

Summary of Comments and Responses on the TMDLs for Oxnard Drain 3
February 16, 2011 Public Notice
Prepared by USEPA, Region IX, October 2011

List of Public Review Comment Letters:

1. Ventura County Agricultural Irrigated Lands Group (VCAILG)
2. California Department of Transportation (Caltrans)
3. Calleguas Creek Watershed Management Plan Steering Committee
4. City of Oxnard
5. County of Ventura Public Works Agency
6. Heal the Bay
7. Marathon Land, Inc. and Southland Sod Farms Operations, Inc.
8. Naval Base Ventura County
9. Oxnard Drainage District #2
10. Oxnard Harbor District
11. Parties Implementing TMDLs on the Calleguas Creek Watershed
12. Port of Long Beach

INTRODUCTION

This document summarizes comments that were received in response to the February 16, 2011 Public Notice, identifies the commenter at the beginning of the comment and responds to the comments. Where multiple comments were received on a single topic, the response generally refers to the most extensive response to comment and additional details are included for the specific comment(s), as appropriate.

SUMMARY OF CHANGES TO THE FINAL TMDLS

The final TMDLS differ from the draft TMDLs as a result of public comment. The changes include:

- Sediment allocations were modified to increase consistency with Calleguas Creek TMDLs while still protecting beneficial uses of the waterbody.
- Fish tissue targets were changed to Threshold Tissue Residual Levels (TTRLs) for consistency with Calleguas Creek TMDLs.
- Portions of the TMDLs addressing bifenthrin and chlorpyrifos were revised.
- Targets and allocations were expressed as DDT congeners rather than total DDT for consistency with the Calleguas Creek TMDLs.
- References to Caltrans were removed from the TMDLs.
- References to Toxic Release Inventory (TRI), Resource Conservation and Recovery Act (RCRA), and Clean Water Act Integrated Compliance Information System (CWA ICP) permits were removed from the TMDLs.
- References to the general NPDES non-chapter 15 US Naval Base Ventura County permit were removed.
- Additional language was added to the implementation section recommending that a modified Calleguas Creek Watershed Management Plan incorporate the Oxnard Drain 3 TMDLs.
- Additional language was added to the implementation section recommending that an additional study be conducted to determine the most appropriate remediation option for the Oxnard Drain 3 bed sediment.
- Other text and map corrections

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1	Ventura County Agricultural Irrigated Lands Group (VCAILG)	
1.1	<p>Listings are already being addressed through CCW TMDL Implementation</p> <p>In 2006, Toxicity and OC Pesticide and PCB TMDLs for the Calleguas Creek watershed were established that address chlordane, chlorpyrifos, DDT, DDE, DDD, dieldrin, PCBs, sediment toxicity, and toxaphene. During TMDL development, there was concern that Analytical Unit #8 (Rio de Santa Clara Drain/Oxnard Drain #3) might include stakeholders that had not been participating so Analytical Unit #8 was not specifically addressed in the CCW Toxicity and OC Pesticide and PCB TMDLs. Subsequent to the adoption of the TMDLs, the Conditional Waiver for Irrigated Lands was adopted. VCAILG, using information from the Regional Water Quality Control Board (RWQCB) and State Water Resources Control Board (SWRCB), defined the boundaries of the CCW for the purposes of implementing Conditional Waiver and TMDL requirements. As discussed below, this watershed definition includes the majority of the Oxnard Drain #3 watershed, as defined by the TMDL. Based on this watershed definition, the VCAILG members in the Oxnard Drain #3 watershed have participated in the implementation of the CCW TMDLs for three years. For this reason, we feel that the Oxnard Drain #3 impairments are already addressed through the CCW TMDL implementation process and Conditional Waiver provisions. Establishing a separate TMDL for Oxnard Drain #3 will establish a second set of targets and wasteload allocations for the same location, creating an undue burden and confusion among growers that have actively implemented the CCW TMDLs for three years. The following is a more detailed discussion of the overlap between the CCW TMDL implementation and the Oxnard Drain #3 TMDL.</p> <p><i>Watershed Definition</i></p> <p>The majority of the Oxnard Drain #3 watershed identified in the TMDL is contained within the Calleguas Creek watershed as defined by the State of California in their GIS files for the Cal Water defined watersheds (see map in Attachment A). The CCW Memorandum of Agreement (MOA) has developed all implementation actions and allocation of funding based on the watershed definition shown in the attached map. As a result, the CCW MOA parties have implemented actions to address the impairments in the majority of the Oxnard Drain #3 watershed since 2006. The stakeholders that are not participants in the CCW MOA are identified in the following table. However, the entities in italics are covered by a general permit for which there are allocations in the CCW TMDLs.</p> <p>Additionally, in 2005, the RWQCB issued a memo defining the watershed for Mugu Drain/Duck Ponds/Oxnard Drain #2 that was covered by the CCW TMDLs. The memo (Attachment B) indicates some, if not all, of the Oxnard Drain #3 watershed is covered by the CCW TMDLs. The memo references Oxnard Drain #3 in a footnote and the included figure, though not specific enough for a direct comparison, appears to include much of the Oxnard Drain #3 watershed defined in this TMDL.</p>	See response 11.1.

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	<p>In general, the drainage in that area is complex and separately defining the watershed for Oxnard Drain #3 to implement a TMDL with different targets and allocations from the CCW TMDLs would be challenging and result in implementation conflicts and confusion for VCAILG members.</p> <p><i>TMDL Implementation</i></p> <p>As stated above, the VCAILG members within the Oxnard Drain #3 watershed have actively participated in the implementation of the CCW TMDLs since 2006. The VCAILG has developed a Water Quality Management Plan (WQMP) to address the impairments in the CCW, provided education to VCAILG members in the Oxnard Drain #3 watershed on the CCW TMDLs, implementation requirements, and BMPs that can be implemented to address the requirements. In addition, the recently adopted Conditional Waiver for Irrigated Lands (Order No. R4-2010-0186) includes requirements to comply with the CCW TMDLs. VCAILG monitors a location on Oxnard Drain #3 to determine compliance with Conditional Waiver provisions, including compliance with the CCW TMDL provisions of the Conditional Waiver. As such, the provisions of the Conditional Waiver could be interpreted as already implementing requirements to address the impairments in the Oxnard Drain #3 TMDL.</p> <p>In addition, the CCW TMDLs have been incorporated into the National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Permit (R4-2010- 0108). The language in the NPDES MS4 permit requires compliance with the CCW TMDLs, but does not specify the area covered by the TMDLs. The NPDES MS4 permit identifies and requires the “MS4 permittees discharging to Calleguas Creek, its tributaries and Mugu Lagoon” to comply with wasteload allocation, actions and special studies for CCW TMDLs. Since the MS4 permittees in the Oxnard Drain #3 watershed drain to Mugu Lagoon, this language can be interpreted to mean that the MS4 permittees are already required to implement BMPs to address impairments in the Oxnard Drain #3 watershed through implementation of the CCW TMDLs. The following language further enforces this: “Compliance with the WLAs is to be determined through the measurement of in-stream water quality at the base of each of the Calleguas Creek subwatersheds, in accordance with the Calleguas Creek Watershed TMDL Monitoring Program approved by the Executive Officer.”</p> <p>Since a compliance monitoring point for the TMDL monitoring program, approved by the Executive Officer, is located at the base of Oxnard Drain #3, compliance with WLAs for the CCW TMDLs from discharges in the Oxnard Drain #3 watershed will be evaluated through this monitoring location.</p> <p>Given that impairments to Oxnard Drain #3 are addressed through CCW TMDL implementation and NPDES MS4 and Conditional Waiver provisions, the VCAILG requests that USEPA place Analytical Unit #8 in Category 4B, Water Quality Limited Segments being addressed by actions other than TMDLs, and not promulgate a separate TMDL for the drain.</p>	

