

Responsiveness Summary - Triennial Review
(to comments received before February 11, 2005)

No.	Author	Date	Comment	Response
			Basin Plan ignores the important role that the dams, debris basins, retention areas, flood control channels and local storm drains play in protecting life and property.	
25.6	Whittier	2/10/05	We believe that this is a reasonable exercise of the Board's discretion. Delaying this work by three additional years will work against the development of reasonable TMDLs under the Consent Decree deadlines. We are prepared to work with the Board and devote resources to this effort.	See response to comment 8.6.
26.1	Rutan	2/11/05	Both the federal and State Law, moreover, require that such plans be periodically reviewed, as revised as necessary. (Water Code § 13240, CWA § 303(c)(1).) The current basin plan has not been comprehensively updated since 1994. Instead, the Regional Board has relied upon a "patchwork" of amendments, which bear no relationship to the whole document; none of which have addressed the defects in the Basin Plan addressed in this Comment Letter. Accordingly, a comprehensive update of the Basin Plan, pursuant to the 2004 Triennial Review, is required at this time.	<p>As explained elsewhere, the triennial review process is an important component of the on-going standards revision process. However, nothing in the law requires a comprehensive update of the Basin Plan. For a more detailed explanation, see response to comment 28.1.</p> <p>The commenter's reference to a "patchwork" of amendments ignores the fact that most Basin Plan amendments in recent years have occurred as a result of information solicited during the triennial review process. For example, numerous dischargers requested a compliance schedule policy in the Basin Plan to afford additional flexibility in implementing standards. This appeared on a prior triennial review, and the Regional Board adopted a compliance schedule amendment to the Basin Plan within the last three years. The process is not a patchwork of amendments, but the culmination of the triennial review process.</p> <p>Further, the consent decree does not constitute a regulatory change that would warrant a comprehensive Basin Plan update. The consent decree is not a regulatory change. Absent the consent decree, the Clean Water Act already compels the development of TMDLs. Where appropriate, the Regional Board has been able to accommodate water quality standards actions either prior to or as part of a total maximum daily load</p>

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				(e.g., updated bacteria standards preceded the Santa Monica Bay Bacteria TMDL, high flow suspensions of the REC-1 use accompanied or preceded bacteria TMDLs, chloride standard changes are being considered in the Upper Santa Clara River Chloride TMDL).
26.2	Rutan	2/11/05	Moreover, comprehensive revisions to the Basin Plan are necessary because the current Basin Plan is flawed in at least the following four respects: 1) the Regional Board failed to adequately consider "economics" in connection with urban runoff when it adopted the Basin Plan in 1975, or during any revision of the Basin Plan since that time, 2) the Regional Board failed to adequately consider the impacts of the Basin Plan on the need for housing within the region when it adopted the Basin Plan in 1975, or during any revision since that time; 3) the Basin Plan improperly developed various water quality objective based on mere "potential" beneficial uses for waterbodies (contrary to both federal and State Law) and these "potential" use designations remain in the Basin Plan today; and 4) the Basin Plan was not developed based on attaining the highest water quality which is "reasonable," and "based on water quality conditions that could reasonably be achieved."	<p>The commenter advances four theories as to why the Basin Plan needs comprehensive revision. Staff discusses below why each theory is either incorrect or misdirected to the triennial review process. (See Response to Comments 26.3-26.21.) Moreover, as detailed in Response to Comment 26.1 and 28.1, there is no statutory duty to comprehensively update the Basin Plan. As information is developed about substantive deficiencies with specific standards (whether the standard is (i) under-protective or (ii) can be revised and is over-protective), the specific standards actions will be considered and incorporated into a triennial review workplan.</p> <p>In passing, staff observes that the commenter repeatedly overstates the dependence of TMDLs on narrative water quality objectives. While some TMDLs implement existing narrative water quality objectives, most involve the derivation of waste load allocations to implement existing numeric water quality objectives. For example, the metals TMDL implements the California Toxics Rule—a federal, numeric water quality standard promulgated by U.S. EPA.</p>
26.3	Rutan	2/11/05	<u>The Regional Board Must Remedy Prior Failures to Consider "Economics" As To Urban Runoff With This Basin Plan Review.</u> Pursuant to the express requirements of Water Code Section 13241, the Board is required to consider "Economic considerations" when it adopts or amends water quality objectives. Similarly, Water Code Section 13000 provides as follows: The Legislature further finds and declares that activities and factors which may affect the quality of the waters of the state	The commenter advances four theories as to why the Basin Plan needs comprehensive revision. The first, second, and fourth theories the commenter advances involve procedural objections to the manner in which certain factors (economics, housing, and reasonableness) were considered at the time the Regional Board established objectives. Initially, staff notes that the time to bring procedural challenges to objectives would have been when the Regional Board adopted the objectives and the State Board, Office of Administrative Law

