKER COMMENTS ON PROPOSED METALS TMDL FOR SAN GABRIEL RIVER

DESCRIPTION	EXHIBIT NO.
LA County Water Policy Research, Report by Charlton Research Company, October 2002	38
Economic Analysis of the California Toxics Rule, October 1999, prepared for U.S. Environmental Protection Agency, by Science Applications International Corporation	39
Additional Excerpts of California Toxics Rule, EPA's Responses to Comments Report.	40
1996 Municipal NPDES Permit for Los Angeles County, California Regional Water Quality Control Board Order No. 96-054 (NPDES No. CAS614001)	41
East Fork San Gabriel River Trash TMDLs, Amended May 25, 2000	42
Multiple Air Toxics Exposure Study (Mates – II) Final Report, Executive Summary, March 2000	43
Professor Schroeder's Peer Review Comments, August 13, 2004	44
Mosquitoes Call Storm Drains Home, Northwest Public Health, Spring/Summer 2004 by Merilee D. Karr, M.D. and Related Articles and Analysis	45
Effectiveness of Street Sweeping For Stormwater Pollution Control, Technical Report, by T.A. Walker and T.H.F. Wong, December 1999	46
State of California, State Water Board Resources Control Board, Order WQ 2001-15, dated November 15, 2001	47
Change Sheet for the Los Angeles River and Tributaries Metals TMDLs Tentative Resolution and Basis Plan Amendment Language, dated June 1, 2005	48

LIST OF ALL EXHIBITS SUBMITTED TO REGIONAL BOARD ON JUNE 19, 2006, IN SUPPORT OF RUTAN & TUCKER COMMENTS ON PROPOSED METALS TMDL FOR SAN GABRIEL RIVER

DESCRIPTION	EXHIBIT NO.
Reporter's Partial Transcript of Proceedings, Items 6 and 15 of the State of California, California Environmental Protection Agency, California Regional Water Quality Control Board, Los Angeles Region, Regular Board Meeting, Thursday, June 2, 2005	49
Los Angeles and San Gabriel River Copper and Lead Concentrations Compared to Drinking Water, prepared by Flow Science Incorporated, September 2005	50
Atmospheric dry deposition of trace metals in the Los Angeles coastal region, Lisa D. Sabin, Kenneth C. Schiff, Jeong Hee Lim and Keith D. Stolzenbach	51
Contribution of trace metals from Atmospheric deposition to stormwater runoff in a small impervious urban catchment, accepted July 4, 2005, Lisa D. Sabin, Jeong Hee Lim, Keith D. Stolzenbach, Kenneth C. Schiff	52
Kearny Foundation Special Report: *Background Concentrations of Trace and Major Elements in California Soils*, Kearny Foundation of Soil Science, Division of Agriculture and Natural Resources, University of California, March 1996	53
Impacts on Housing of the Metals TMDL for the San Gabriel River, dated June 14, 2006	54
Southern California Home Resale Activity, *L.A. Times Sunday Edition Charts – Data for April 2006*	55
Socio-Economic Factors and Environmental Justice Impacts of the Metals TMDL for the San Gabriel River, dated June 14, 2006	56
San Gabriel River Metals TMDL Technical Comments, dated June 19, 2006, by Flow Science Incorporated	57
State Board Letter re: Comments on Proposed Revision to National Ambient Air Quality Standards for Particulate Matter, dated April 14, 2006	58

LIST OF ALL EXHIBITS SUBMITTED TO REGIONAL BOARD ON JUNE 19, 2006, IN SUPPORT OF RUTAN & TUCKER COMMENTS ON PROPOSED METALS TMDL FOR SAN GABRIEL RIVER

DESCRIPTION	EXHIBIT NO.
The Impacts of Atmospheric Deposition in the San Gabriel River Watershed, dated June 2006, by Richard Watson & Associates	59
Analysis of the *Total Maximum Daily Loads for Metals and Selenium, San Gabriel River and Impaired Tributaries* with Emphasis on Implementation, dated June 2006, by Richard Watson & Associates	60
California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2002-0010, NPDES No. CAS618030, *Water Discharge Requirements for the County of Orange, Orange County Flood Control District and the Incorporated Cities of Orange County Within the Santa Ana Region Areawide Urban Storm Water Runoff, Orange County*	61

LIST OF ADDITIONAL EXHIBITS SUBMITTED TO STATE BOARD ON OCTOBER 25, 2006, IN SUPPORT OF RUTAN & TUCKER COMMENTS ON PROPOSED METALS TMDL FOR SAN GABRIEL RIVER

DESCRIPTION	EXHIBIT NO.
July 12, 2006 letter to Ms. Jenny Newman from Rutan & Tucker, LLP, re Additional Comments re CEQA Metals and Selenium TMDL for the San Gabriel River and Impaired Tributaries	A
July 12, 2006 letter to Ms. Jenny Newman from Rutan & Tucker, LLP, re Failure to Provide At Least Ten Days Notice on Responses to Comments Required by the CEQA – Metals and Selenium TMDL for the San Gabriel River and Impaired Tributaries	B
Amended portions of California Regional Water Quality Control Board, Los Angeles Region – Waste Discharge Requirements for Municipal Storm Water and Urban Runoff Discharges Within the County of Los Angeles, and the Incorporated Cities Therein, dated December 13, 2001 as Amended on September 14, 2006 by Order R4-2006-0074)	C
Storm Water Panel Recommendations to the California State Water Resources Control Board – The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities, dated June 19, 2006	D
July 31, 2002 letter from EPA Administrator Christine Todd Whitman, to Congressman Stephen Horn, with attached "Detailed Response to Concerns Raised by Congressman Horn, the Coalition for Practical Regulation, and the City of Signal Hill, California"	E
Transcript of State Water Board Meeting, Item No. 8, October 5, 2005	F
Transcript of State Water Board Meeting, Item No. 8, October 20, 2005	G

LIST OF ADDITIONAL EXHIBITS SUBMITTED TO STATE BOARD ON OCTOBER 25, 2006, IN SUPPORT OF RUTAN & TUCKER COMMENTS ON PROPOSED METALS TMDL FOR SAN GABRIEL RIVER

DESCRIPTION	EXHIBIT NO.
State Water Resources Control Board **Total Maximum Daily Loads (TMDL)** QUESTIONS & ANSWERS	H
EPA Region 7 Total Maximum Daily Load – Definitions	I
Copper Sources in Urban Runoff and Shoreline Activities, Information Update, dated November 2004	J
Copper Management Strategy Development Resources, Final, dated September 2006	K