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	<p>If this is not feasible, we request that the Oxnard Drain #3 TMDL be incorporated into the CCW TMDLs.</p> <p><i>Requested Action: Place Analytical Unit #8 in Category 4B.</i></p>	
1.2	<p>Consistency with Calleguas Creek Watershed TMDLs</p> <p>As previously discussed, responsible parties are already implementing actions to address the targets and allocations outlined in the CCW TMDLs and the VCAILG feels that the impairments in Oxnard Drain #3 will be addressed through this implementation. As a result, we request that the targets and allocations in the Oxnard Drain #3 TMDL should be consistent with those previously established in the CCW TMDLs. Additionally, we have significant technical concerns with the currently proposed Oxnard Drain #3 targets and resulting allocations (as discussed below). Even if the impairments are placed on the Category 4B list as requested, the documentation should support and be consistent with the CCW TMDLs.</p> <p>The CCW TMDLs were developed through a comprehensive stakeholder process with extensive coordination with the RWQCB and USEPA that included careful consideration of the TMDL targets and allocations and were approved by both agencies. There is no reason to suggest that conditions are significantly different in Oxnard Drain #3 such that different targets and allocations are necessary for this TMDL. We feel that promulgation of a TMDL that includes different targets and allocations will prevent the VCAILG from effectively defining compliance with the TMDLs and successfully and fairly addressing the same impairments by all growers in the CCW.</p> <p>If different targets and allocations are assigned for the Oxnard Drain #3 TMDL, a conflict will arise in determining compliance with TMDL requirements for the same constituents between Oxnard Drain #3 and Mugu Lagoon, the waterbody to which the drain discharges. For example, the fish tissue targets vary between the Oxnard Drain #3 TMDL and the CCW TMDLs. Fish that are collected in Oxnard Drain #3 have potentially spent some of their lifespan in Mugu Lagoon. Depending on where the fish is caught, it could be considered in compliance with one TMDL and out of compliance with the other TMDL. Additionally, if targets and allocations vary between the two TMDLs, growers in the Oxnard Drain #3 watershed will be faced with different requirements than growers in the rest of the CCW to address the same impairments. This places them at an unfair disadvantage with no benefit to the environment.</p> <p>The following sections provide more detailed justifications for modifying the targets and allocations in the Oxnard Drain #3 TMDL.</p>	<p>Some of the Oxnard Drain 3 TMDL targets and allocations were modified to increase consistency with the Calleguas Creek TMDLs while still protecting the beneficial uses of the waterbody.</p> <p>See responses 1.3, 1.4, 1.5, and 1.6 for additional details on the water, sediment, and fish tissue targets and allocations.</p>
1.3	<p><i>Fish Tissue Targets</i></p> <p>The fish tissue targets in the CCW OC Pesticide and PCB TMDL were derived from the California Toxics Rule (CTR) criteria for the protection of human health. As stated in the</p>	<p>The OEHHA document provides that “Fish Contaminant Goals can be used as a starting point for agencies to develop fish tissue-based criteria.</p>

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	<p>TMDL Technical Report, the fish tissue targets (or TTRLs) are derived from CTR human health criteria for “consumption of organisms only.” CTR human health criteria were developed by determining OC pesticide and PCB concentrations in edible fish tissue that would pose a health risk to humans consuming 6.5 grams per day of fish. These fish tissue concentrations were then converted to water column concentrations using a bioconcentration factor (BCF), which is the ratio of the chemical concentration in fish to the chemical concentration in water. TTRLs are calculated by eliminating the BCF from the human health criteria equation, thereby reverting back to the original fish tissue concentration upon which the CTR human health criteria are based” (CCW OC Pesticide and PCB TMDL Technical Report, p. 51).</p> <p>The fish tissue targets in the Oxnard Drain #3 TMDL are based on the Fish Contaminant Goals (FCGs) recently developed by the Office of Environmental Health Hazard Assessment (OEHHA). FCGs are goals developed by the State of California to “provide a starting point for OEHHA to assist other agencies in their efforts to develop fish tissue-based criteria with a goal toward pollution mitigation or elimination.” “FCGs are estimates of contaminant levels in fish that pose no significant health risk to individuals consuming sport fish at a standard consumption rate of eight ounces per week (32 g/day), prior to cooking, over a lifetime. FCGs are based solely on exposure to each individual contaminant, without regard to economic considerations, technical feasibility, or the counterbalancing benefit of fish consumption” (p. 1). OEHHA also developed Advisory Tissue Levels (ATLs) which are used as part of the process to develop health advisories for sport fish. FCGs are not used for developing health advisories.</p> <p>The FCGs were developed as a “starting point . . . to develop fish tissue-based criteria.” Additionally, the FCGs are not utilized by OEHHA to develop health advisories. Therefore, the FCGs are truly goals and are not fish tissue based criteria that should be utilized as TMDL targets if other criteria are available. EPA has already developed fish tissue based criteria in the CTR. The criteria in the CTR for the protection of human health (organisms only) were developed based on a fish tissue threshold and a bioconcentration factor (BCF). Since the FCGs are goals, not established criteria, and the CTR is an established water quality objective for the waterbody, the use of the CCW TMDL targets for fish tissue are more appropriate and consistent with achieving water quality objectives in the watershed (see Table 2).</p> <p><i>Requested Action: Replace the TMDL targets for fish tissue with the CTR-based tissue targets included in the CCW TMDLs.</i></p>	<p>Agencies that require screening criteria for mandated activities may still seek OEHHA’s advice for their development.” EPA finds no statement in the OEHHA document stating that FCGs should not be used as screening values or numeric targets.</p> <p>As of the time the TMDL is written, the OEHHA 2008 document represents current knowledge of the toxicity of seven common fish contaminant levels. FCGs have been used as numeric targets in previously adopted TMDLs in the Los Angeles Region including the Colorado Lagoon OC Pesticides, PCBs, Sediment Toxicity, PAHs, and Metals TMDLs and Machado Lake Pesticides and PCBs TMDLs.</p> <p>However, since FCG and TTRL concentrations are on the same order of magnitude, and in order to provide greater consistency with the overlapping Mugu Lagoon watershed TMDLs which have TTRL fish tissue targets, TTRLs are selected as the fish tissue targets for Oxnard Drain 3.</p> <p>FCG and TTRL targets do not exist for chlorpyrifos. Thus the USEPA human health screening value for recreational fishers remains the chlorpyrifos fish tissue target.</p>
1.4	<p><i>Sediment Targets</i></p> <p>The sediment targets in both the Oxnard Drain #3 and the CCW TMDLs are based on the Effects Range-Low (ERLs) and Threshold Effect Concentrations (TECs). However, since the adoption of the CCW TMDLs, Sediment Quality Objectives (SQOs) for the State of California have been developed. Although the SQOs do not apply to Oxnard Drain #3 (due to</p>	<p>EPA understands the comment to contend that, after (1) the development of California’s Sediment Quality Objectives and (2) the establishment of the TMDLs for the Calleguas Creek Watershed, it is inappropriate to use Effects Range-Low (ERL) concentrations or</p>