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			<p>shall be regulated to attain 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. (Emph. Added.)</p>	<p>and U.S. EPA approved the objectives. That was when the procedural objections could appropriately have been evaluated and challenged in court.</p> <p>Importantly, the commenter's procedural objections do not bear on the federal requirement to review water quality standards under Clean Water Act section 303(c) or the federal regulations at 40 C.F.R. section 131.20. The process of adopting the standard is not a part of the water quality standard or a part of the Basin Plan. As a result, any alleged procedural defects—which the Regional Board staff disagree with—are not within the scope of the triennial review. The objectives are in effect and are federal water quality standards.</p> <p>The staff does agree that economic considerations and housing (along with the other factors identified in Water Code section 13241) are to be addressed when establishing a water quality objective or amending an existing water quality objective. The Porter-Cologne Act requires certain "[f]actors to be considered by a regional board in <i>establishing</i> water quality objectives." (Wat. Code, § 13241, emphasis added.) The objectives referenced were established long ago. The plain language of the Porter-Cologne Act only requires consideration of economics, housing, and other factors when establishing the water quality objectives in the first instance. Moreover, the Water Code does not contemplate a continual reassessment of those considerations, which is what the commenter desires. The section 13241 considerations do not become a part of the Basin Plan and hence are not part of regular review.</p> <p>For the foregoing reasons and as discussed with more specificity in Response to Comments 26.4-26.8, the commenter's objection is legally incorrect and beyond the scope of the triennial review.</p>
26.4	Rutan	2/11/05	Moreover, federal law requires an economic analysis	The authority relied upon by the commenter overstates the role

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			<p>when Basin Plan are adopted or amended. The regulations to the CWA require that <i>economic</i> factors be considered in developing water quality management plans (40CFR § 130.6(c) Federal law also mandates that implementation measures necessary to carry out the plan, including <i>financial and economic, social and environmental impacts</i>, all be considered. Specifically, 40 CFR § 130.6(c)(3) requires that the State include in its Water Quality Management Plan “the identification of anticipated municipal and industrial waste treatment works, including facilities for treatment of storm water-induced combined sewer overflows, along with programs to provide <i>necessary financial arrangements</i> for such works.....</p>	<p>of economics at the federal level. The commenter’s citation to 40 C.F.R. section 130.6(c), in particular, is misleading. First, the relevant section does not involve the establishment of water quality standards. Second, the water quality management plan described in section 130.6(c) is broader than just the Basin Plan, and also includes several program elements addressed by the State Board (e.g., the State Board’s Non-Point Source Policy) and other third parties (e.g., 208 Plans that were established by the Southern California Association of Governments (SCAG) and others). Third, the Basin Plan explicitly addresses and identifies various programs for management and waste water treatment facilities as required by the subparagraphs cited by the commenter. Fourth, all of the citations to 40 C.F.R. section 130.6(c)(4)(iii), (5), (6) (discussing economic and fiscal analysis and financing schedules) involve the implementation of non-point source management and control through the areawide planning process of section 208(b)(2) of the Clean Water Act. (33 U.S.C. § 1288(b)(2).) The areawide planning obligations of section 208 have largely been abandoned by U.S. EPA and subsumed by other Clean Water Act programs, but many of the identified financial arrangements, analysis, and scheduling obligations were the responsibility of the local areawide planning agency (i.e., SCAG) when the 208 plans were originally developed.</p> <p>See generally Response to Comment 26.3 for the reasons that the comment is outside the scope of the triennial review.</p>
26.5	Rutan	2/11/05	<p>Federal law further provides that “[e]conomic, institutional, and technical factors shall be considered in a continuing process of identifying control needs and evaluating and modifying the BMPs as necessary to achieve water quality goals.” (40 CFR § 130.6(c)(4).) In identifying BMPs for urban storm water control to achieve water quality goals, a “fiscal analysis” of the</p>	<p>See Responses to Comments 26.3-26.4.</p>