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	<p>salinity levels well below thresholds established for SQO applicable waters), the CCW TMDL includes a reopener to update the TMDL to incorporate the SQOs. This reopener has not yet occurred, but the existence of the SQOs and the clear intent of the CCW TMDLs to incorporate the SQOs demonstrates that it is not appropriate to include other types of sediment targets in the TMDL. Additionally, as outlined in the comment letters from parties in the CCW that participated in the development of the CCW TMDLs, there are significant technical concerns with the use of ERLs and TECs as TMDL targets. We feel these concerns, as summarized below, are still valid.</p> <p>The use of ERLs and TELs as numeric targets is a misapplication of the sediment guidelines, which are presented by the National Oceanic and Atmospheric Administration (NOAA) as Screening Quick Reference Tables (SQiRTs) that includes a disclaimer that state that the tables are intended for preliminary screening purposes only and do not constitute criteria or clean-up levels.</p> <p>It has been shown in scientific studies that there is no predictable relationship between ERLs and the threshold point of toxicity, which is a major reason that these chemical concentrations should not be used as numeric targets above which sediment is presumed to be “impaired” for a particular constituent. ERLs and TELs are both unlikely to predict either sediment toxicity or actual effects on local aquatic organisms. Much of the time, ERLs predict sediments will be toxic when they actually are not. ERLs and TELs have poor capability to predict toxicity because they do not accurately predict the bioavailability or toxicity of chemicals, nor do they account for the complex interactions that influence community-level impacts.</p> <p>Additionally, there are no sediment contaminant listings being addressed by the TMDL. Therefore, the only listing for which sediment targets need to be evaluated is sediment toxicity. ERLs and TECs have no relationship to the threshold point of toxicity, and the exceedance of an ERL (or TECs) as the single line of evidence does not necessarily indicate impairment of beneficial uses.</p> <p>Based on this information, we request that the sediment targets be removed from the TMDL. If the targets are not removed, they should be consistent with the CCW TMDLs as shown in Table 3.</p> <p><i>Requested Action: Remove sediment targets from TMDL or at a minimum replace them with the CCW sediment targets.</i></p>	<p>Threshold Effect Concentrations (TECs) to develop targets in the Oxnard Drain 3 TMDL. EPA disagrees.</p> <p>The sediment targets established in the TMDL for chlordane, 4,4’-DDD, 4,4’-DDE, 4,4’-DDT, dieldrin, and PCBs are equal to the concentrations identified as ERLs in MacDonald DD, Ingersoll CG, Berger TA, Development and evaluation of consensus-based sediment quality guidelines for freshwater ecosystems, Archives of Environmental Contamination and Toxicology 29:20-31 (2000). ERL concentrations are the 10th percentile values indicative of the concentration below which adverse effects rarely occur. See, Long ER, MacDonald DD, Smith SL, and Calder FD, Incidence of adverse biological effects within ranges of chemical concentrations in marine and estuarine sediments, Environmental Management 19:81-97 (1995). EPA concludes that establishing targets for chlordane, 4,4’-DDD, 4,4’-DDE, 4,4’-DDT, dieldrin, and PCBs that are equal to the ERLs for those pollutants is appropriate. Inclusion of those targets helps ensure that the TMDL fully protects beneficial uses of Oxnard Drain 3 with an appropriate margin of safety.</p> <p>The toxicity predictive ability of ERLs has been tested in the field and when several ERLs are exceeded, the predictive ability is greater. See, Long ER, Field LJ, MacDonald DD, Predicting Toxicity in Marine Sediments with Numerical Sediment Quality Guidelines, Environmental Toxicology and Chemistry 17:714-727 (1998).</p> <p>Establishing targets equal to ERLs is consistent with previously adopted TMDLs in the Los Angeles Region, including the Calleguas Creek OC pesticides, PCBs, and Siltation TMDL, the Marina del Rey Harbor Toxic Pollutants TMDL, and the Colorado Lagoon OC Pesticides, PCBs, Sediment Toxicity, PAHs, and Metals TMDLs. Targets that are equal to ERLs are readily measurable, and can be used as</p>

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		<p>allocations.</p> <p>The development of California's Sediment Quality Objectives does not render the inclusion of ERL-derived targets inappropriate in the Oxnard Drain 3 TMDL. First, California's Sediment Quality Objectives Phase II have not yet been adopted. Second, as the comment acknowledges, the Sediment Quality Objectives for Enclosed Bays and Estuaries do not apply to Oxnard Drain 3.</p> <p>The establishment of the TMDLs for the Calleguas Creek Watershed likewise does not render the inclusion of ERL-derived targets inappropriate in the Oxnard Drain 3 TMDLs.</p> <p>The sediment target established in the TMDL for toxaphene is equal to the TEL concentration identified in MacDonald DD, Ingersoll CG, Berger TA, Development and evaluation of consensus-based sediment quality guidelines for freshwater ecosystems, Archives of Environmental Contamination and Toxicology 29:20-31 (2000). The TEL represents concentrations below which adverse effects rarely occur. See, (Smith SL, MacDonald DD, Keenleyside KA, Ingersoll CG, Field LJ, A Preliminary Evaluation of Sediment Quality Assessment Values for Freshwater Ecosystems, Journal of Great Lakes Research 22:624-638 (1996). EPA concludes that establishing a target for toxaphene equal to the TEL is appropriate. Inclusion of this target helps ensure that the TMDL fully protects beneficial uses of Oxnard Drain 3 with an appropriate margin of safety.</p> <p>Both the Calleguas Creek watershed and Oxnard Drain 3 TMDLs use ERLs as sediment targets. For further consistency with the Calleguas Creek TMDLs, the Total DDT sediment target was replaced with 4,4'-DDD, 4,4'-DDE, and 4,4'-DDT sediment targets.</p>

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		<p>EPA does not agree that “there are no sediment contaminant listings being addressed by the TMDL.” California has determined that Oxnard Drain 3 is impaired, and that the impairment is due to sediment toxicity as well as a variety of particular pollutants. The TMDL addresses the impairment due to sediment toxicity as well as the impairments due to the particular pollutants identified by California.</p>
1.5	<p><i>Water Column Targets</i></p> <p>In the Oxnard Drain #3 TMDL, the lowest water column criterion for the constituent was selected as the TMDL target, regardless of the purpose of the criterion. For the majority of the OC Pesticides and PCBs, the lowest criterion is generally for the protection of human health (organisms only). As discussed above, the CCW fish tissue targets are derived from these CTR criteria. As a result, the inclusion of water column targets for the protection of human health due to consumption of fish is redundant with the fish tissue targets. However, there may be concerns about the protection of aquatic life beneficial uses. Therefore, the water column targets in the CCW TMDL were set equal to the CTR criteria for the protection of aquatic life. To prevent duplicative targets in the TMDL and ensure that aquatic life beneficial uses are addressed and protected by the TMDL, the CCW water column TMDL targets should be used (see Table 4).</p> <p><i>Requested Action: Replace the Oxnard Drain #3 water column targets with the CCW water column targets.</i></p>	<p>The pollutants identified in the TMDL’s Table 15 may cause impairments due to their presence in the water column or in fish tissue. Allocations expressed as maximum concentrations of the pollutants in each of the media are appropriate.</p> <p>Oxnard Drain 3 has both aquatic life and human health beneficial uses. Therefore, the more stringent of the CTR aquatic life or human health criteria is the applicable standard. The TMDL targets and allocations match the applicable water quality standard. The Calleguas Creek watershed targets are less stringent than the applicable water quality standards in Oxnard Drain 3.</p> <p>See also, <i>Anacostia Riverkeeper, Inc. v. Jackson</i>, -- F.Supp. 2d --, 2011 WL 3019922 (D.D.C. 2011) (“The Scope of a TMDL is Not Limited by Impairment Reports in a 303(d) List”; “... subsection (1)(C)’s instruction to develop a TMDL protective of water quality standards is an instruction to determine the pollutant load level necessary to safeguard all designated uses.”; “Thus, by listing the Anacostia River as impaired and including it on their 303(d) lists, Maryland and the District triggered an obligation to develop TMDLs for pollutants that set load limits necessary to protect all water quality standards specified under state laws as applicable to the river—including all designated uses.”).</p>
1.6	<p><i>Load Allocations</i></p> <p>The VCAILG requests that the load allocations in the Oxnard Drain #3 TMDL be replaced by the CCW TMDL load allocations for the Mugu subwatershed as shown in Table 5. These load</p>	<p>Although the Oxnard Drain 3 TMDL establishes targets expressed as fish tissue concentrations, it does not establish allocations expressed as fish tissue</p>

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	<p>allocations are already included in the Conditional Waiver as benchmarks that are being implemented by VCAILG members in the Oxnard Drain #3 watershed. Identifying different load allocations and corresponding benchmarks that would trigger actions to comply with the Conditional Waiver for only the VCAILG members in the Oxnard Drain #3 watershed would add a significant additional cost burden to these growers to address the same impairments as other growers in the CCW. For example, the CCW TMDLs include one load allocation expressed as a sediment concentration. The Oxnard Drain #3 TMDL includes three allocations (one for fish tissue, one for sediment, and one for water column). For each exceedance of a load allocation that has been placed in the Conditional Waiver, a WQMP must be developed that outlines BMPs to achieve the benchmarks and a schedule. The cost of developing and implementing the WQMP is split among the watersheds. With different and more allocations to comply with, the Oxnard Drain #3 watershed may be forced into preparing more WQMPs than other portions of the watershed to address the same impairments and putting them at a strategic disadvantage as compared to other growers in the watershed.</p> <p>For these reasons and to maintain consistency of TMDL implementation for all growers in the CCW, we request that the CCW allocations below be included in the Oxnard Drain #3 TMDL.</p> <p><i>Requested Action: Modify the TMDL to make the allocations consistent with the existing CCW TMDLs.</i></p>	<p>concentrations. See, TMDL, secs. 3 and 6.</p> <p>If the comment contends that the TMDL should not establish allocations expressed as water column concentrations as well as allocations expressed as sediment concentrations, EPA disagrees. The pollutants identified in the TMDL's Table 15 may cause impairments due to their presence in the water column and/or in sediment. Allocations expressed as maximum concentrations of the pollutants in each of the media are appropriate.</p> <p>Calleguas Creek (Mugu Lagoon subwatershed) TMDL's allocations cannot independently be used in Oxnard Drain 3 for several reasons. The Calleguas Creek sediment allocations were calculated based on site-specific percent reductions which differ from the conditions in Oxnard Drain 3. Additionally, it is not clear that the Calleguas Creek allocations were designed to protect benthic organisms.</p> <p>In order to increase consistency with the Calleguas Creek Watershed TMDLs while still protecting the beneficial uses of Oxnard Drain 3, alternate sediment allocations which match the Calleguas Creek Mugu Lagoon targets were added. The alternate sediment allocations apply if the fish tissue and sediment toxicity targets are achieved in Oxnard Drain 3.</p>
1.7	<p>Remove Bifenthrin and Chlorpyrifos from the TMDL</p> <p>The TMDL includes targets and allocations for bifenthrin and chlorpyrifos, neither of which were identified in Analytical Unit #8 of the Consent Decree or on the most recent version of the 303(d) list. These constituents should not be included in the TMDL until the impairments have been fully evaluated through the 303(d) listing process. In particular, no water quality objectives have been promulgated by USEPA or the State of California for bifenthrin. The use of draft criteria developed for the Central Valley Region as the basis for determining an impairment without a formal listing evaluation process is inappropriate. Especially given that the criteria being developed for bifenthrin by UC Davis is for freshwater only and Oxnard Drain #3 is a brackish waterbody. The UC Davis criteria development study expressly states that the purpose is to establish freshwater water quality criteria. Saltwater studies were not used in the criteria derivation and the document states that "the risk to freshwater and</p>	<p>EPA does not agree that allocations expressed as concentrations of bifenthrin and chlorpyrifos should be omitted from the Oxnard Drain 3 TMDL. California has determined that Oxnard Drain 3 is impaired, and that the impairment is due to sediment toxicity as well as a variety of particular pollutants. Further evaluation of California's listing is not required before the allocations pertaining to bifenthrin and chlorpyrifos may be included in the TMDL. Likewise, California's listing determination does not have to be revised before the allocations pertaining to bifenthrin and chlorpyrifos may be included in the TMDL. As the TMDL explains, both bifenthrin and</p>