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			necessary capital, operational and maintenance expenditures is required (40 CFR § 130.6(c)(4)(G).)	
26.6	Rutan	2/11/05	The regulations also require the identification of agencies necessary to carry out the plan along with their “ financial capabilities ,” and a “ financing schedule and the consideration of the <i>economics</i> , social and environmental impacts” of any proposed amendments to the Water Quality Management Plan (40 CFR § 130.6(c)(4)(G).)	See Responses to Comments 26.3-26.4.
26.7	Rutan	2/11/05	Despite the clear requirement that “ <i>economics</i> ” be considered in the development of the Basin Plan, neither at the time the Basin Plan was originally adopted, nor at any time the Basin Plan has since been revised did the Regional Board fully and properly consider the “ <i>economic</i> ” impacts of applying water quality objectives to non-point sources, or to storm water and urban and rural runoff. In fact, even though the Regional Board previously specifically acknowledged the need to subsequently analyze the economic (and other) impacts from storm water and urban runoff, no such economic evaluation has occurred.	<p>With respect to the commenter’s particular objection that the prior consideration of economics did not consider the economics associated with regulating municipal storm water discharges as a point source discharge, even if true, the comment would not require a comprehensive reconsideration of the Basin Plan’s objectives. As noted in Response to Comment 26.3, section 13241 considerations only apply when establishing objectives. But even then, those considerations are subject to the overarching federal requirement that water quality standards be established that (1) designate beneficial uses and (2) identify the criteria to protect the uses. (40 C.F.R. § 131.3(i).) “Water quality standards are to protect the public health or welfare, enhance the quality of water and serve the purposes of the [Clean Water] Act. (<i>Ibid.</i>) As a minimum requirement, water quality criteria (i.e., objectives) must be “sufficient to protect the designated uses.” (40 C.F.R. § 131.6(c).) Water Code section 13241 specifically addresses “water quality objectives,” which are equivalent to the criteria component of federal water quality standards.</p> <p>Even if there are new sources or new regulatory schemes established, the water quality standards are the goals to which those programs must be tailored. (40 C.F.R. § 130.3.) A central scheme of the Clean Water Act is to establish the level of water quality necessary to protect beneficial uses and to</p>

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				<p>implement the goals and policies expressed by Congress. (See, e.g., 40 C.F.R. § 130.3 & 33 U.S.C. § 1313.) The criteria or water quality objectives necessary to protect an established, designated use do not change because a new class of discharges has been regulated. In fact, what the commenter advocates turns the entire Clean Water Act on its head. The objectives must still be consistent with the federal law requirement to protect the uses, enhance the quality of water, and "serve the purposes of the [Clean Water] Act." (40 C.F.R. § 130.3.) The fact that municipal storm water is now regulated as a point source does not change the criteria or water quality objectives necessary to protect designated uses.</p>
26-8	Rutan	2/11/05	<p>Although the Board has previously, informally, and in a cursory fashion, rejected the extensive economic analyses set forth in these studies, in light of the continuing development of TMDLs for the Region, combined with the Receiving Water Limitation language prohibiting exceedances of water quality standards and objectives in the existing Los Angeles County Municipal (NPDES permit, these studies must be formally and fully evaluated, and the economic impacts discussed therein considered in the course of the Board's 2004 Triennial Review of the Basin Plan. Further, this requested consideration of these studies and the evolving circumstances of the economic impacts of applying these water quality objectives to urban runoff should then be reflected in modifications to the Basin Plan, in accordance with the requirements of the State and federal law.</p>	<p>The commenter's economic contentions are noted, but they are beyond the scope of this triennial review. As the commenter is aware, the Regional Board has performed its own economic analysis of the costs. The numbers are orders of magnitude less. Further, the costs detailed by the commenter assume a worst-case scenario and assume advanced treatment for all storm water discharges. At this point in time, the Regional Board and the municipal storm water permit still follow the BMP-based approach advocated by the State Board and U.S. EPA. This has been reaffirmed on numerous occasions. In addition, the Brown & Caldwell Study has been disavowed by Cal-Trans, the agency that requested the report.</p> <p>It should be noted that assuming full compliance with the California Toxics Rule drives the most extravagant costs assumptions. The California Toxics Rule is a federal water quality standard promulgated by U.S. EPA and it applies to all inland surface waters within the region. (40 C.F.R. § 131.38(d)(2)(ii).) While the California Toxics Rule is a numeric translation of the narrative toxicity objective in the Basin Plan, it is important to recall that such an objective is necessary. Water quality standards must "serve the purposes of the [Clean Water] Act." (40 C.F.R. § 131.2(i). The Clean</p>

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				<p>Water Act unequivocally states: "It is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited." (33 U.S.C. § 1251(a)(3).) The narrative toxicity objective and the California Toxics Rule reflect this congressional policy. As a result, the extravagant costs alleged by the commenter's studies are not associated with specific designations or objectives in the Basin Plan.</p>
26.9	Rutan	2/11/05	<p><u>The Regional Board Must Remedy Its Prior Failures to Consider The Need For Developing Housing Within The Region When Establishing Water Quality Objectives For Urban Runoff.</u></p>	<p>For the same reasons noted in Responses to Comments 26.3, 26.7, and 26.8, the commenter's procedural objections as to the Regional Board's past consideration of housing is beyond the scope of the triennial review. Again, the staff disputes the contention that the Regional Board inadequately considered housing when previously establishing objectives. Moreover, the two studies proffered in support of the housing impacts associated with the Los Angeles River Metals TMDL are essentially directed at the impacts of the California Toxics Rule—a federal water quality standard promulgated by U.S. EPA.</p>

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26.10	Rutan	2/11/05	<p><u>The Regional Board Must Correct The Basin Plan's Defect Of Establishing Water Quality Objectives Based On Potential Beneficial Uses, Rather Than Actual Or Probable Further Beneficial Uses.</u></p> <p>Thus, water quality standards must be based on the "uses to be made" or waterbodies, given the "past, present and probable future beneficial uses" of such waterbodies. Moreover, the Regional Board is required to be reasonable" in establishing beneficial uses and setting water quality objectives. (See Water Code §§ 13000, 13241.)</p>	<p>The broad objection to designation of "potential" uses does not warrant a comprehensive update to the Basin Plan; however, as specific problems are identified that satisfy criteria for removing potential uses, then the Regional Board may consider revisions to the water quality standards. Like the first two theories, this objection is more of a procedural challenge than a substantive challenge. Basin plans for all nine of California's regions designate at least two categories of uses: existing and potential. In the Central Coast, Lahontan, and Santa Ana regions the beneficial use tables do not distinguish between existing and potential uses, and the presence of a use means that it is either existing or potential.</p> <p>The "potential" designation is shorthand for waters where there is not sufficient evidence of an existing use, and embraces the federal concept of "uses to be made of" (40 C.F.R. § 130.3) and the state requirement to protect "probable future beneficial uses" (Wat. Code, § 13241(a)). Waters with a "potential" use were previously designated and that potential use designation was made taking into account the federal regulations and Water Code section 13241. This is reflected, in part, by the commenter's reference to Basin Plan, page 2-1, describing some of the aspects of potential uses. The "potential" label is merely the Regional Board's (in fact all water boards) nomenclature and there is nothing wrong with using the "potential" designation.</p> <p>The fact that the Regional Board's Basin Plan distinguishes between existing and potential uses is a valuable distinction for dischargers. Existing uses (which are most the use designations in the Basin Plan) can never be removed. (40 C.F.R. § 131.10(h)(1).) In contrast, the potential use designations may be removed in certain circumstances if use attainability analyses are conducted. (40 C.F.R. § 131.10(g).) This recently happened with certain recreational uses in concrete channels during high-flow conditions and also year-round in parts of Ballona Creek.</p> <p align="right">February 18, 2005 38 of 66</p>