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	<p>saltwater organisms should be assessed separately” (p. 23). Because the criteria have not been finalized and are for freshwater only, it is inappropriate to use the draft bifenthrin criteria for evaluation of water quality data on a brackish waterbody that results in development of a TMDL without going through the 303(d) listing process.</p> <p>For chlorpyrifos, the listing process was not followed in that no fish tissue exceedances were observed in the available data, yet fish tissue targets and allocations were included in the TMDL. The fish tissue targets and allocations are unwarranted without clear evidence of fish tissue exceedance(s). This demonstrates the problem with including chlorpyrifos in the TMDL without full consideration of the actual impairments through the 303(d) listing process.</p> <p><i>Requested Action: Remove bifenthrin and chlorpyrifos from the TMDL and just address constituents included in analytical unit #8 on the consent decree.</i></p>	<p>chlorpyrifos contribute to Oxnard Drain 3’s sediment toxicity. The allocations expressed as maximum concentrations of those pollutants address that impairment. See also, <i>Anacostia Riverkeeper , Inc. v. Jackson</i>, -- F.Supp. 2d --, 2011 WL 3019922 (D.D.C. 2011) (“The Scope of a TMDL is Not Limited by Impairment Reports in a 303(d) List”; “... subsection (1)(C)’s instruction to develop a TMDL protective of water quality standards is an instruction to determine the pollutant load level necessary to safeguard all designated uses.”; “Thus, by listing the Anacostia River as impaired and including it on their 303(d) lists, Maryland and the District triggered an obligation to develop TMDLs for pollutants that set load limits necessary to protect all water quality standards specified under state laws as applicable to the river—including all designated uses.”).</p> <p>As discussed in TMDL Section 2.2.2, narrative water quality objectives apply to Oxnard Drain 3. The Basin Plan states that “no individual pesticide or combination of pesticides shall be present in concentrations that adversely affect beneficial uses. There shall be no increase in pesticide concentrations found in bottom sediments or aquatic life” and that “all waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological response in human, plant, animal, or aquatic life.”</p> <p>The three highest bifenthrin concentrations in Oxnard Drain 3 were 0.0122ug/L, 0.0091ug/L, and 0.00465ug/L which exceed the freshwater chronic and acute UC-Davis report concentrations as well as the LC50 concentration for the estuarine species <i>Americamysis bahia</i>. The three highest chlorpyrifos concentrations in Oxnard Drain 3 were 0.4443ug/L, 0.1285ug/L, 0.1234 ug/L which exceed the USEPA chronic and acute aquatic life protection values. Additional details are explained in the TMDL. Chlorpyrifos and bifenthrin impairments exist in</p>

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		<p>Oxnard Drain 3.</p> <p>As discussed in comment 7.7, the more stringent of freshwater and saltwater criteria apply in brackish waterbodies. Since no saltwater guideline currently exists for bifenthrin, it is most appropriate to use the freshwater concentration for TMDL targets and allocations. In addition, saltwater organisms tend to be more sensitive than freshwater species, which would decrease the target bifenthrin concentrations.</p> <p>The peer reviewed UC Davis water quality criteria report for bifenthrin reviews approximately 40 original studies on the effects of bifenthrin on aquatic life. The UC Davis report is the best available study which converts the narrative pesticide and toxicity objectives into a numeric target.</p> <p>Although no chlorpyrifos fish tissue target exceedances have been detected, a fish tissue target was included because chlorpyrifos can partition between water, sediment, and fish tissue.</p> <p>Bifenthrin and chlorpyrifos are used within the Oxnard Drain 3 watershed. These pyrethroids pesticides can be a major source of toxicity. The TMDL includes allocations expressed as concentrations of bifenthrin and chlorpyrifos in order to achieve the narrative pesticide and toxicity water quality objectives, and ensure that Oxnard Drain 3's designated uses are supported.</p>
1.8	<p>Modify the Implementation Recommendations to be consistent with the CCW TMDLs and Conditional Waiver</p> <p>Implementation recommendations are identified that do not align with the requirements of the Conditional Waiver. In particular, the following recommendations should be removed:</p> <ul style="list-style-type: none"> Dredging Oxnard Drain 3 sediments and sediments in agricultural drains in the watershed Sediment capping <p>The TMDL should remove these recommendations and instead reference implementation actions for agricultural dischargers to the Conditional Waiver provisions.</p>	<p>Additional language was added to the implementation section recommending that a modified Calleguas Creek Watershed Management Plan incorporate the Oxnard Drain 3 TMDLs. The TMDLs already recommend including the allocations in the Conditional Waiver of Waste Discharge Requirements.</p> <p>The Regional Board maintains the authority to require other regulatory mechanisms, such as the remediation</p>

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	<p><i>Requested Action: Remove the implementation recommendations outlined above and replace with a recommendation to implement actions consistent with the requirements in the Conditional Waiver for Irrigated Lands and approved Water Quality Management Plans.</i></p>	<p>of bed sediment in agricultural drains through a Cleanup and Abatement Order and require monitoring through authority under water code section 13267. The Regional Board will not likely use other regulatory mechanisms if the Conditional Waiver of Waste Discharge Requirements is successful in removing impairments in Oxnard Drain 3.</p>
1.9	<p>Remove allocations for Dieldrin and PCBs</p> <p>In the CCW TMDLs, a number of constituents were identified that were no longer detected in recent data, but had detection limits higher than the TMDL targets, similar to dieldrin and PCBs in the Oxnard Drain #3 TMDL. In the CCW TMDLs, targets were included for these constituents, but allocations were not included. By maintaining targets, should analytical methods improve and allow for the detection of these constituents at lower levels, targets have been established to evaluate whether or not an impairment exists due to a future detection of the constituent. By not including allocations, implementation actions are not required to address constituents that appear to no longer be causing impairments. We request that the same approach be used for the Oxnard Drain #3 TMDL.</p> <p><i>Requested Action: Remove dieldrin and PCB allocations from the TMDL.</i></p>	<p>Commenters provided no additional dieldrin or PCB data. EPA is establishing TMDLs for dieldrin and PCBs in Oxnard Drain 3 because the original 303(d) listing data showed exceedances and current data are often below detection limits but above the assessment target. Including PCB and dieldrin TMDLs is also consistent with the neighboring Calleguas Creek TMDLs.</p>
2	California Department of Transportation (Caltrans)	
2.1	<p>While Caltrans strongly supports the United States Environmental Protection Agency (USEPA) and the Los Angeles Regional Water Quality Control Board (LARWQCB) efforts to protect human health and achieve the highest standard of water quality possible; Caltrans is incorrectly named as a stakeholder in this TMDL and should not have any waste load allocations. The staff report states that the stormwater discharges from most of the Caltrans properties and facilities in the watershed eventually end up in either a city or county storm drain. Figure 8 of the staff report shows the jurisdictions and permits in the Oxnard Drain 3 watershed and identifies East Hueneme Road as a Caltrans highway. Our review of the revised Ventura County Assessor Maps dated 2002 through 2007, Caltrans Right of Way Engineering Maps and an evaluation of the watershed conclude that Caltrans does not own and/or operate East Hueneme Road, Rice Avenue and any other facilities within the watershed. Therefore, please remove all references to Caltrans as a responsible jurisdiction from this TMDL.</p>	<p>All references to Caltrans were removed from the Oxnard Drain 3 TMDLs.</p>
3	Calleguas Creek Watershed Management Plan Steering Committee	
3.1	<p>The Steering Committee would like to support the comments submitted by the Parties Implementing TMDLs in the Calleguas Creek Watershed (CCW) and the Ventura County Agriculture Irrigated Lands Group in requesting that the impairments for Oxnard Drain #3 be addressed through a category 4B classification rather than a TMDL. We feel that the Oxnard Drain #3 impairments are already being addressed by the responsible parties in the CCW and different requirements should not be placed on the watershed stakeholders in the Oxnard</p>	<p>See responses to Parties Implementing TMDLs on the Calleguas Creek Watershed and Ventura County Agriculture Irrigated Lands Group.</p>