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26.11	Rutan	2/11/05	The Basin Plan identifies "existing" and "potential" beneficial uses, along with "intermittent" beneficial uses. (Basin Plan section 2-1.) Yet, a Basin Plan that relies on "potential beneficial uses," rather than the present or probable future beneficial uses to establish water quality objectives contravenes the Porter-Cologne Act and the Clean Water Act.	See Response to Comment 26.10.
26.12	Rutan	2/11/05	The problem is not merely one of semantics. Under the Basin Plan "potential" beneficial uses can be designated for waterbodies for any one of five reasons, including: 1) implementation of the State Board's policy entitled "Sources of Drinking Water Policy", 2) plans to put the water to such future use; 3) "potential to put the water to such future use", 4) designation of a use by the Regional Board as a regional water quality goal, or 5) public desire to put the water to such future use. (Basin Plan, Section 2, p.1.) Thus, the Board's definition of "potential" use goes far beyond a "probable future use." For example, the mere fact that there is public "desire" to put a waterbody, does not mean such use can be reasonably achieved in the foreseeable future or that it is a probable future use. This, such "potential" uses are not "probable" future uses.	See Responses to Comment 26.10. As explained there, the "potential" designation is shorthand for waters where there is not sufficient evidence of an existing use, and embraces the federal concept of "uses to be made of" (40 C.F.R. § 130.3) and the state requirement to protect "probable future beneficial uses" (Wat. Code, § 13241(a)). Moreover, the list identified from Basin Plan page 2-1 is not an exhaustive list, but only identifies some of the factors included in the process of designating "potential" uses. The individual designations are evaluated for compliance with the Clean Water Act and Porter-Cologne Act at the time the designations are made. As additional evidence is received, potential uses may be revisited to determine whether the designated use still conforms to the standards of the Clean Water Act and the Porter-Cologne Act.
26.13	Rutan	2/11/05	Moreover, the designation of "potential" beneficial uses, instead of "probable future beneficial uses" or "uses to be made," as required by law, has led to numerous improper beneficial use designations in the Basin Plan. For example, the Basin Plan currently lists "REC-1" as a potential beneficial use for various concrete-channelized waterbodies, waters which are often intermittent and which are off-limits to the public, including the Alhambra Wash, the Arcadia Wash, and the Santa Anita Wash. (A REC-1 designation means that a waterbody is used for recreational activities involving body contact	As noted in Responses to Comments 26.10-26.12, as information is developed about substantive deficiencies with specific, potential use designations, the specific standards actions will be considered and incorporated into a triennial review workplan. The commenter's only specific comment concerns certain potential REC-1 designations associated with certain concrete-lined channels. These channels are already subject to a limited de-designation during times of high-flow conditions. This was the result of a prior Regional Board triennial review workplan.