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	Drain #3 subwatershed. Providing consistency between the CCW TMDLs and the Oxnard Drain #3 TMDLs will ensure that the Calleguas Creek Watershed Management Plan and implementing parties can continue to cooperatively implement actions necessary to protect the beneficial uses in the CCW. It also honors the extensive stakeholder involvement by the watershed in developing TMDLs.	
4	City of Oxnard	
4.1	Oxnard Drainage District #3 was originally listed in 1996 based on Toxic Substances Monitoring (TSM) fish tissue data from 1989. The next available data from the TSM Program came in 1997. The Final California 2010 Integrated Report stated that the pollutants/reach combinations for ODD #3 were "being considered for removal from the section 303(d) list under section 4.5 of the Listing Policy. One line of evidence is available in the administrative record to assess this pollutant." However, it was not delisted because "two of the 2 samples exceeded the OEHHHA Screening Value". The two samples were actually a split sample of mosquito fish taken during a single sample event in 1997 from ODD #3 at Arnold Road (Figure 1). Not only is this tissue data over ten years old, it constitutes a single line of evidence and is not sufficient to trigger impairment under the Listing Policy. The City of Oxnard has consistently commented that Oxnard Drainage Districts 303(d) listings are outdated, and the reaches should be delisted. As they have not been delisted, we request that the TMDLs be considered adequately addressed by existing TMDLs and programs.	California identified Oxnard Drain 3 as a water quality limited segment still requiring a TMDL in the CWA sec. 303(d) list approved by the State in 2010. The amended consent decree in <i>Heal the Bay, Inc. v. Browner</i> , No. C98-4825 SBA (N.D. CA) requires that a TMDL be developed for the water by March 2013. During TMDL development, EPA analyzed the available data, including sampling from 2007-2010, and confirmed that Oxnard Drain 3 is impaired and that the subject TMDL is still required to address the impairment. See response 11.1.
4.2	<p>The draft Total Maximum Daily Loads (TMDLs) for Oxnard Drain 3, however, adds allocations for chlorpyrifos and bifenthrin. This action short-circuits the 303(d) listing process and moves directly to TMDL, without providing the opportunity for stakeholders to identify and correct water quality issues related to the application of these approved pesticides. From the data included in the draft document, it is clear that chlorpyrifos and bifenthrin are being monitored by stakeholders in the Calleguas Creek watershed (Ventura County Agricultural Irrigated Lands Group (VCAILG) 2009 Annual Monitoring Report). What is not clear is the extensive use of BMPs by VCAILG members to address the pollutants identified by monitoring. The success of these BMPs appears to be reflected in the percent reduction of "0" needed to meet allocations (Table 4). We request that chlorpyrifos and bifenthrin be removed from the TMDLs until they have gone through the listing process.</p> <p>The Total Maximum Daily Loads (TMDLs) for Oxnard Drain 3 report recognizes that "To date, there are no USEPA water quality criteria or aquatic life benchmarks for bifenthrin. The California Department of Fish and Game (CDFG) composed a risk assessment report for synthetic pyrethroids (Siepmann & Holm 2000). CDFG concluded that there was insufficient data to calculate criteria for bifenthrin using the USEPA (1985) methods." As there are no adopted water quality criteria for bifenthrin, we request that bifenthrin be removed until criteria appropriate for ODD #3 are adopted, and the listing process is triggered by exceedances of that criteria.</p>	See response 1.7.
4.3	Duplication of effort with the Calleguas Creek Watershed Management Plan As mentioned, the City of Oxnard is an active member of the Calleguas Creek Watershed	EPA appreciates the City of Oxnard's current management plans to address pesticide pollution.

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	<p>Management effort, and is subject to existing TMDL wasteload allocations for all of the pollutants that are addressed in the draft Total Maximum Daily Loads (TMDLs) for Oxnard Drain 3, with the exception of chlorpyrifos and bifenthrin. We feel that it would be an inefficacious use of public resources to develop a separate implementation plan and monitoring program for a small area of the City that is essentially covered by the Calleguas Creek TMDLs. We request that the ODD #3 listings be addressed by the current stakeholder-driven process in the Calleguas Creek watershed.</p>	<p>The Oxnard Drain 3 TMDL implementation and monitoring measures will be developed by the Regional Water Quality Control Board, not EPA. EPA revised the TMDL to recommend: that the implementation activities proposed for Oxnard Drain 3 are consistent with previous studies and assessments, and coordinated with existing watershed-based planning, restoration, and monitoring efforts in the watershed; and that a modified Calleguas Creek watershed management plan incorporate the Oxnard Drain 3 TMDLs.</p>
4.4	<p>Conflicts with the Calleguas Creek Watershed Management Plan The load and wasteload allocations in the draft Total Maximum Daily Loads (TMDLs) for Oxnard Drain 3 differ from those in the current Calleguas Creek TMDLs for the same constituents, in the same watershed area. We request that the ODD #3 listings be addressed by the current stakeholder-driven process in the Calleguas Creek watershed.</p>	<p>See response 1.6.</p>
5	County of Ventura Public Works Agency	
5.1	<p>REMOVE COUNTY WASTELOAD ALLOCATIONS According to the draft TMDL (as identified in Table 16), the County of Ventura is assigned a wasteload allocation (WLA). The County does not own any land or improved municipal separate storm drain system (MS4s) within the Oxnard Drain NO.3 watershed and does not maintain or operate any storm drain facilities. We have confirmed this by searching County records, parcel database and Geographic Information System (GIS) analysis. The Ventura County MS4 system (as defined in Ventura Countywide MS4 Stormwater Permit Order No. R4-2010-0108) is located within the unincorporated urban areas. Based on our GIS analysis, we determined that there are no County Unincorporated urban areas located within the watershed defined for this TMDL. Also, we determined that none of the Ventura County Watershed Protection District's red channels is located within this watershed. Indeed, Ventura County Department of Transportation maintains three roads within this watershed, i.e., Casper Road, Arnold Road, and Hueneme Road; however none of these roads has an improved storm drain system considered as an MS4. Moreover, these roads do not connect with Oxnard Drain No.3, do not generate or convey water pollution addressed in this TMDL, and do not discharge to Waters of the United States.</p> <p>Since the County does not have an MS4 system covered by a NPDES permit in the watershed; a WLA should not be assigned to the County in the TMDL. TMDLs prescribe WLAs for point source pollution (40 C.F. R. § 130.2(i).), and the federal regulations define a WLA as that "portion of a receiving water's loading capacity that is allocated to one of its existing or future <i>point sources</i> of pollution." (40 C.F.R. § 130.2(h), emphasis added). Accordingly, federal law directs USEPA and other TMDL writers to assign WLAs only to point sources (which typically are regulated by an NPDES permit). The MS4 permit that applies to the County only</p>	<p>Additional correspondence with the County of Ventura Public Works Agency confirmed that "Both County of Ventura and private owners maintain the surface ditches... County maintains roadside and bottom of ditch, and property owner maintains their side. On Arnold Rd, County maintains their part of surface ditches, about 7,230 ft stretch from Hueneme Rd south where the ditch is under City of Oxnard's jurisdiction. On Casper Rd, about 7,920 ft stretch from Hueneme Rd south to chain link fence where the ditch becomes private."</p> <p>The definition of a municipal separate storm sewer system (MS4) in the Ventura County MS4 permit is "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains), as defined by 40 CFR122.26(b)(8):</p> <ol style="list-style-type: none"> 1. Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) including special districts under State law such as a sewer district, flood control district or drainage district, or similar

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	<p>applies to " .. all areas within each co-permittee's boundaries that drain into the MS4." (Order No. R4-2010-0108 at p. 13). MS4 is defined to mean "a conveyance or system of conveyances ... [o]wned or operated by a state, city, town, borough, county, ... that discharges into waters of the United States." (Order No. R4-201 0-01 08 at p. 109). As stated above, the County does not own or operate any MS4 system in the watershed, thus, does not have any facilities that are subject to the MS4 permit in the watershed. Therefore, the County should not be assigned a WLA in this TMDL.</p> <p>Additionally, the majority of the land in the Oxnard Drain NO.3 watershed is designated as agricultural area, which is privately owned and operated. The County has no jurisdiction or authority over these areas, and again, should therefore not be a responsible party to the TMDL. All non-agricultural lands within the watershed are identified in the figure and table below. Nonagricultural ownership includes a few individual residences, the Oxnard Harbor District, the Agromin, Inc. and VC Game Reserve operated by a County Game Preserve Association. The TMDL watershed map illustrating results of the County parcel database research is provided in Attachment A.</p> <p>REQUESTED ACTION: Since the County does not have jurisdiction over any land, and does not own or operate any storm drain facilities, remove the County as a responsible party from the TMDL and delete the County's wasteload allocations.</p>	<p>entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under §208 of the Federal Clean Water Act that discharges into waters of the United States</p> <ol style="list-style-type: none"> 2. Designed or used for collecting or conveying storm water 3. Which is not a combined sewer 4. Which is not part of a Publicly Owned Treatment Works, as defined in 40 CFR122.2" <p>The permit coverage in the Ventura County MS4 "includes all areas within Ventura County boundaries and all areas within each co-permittee's boundaries that drain into the MS4."</p> <p>The roadside ditches alongside Casper and Arnold Road drain to Oxnard Drain 3. Therefore, Ventura County was correctly identified as a responsible jurisdiction in the TMDLs and receives a wasteload allocation.</p>
5.2	<p>CONSISTENCY WITH CALLEGUAS CREEK TMDLS</p> <p>Responsible parties are already implementing actions to address the targets and allocations outlined in the CCW TMDLs and the County feels that the impairments in Oxnard Drain NO.3 will be addressed through this implementation. As a result, the County feels that the targets and allocations in the Oxnard Drain NO. 3 TMDL (or category 4B designation) should be consistent with those previously established in the Calleguas Creek TMDLs. The County requests the CCW TMDL targets and allocations as shown in the following tables replace the Oxnard Drain NO.3 targets and allocations.</p> <p>The implementation recommendations are inconsistent with the CCW TMDLs and the MS4 permit requirements for the CCW. Given the size of the watershed and the active TMDL implementation being undertaken in the CCW, the TMDL recommendations should be consistent with the CCW TMDLs.</p> <p>REQUESTED ACTION: Modify the TMDL to make targets and allocations consistent with the existing CCW TMDLs. In addition, modify the implementation recommendations to refer to the implementation requirements for the CCW TMDL and the existing provisions of the MS4 permit and conditional waiver.</p>	<p>See response 4.3 and 1.2.</p> <p>The Implementation Recommendations section suggests including Oxnard Drain 3 in MS4 and conditional waiver renewals.</p>
5.3	<p>BIFENTHRIN AND CHLORPYRIFOS</p> <p>The TMDL includes targets and allocations for bifenthrin and chlorpyrifos, neither of which</p>	<p>See response 1.7.</p>

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	<p>were identified in Analytical Unit NO.8 of the Consent Decree or on the most recent version of the 303(d) list. These constituents should not be included in the TMDL until the impairments have been fully evaluated through the 303(d) listing process. In particular, no water quality objectives have been promulgated by USEPA or the State of California for bifenthrin. The use of draft criteria developed for the Central Valley Region as the basis for determining impairment without a formal listing evaluation process is inappropriate, especially given the criteria being developed for bifenthrin by UC Davis is for freshwater only, and Oxnard Drain NO. 3 is a brackish waterbody. The UC Davis criteria development study expressly states that the purpose is to establish freshwater water quality criteria. Saltwater studies were not used in the criteria derivation and the document states, "the risk to freshwater and saltwater organisms should be assessed separately" (p. 23). Because the criteria have not been finalized and are for freshwater only, it is inappropriate to use the draft bifenthrin criteria for evaluation of water quality data on a brackish waterbody to develop a TMDL without going through the 303(d) listing process. For chlorpyrifos, the listing process was not followed as no fish tissue exceedances were observed in the available data, yet fish tissue targets and allocations were included in the TMDL. This demonstrates the problem with including chlorpyrifos in the TMDL without full consideration of the actual impairments through the 303(d) listing process.</p> <p>REQUESTED ACTION: Remove bifenthrin and chlorpyrifos from the TMDL and just address constituents included in Analytical Unit NO.8 of the Consent Decree.</p>	
5.4	<p>DIELDRIN AND POLYCHLORINATED BIPHENYLS NON-DETECTS</p> <p>In the CCW TMDLs, for constituents that were no longer detected in recent data, the TMDLs included targets, but not allocations. This TMDL should address dieldrin and Polychlorinated Biphenyls (PCBs) in the same way.</p> <p>REQUESTED ACTION: Remove dieldrin and PCB allocations, and recommendations for TMDL implementation.</p>	See response 1.9.
5.5	<p>AREA OF SPECIAL BIOLOGICAL SIGNIFICANCE</p> <p>The wetland area surrounding Oxnard Drain NO. 3 is not designated as an Area of Special Biological Significance (ASBS). The designated ASBS is the nearshore ocean from Laguna Point eastward to Latigo Point.</p> <p>REQUESTED ACTION: Remove statement that: "the wetland area surrounding Oxnard Drain NO.3 is designated as the Area of Special Biological Significance".</p>	EPA deleted the referenced statement.
6	Heal the Bay	
6.1	<p>The Draft TMDL mentions that USEPA invites comment on the decision to include PCBs and dieldrin in the TMDL. Heal the Bay strongly supports the inclusion of these constituents. Even though detection limits are currently higher than the standard for these constituents, the Draft TMDL clearly outlines that fish tissue results show concentrations above standards for dieldrin. Data from 1989-1997 also have multiple exceedances of dieldrin and PCBs in fish</p>	Comment noted.