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			with water, e.g. swimming or wading.) Such uses are entirely unsuitable for concrete-channelized waterbodies, and as shown by news accounts every storm season, allowing such a use may be extremely dangerous or even deadly. Thus, it is improper to designate a REC-1 use for a concrete-channelized waterbody where there is no evidence of an actual legal or probable future REC-1 use. (See State Board Order WQO 2005-0004, Exh. J.)	
26.14	Rutan	2/11/05	Thus, for example, although it is "possible" that some currently concrete-channelized waterbodies could someday be used for some type of REC-1 activities, such activities are certainly not "probable future beneficial uses" of such waterbodies. It is, thus, inherently "unreasonable" to designate concrete-lined storm channels which are closed to the public because of safety concerns as potential REC-1 waterbodies. Thus, it was, and is, improper for the Board to consider such "potential" uses in setting water quality standards for these waterbodies, and this defect in the Basin Plan should be considered and corrected as a part of the 2004 Triennial Review.	As noted above, these issues are subject to on-going review as evidence is received. The process for removing the uses is the structured scientific analysis under 40 C.F.R. section 130.10(g). Staff disagrees with the statement that the designations are inherently unreasonable. See also Responses to Comments 26.10, 26.12, and 26.13.
26.15	Rutan	2/11/05	Moreover, as the Board has recently began to develop and issue TMDLs for water bodies throughout the Region, it is particularly important that the use designations in the Basin Plan to be corrected; otherwise improper use designations in the Basin Plan will lead to unreasonable numeric limits and excessive implementation measures being imposed through inappropriate TMDLs.	See Response to Comment 26.1, indicating that where appropriate the Regional Board has incorporated standard actions into TMDL implementation plans or had the standards action precede the TMDL adoption.
26.16	Rutan	2/11/05	The Board's designation of "potential" uses in the Basin Plan, instead of actual and probable future uses, is improper. Improperly designated uses will lead to improper water quality objectives and standards, and	See Responses to Comments 26.10, 26.12, 26.13, 26.14, and 26.15.

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			unreasonable and unachievable TMDLs. The Board must thus act to correct this problem by re-designating beneficial uses based on "past, present, and probable future" beneficial uses, or the "uses to be made" rather than mere "potential" uses, in the course of the 2004 Triennial Review.	

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26.17	Rutan	2/11/05	<p><u>The Regional Board Must Establish Water Quality Objectives That Can Reasonably Be Achieved.</u> Despite this clear mandate to adopt water quality objectives that can "reasonably" be achieved, the Basin Plan is rife with unreasonable and unachievable objectives. Not only has the Board acted improperly in failing to adequately consider economics and housing when it adopted the Basin Plan, and in setting beneficial uses, it has further adopted "unreasonable" water quality objectives and requirements.</p>	<p>The commenter's final theory is that the previously established objectives are somehow unreasonable in contravention of a "reasonableness" standard in the Porter-Cologne Act. As previously noted in Responses to Comments 26.2 and 26.3, this is essentially a procedural objection to prior standards actions and it is beyond the scope of the triennial review. Whether a previous Regional Board "establish[ed] such water quality objectives in water quality control plans <i>as in its judgment</i> . . . ensure the reasonable protection of beneficial uses. . . ." (Wat. Code, § 13241, <i>emphasis added</i>) is not within the scope of the triennial review. That is a procedural consideration of a prior Regional Board.</p> <p>Further, as previously noted the water quality objectives are the criteria component of federal water quality standards. As a result, they must be established at levels "sufficient to protect the designated uses." (40 C.F.R. § 131.6(c).) In other words, there may be occasions when the federal requirement that criteria be "sufficient to protect designated uses" trumps the "reasonable protection of beneficial uses." However, there is no evidence that the objectives are unreasonable.</p> <p>Similarly, in the coastal marine environment (to which everything in the Los Angeles basin drains), the Legislature has established a more specific and stringent policy directive. In Water Code section 13142.5, subdivision (a), the Legislature identified a critical need to treat discharges in the coastal zone that affect "wetlands, estuaries, and other biologically sensitive sites," "areas important for water contact sports," "areas that produce shellfish for human consumption," and "ocean areas subject to massive waste discharge" and "where feasible, to restore past beneficial uses of the receiving waters." In discussing this requirement, the Legislature stated a variety of factors to be considered, but explicitly excluded "convenience of the discharger." (Wat. Code, § 13142.5(a).) As a result, prior regional boards would have needed to consider this specific legislative directive in considering the broader "reasonable protection of beneficial uses."</p>

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26.18	Rutan	2/11/05	These objectives are unreasonable on their face, in that they impose absolute standards, without regard for whether or not they can be reasonably achieved.	<p>To the extent the commenter identifies specific objectives as unreasonable, the commenter makes unsupported assertions that ignore the plain language of the objectives. The two objectives cited by the commenter are the narrative objectives concerning floating materials and solid, suspended, or settleable materials. (Basin Plan, pp. 3-9, 3-16.) The commenter asserts that the objectives are facially unreasonable because they impose absolute standards. This statement is incorrect. Both objectives require that floating materials and solid, suspended, or settleable materials not be present "in concentrations that cause nuisance or adversely affect beneficial uses." (<i>Ibid.</i>) This clause is very important because it establishes two conditions under which the materials may not be present: first, if the material is at a concentration that causes nuisance, and second, if the material is at a concentration that adversely affects beneficial uses.</p> <p>Neither narrative objective establishes an absolute and neither is unreasonable. The first concentration threshold is to prevent nuisance. Importantly, the Water Code does not allow the discharge of waste to create a nuisance, and the prevention of nuisance is not limited by any reasonableness requirement in the Porter-Cologne Act. (See, e.g., Wat. Code, §§ 13050(h)-(i), 13225(a), 13263(a), and 13241.) Moreover, the definition of nuisance means that certain factors would need to be evaluated before a determination of nuisance could be made. (See, Wat. Code, § 13050(m).) This evaluation would identify the "concentration that causes nuisance." The second concentration threshold is that the materials must not "adversely affect beneficial uses." Again, this is not an absolute, but requires a determination of "adverse" effects. That means the concentration would need to be assessed and it is not a rigid, absolute as characterized by the commenter. In fact, the language "adversely affects beneficial uses" can be viewed as a reflection of the reasonableness language in</p>

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				<p>section 13241. Neither objective is facially unreasonable as claimed by the commenter.</p>
26.19	Rutan	2/11/02 050.	<p>For example, the Board has interpreted these narrative objectives to require the unreasonable and in effect, impossible, numeric water quality objective of "zero" trash in the Los Angeles River and Ballona Creek. (See Trash TMDL, Echs. "F" p. 16.)</p>	<p>The commenter notes that the two narrative objectives have been interpreted in two different trash TMDLs to mean zero-trash. (In fact, there are three trash TMDLs in the region where the wasteload allocation and load allocations have been established at zero trash.) While it is beyond the scope of the triennial review, the characterizations in the comment bear correction. First, the trash TMDLs involved the specific interpretation of the narrative water quality objective into a numeric waste load allocation for a specific pollutant. This is required by section 303(d) of the Clean Water and U.S. EPA's regulations. (33 U.S.C. §. 1313(d), 40 C.F.R. § 130.2.) Second, this interpretation was performed in the context of an unusual pollutant that does not assimilate like many other pollutants. Third, this interpretation was performed in the specific context of beneficial uses that contain an aesthetic component, and hence a policy determination by the Regional Board. Fourth, the comment incorrectly characterizes the numeric waste load allocation as a "water quality objective," which it is not. Instead, it is a waste load allocation, which is not a water quality standard. (Compare 40 C.F.R. §§ 130.3 and 131.3(i) with 130.2(h).)</p>
26.20	Rutan	2/11/02 050.	<p>The Regional Board similarly tentatively interpreted the Basin Plan to require unreasonable numeric water quality objectives when it sought to include in a Proposed Metals TMDL for the Los Angeles River that the numeric targets for the TMDL be based upon those targets set forth in the California Toxics Rule ("CTR") promulgated by the EPA in 2000. (Proposed Metals TMDL, Exh. "E," p. 26) The</p>	<p>The final objection based on a purported "reasonableness" failing has to do with the Los Angeles Rivers Metals TMDL, which has not yet been approved by the Regional Board. First, the comment is beyond the scope of the triennial review because it does not address items within the Basin Plan that are subject to review. Second, the commenter repeats the incorrect statement that TMDLs establish water quality</p>

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			<p>Basin Plan is unreasonable in this regard because both EPA and the State of California have indicated the CTR was not intended to be applied to the regulation of storm water discharges.</p>	<p>objectives. In fact, they do not as explained above. Third, the metals TMDL will be based on the federal California Toxics Rule established by U.S. EPA because that California Toxics Rule establishes the water quality standard for priority pollutants (including the subject metals) in inland surface waters in California. (40 C.F.R. § 131.38(a).)</p> <p>Fourth, the commenter conflates the California Toxics Rule, with a separate policy used by the State Board to implement the California Toxics Rule. The State Implementation Policy (SIP) for the California Toxics Rule provides procedures, including equations, for applying the California Toxics Rule to certain discharges. The State Board has said that those procedures (i.e., the SIP) do not apply to storm water discharges. However, the California Toxics Rule, as a water quality standard, is applicable to all inland surface waters and hence all discharges to inland surface waters. When another representative of the Coalition for Practical Regulation raised the commenter's point at a recent State Board hearing, the State Board rejected the commenter's contention as "illogical." (State Board Hearing on Revisions to the SIP, Item 3 (Feb. 24, 2005).) The State Board noted that water quality standards apply regardless of the source of the discharge.</p> <p>Similarly, in support of the metals TMDLs, the U.S. EPA has rejected the commenter's contention. In fact, the U.S. EPA quote offered by the commenter is inapposite. That quote simply says when establishing the numeric criteria in the California Toxics Rule that's all U.S. EPA was doing: establishing the criteria. A broader issue of how the criteria would be translated into permit requirements for storm water discharges was "beyond the scope of the rule." The quote does not support, nor does U.S. EPA believe that the California Toxics Rule is not an applicable water quality standard for determining wasteload allocations for municipal</p>

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Responsiveness Summary - Triennial Review
(to comments received before February 11, 2005)

No.	Author	Date	Comment	Response
				storm water discharges.
27.1	CICWQ	2/11/05	We believe that it is imperative that the Board revise its proposed 2004 Triennial Review Priorities List to review the region's water quality standards, particularly as they apply to stormwater, to determine the feasibility of creating a new beneficial use category (and associated water quality objectives) for flood protection (and to address its relationship to other designated uses already included in the Basin Plan), and to explore the feasibility of alternative approaches to protection of so-called "potential" beneficial uses.	See responses to 8-5 and 26.10.
27.2	CICWQ	2/11/05	County to be the 4 th least affordable county nationwide in the third quarter of 2004- the latest period for which data are available. The organization blames "excessive regulation" for much of the lack of affordability. Yet, the Triennial Review fails to even mention or consider this fact.	Comment noted.
27.3	CICWQ	2/11/05	We believe that it is imperative that the Board revise its 2004 Triennial Review Priorities List to address the applicability of water quality objectives to storm flows and other critical flow conditions and resolve conflicts between various basin planning provisions. This is critical due to the housing affordability crisis and job loss potential of the continual reliance on outdated and inappropriate water quality standards.	Comment noted. See response to 8-2.
27.4	CICWQ	2/11/05	These considerations are important enough to us that we are willing to support the formation of a Stakeholder Task Force as outlined in the Coalition Letter dated February 11, 2005. We look forward to working with you on this process.	Thank you; offer noted. See response to 8-1.
28.1	Burhenn	2/11/05	The proposed 2004 Triennial Review Basin Plan review does not meet the legal requirements for a Triennial	The triennial review workplan and the process for developing the workplan complies with all applicable legal requirements.

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