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	tissue. These data must be considered in the drafting of this TMDL.	
6.2	The inclusion of pyrethroids and chlorpyrifos in the TMDL is crucial. Both pesticides are used within the watershed. In addition, pyrethroids have been shown to be a leading cause of toxicity in the environment. Recent work by SCCWRP and the City of Los Angeles on Ballona Creek sediments demonstrated that the sediments were often toxic and the predominant source of the toxicity was pyrethroids. Thus, we believe it is appropriate for this TMDL to contain these limits in order to fully address pesticide impairment.	Comment noted.
6.3	We also support the inclusion of concentration-based WLAs.	Comment noted.
6.4	In addition, we support the inclusion of water column allocations based on protective CTR human health criteria for OC pesticides and PCBs. We feel this is the most protective and appropriate CTR standard to use in this TMDL.	Comment noted.
6.5	We are concerned that the Draft TMDL does not contain a WLA for water column toxicity. Toxicity testing is a type of “safety net,” which captures potential impacts of the constituents included in this TMDL, the synergistic impacts of these constituents, and constituents that may not be monitored. Toxicity testing is necessary to ensure beneficial uses are protected. We suggest that the TMDL include a WLA of 1 chronic toxicity unit (TUC). 1 TUC represents the limit at which undiluted sample water will not cause significant mortality in test organisms. This would be consistent with the limit that currently exists in the Conditional Waiver for Irrigated Lands that covers this region. When the State Water Board finalizes the Toxicity Policy, the limit can be updated appropriately.	The Conditional Waiver for Irrigated Lands includes a benchmark of 1.0 TUC to address water column toxicity. EPA believes that, collectively, the pollutant-specific maximum loads and allocations established in sec. 6 of the TMDL adequately address the risk of water column toxicity. Accordingly, EPA determined not to establish a waste load allocation equal to the 1.0 TUC benchmark in the Conditional Waiver for Irrigated Lands at this time. If California or EPA later finds that a waste load allocation expressed in TUC to protect against water column toxicity is warranted, the TMDL may be revised or a new TMDL may be established.
6.6	The TMDL should also clarify the requirements of the sediment toxicity WLAs. Currently, Table 16, which contains numeric targets used for wasteload and load allocations, does not contain a clear explanation of the sediment toxicity target and instead refers readers to Section 3 of the TMDL (Numeric Targets). The allocations section should clearly restate the sediment toxicity WLA, as well as what is needed to demonstrate compliance with this limit.	EPA added clarifying language to the allocation section.
6.7	A big problem we see with the Draft TMDL is the recommendation that these limits be included in the Conditional Agricultural Waiver (Ag Waiver) as weak “benchmarks” instead of enforceable effluent limits. In other words, an exceedance of benchmarks simply triggers an evaluation of the current best management practices (BMPs), with the outcome of upgrading or replacing the BMPs. This iterative approach has been very ineffective in other regulatory programs such as the MS4 program. Due to flaws in the current Ag Waiver such as the infrequent monitoring requirements and the lack of timely reporting requirements when benchmarks are exceeded, it is unclear if the WLAs would actually be met. An exceedance resulting in an iterative approach of increasing BMPs is tantamount to exceedance without risk of enforcement. This is especially true since there are no BMP performance standards in place to ensure BMPs installed will lead to compliance with water quality standards. Essentially, a discharger could be considered in compliance with these benchmarks for merely	<p>EPA revised sec. 7 (Implementation Recommendations) of the TMDL. The section now recommends that sediment toxicity and PCBs “should be added as water and sediment quality limits, and should be included in the monitoring requirements when the Conditional Agricultural Waiver is renewed or other Regional Board order is issued.”</p> <p>Under the agricultural waiver, a discharger would not be considered in compliance with benchmarks for merely installing BMPs without regard to their effectiveness in contaminant removal. Dischargers</p>

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	<p>installing BMPs without regard for their effectiveness in contaminant removal. It is both the law and good public policy for the USEPA to require that WLAs be implemented only as enforceable numeric limits. The USEPA has full authority to establish numeric limits for toxic constituents in water discharged from irrigated lands. Therefore, we ask that the Draft TMDL be revised to state on page 36 of the TMDL that “These constituents should be added as Numeric Water Quality <i>Limits</i>, and should be included in the monitoring requirements when the Conditional Agricultural Waiver is renewed.” In addition, EPA should develop standards to evaluate BMP performance, such as requiring 75% pollutant removal and/or tailwater capture, in order to ensure that BMPs implemented will lead to attainment of water quality.</p>	<p>must consider effectiveness when choosing BMPs and submit the rationale in their water quality management plan.</p> <p>The implementation recommendations section discusses several options, not just the Conditional Agricultural Waiver. If the Conditional Agricultural Waiver program actions are not improving the health of Oxnard Drain 3, EPA recommends moving to other stronger Regional Board orders.</p> <p>EPA does not have full authority to establish numeric limits for toxic constituents in water discharged from irrigated lands. See, Clean Water Act, sec. 502(14) (excluding “agricultural stormwater discharges and return flows from irrigated agriculture” from the definition of “point source”).</p>
6.8	<p>USEPA should work with the Regional Board to aid in the timely development of monitoring and implementation plans for this TMDL.</p> <p>We are concerned that there is no monitoring or implementation plan associated with the Draft TMDL, especially given the legacy sediment contamination. While we understand that USEPA does not have this authority, it is critical that USEPA work closely with the Regional Water Board to ensure that all TMDLs in the Region have monitoring and implementation plans developed. An implementation plan still has not been developed by the Regional Board as a follow up to the Malibu Creek Watershed Nutrient TMDL—exactly eight years after EPA developed the TMDL. Implementation plans are crucial in ensuring that dischargers are on-track for ultimate compliance with the waste load allocations. In addition, a comprehensive monitoring plan is essential to assess progress towards meeting the WLAs and ultimately assess compliance with these allocations. Elements such as the specific monitoring locations and frequency of monitoring must be specified in order to ensure ultimate compliance with the TMDL. Also, EPA and Regional Board should require NPDES dischargers to develop a Stormwater Management Plan that would outline actions that they will implement to meet water quality standards and prevent contaminants from reaching the waterway, as well as performance criteria for BMPs included as a part of this plan. Thus, the EPA should actively encourage the timely development of implementation plans and monitoring plans and work with the Regional Board to develop them. Thus, we urge the EPA to work with the Regional Board to develop a comprehensive monitoring plan in the very near future.</p>	<p>Comment noted.</p>
6.9	<p>USEPA should require whole fish testing to demonstrate that fish tissue targets are met.</p> <p>This TMDL suggests that composite samples of skin off fillets be taken to demonstrate targets</p>	<p>EPA used Threshold Tissue Residual Levels (TTRLs) as fish targets in the final TMDLs. These targets were based on the pollutant residues in the fillet of the</p>

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	<p>are being met. This is a non-protective approach, given that a number of sub-populations, especially subsistent anglers and Asian/Pacific Islander cultures, utilize the entire fish in their food preparation. A fish consumption study found that of Asian anglers surveyed, 50 percent consume the whole fish (SCCWRP, Santa Monica Bay Seafood Consumption Study, 1994). In addition, birds and other wildlife that prey on fish eat the entire fish. The TMDL should require that the entire fish is tested, as certain high-lipid parts of the fish are prone to accumulate different levels of contamination and many anglers, wildlife, and other consumers eat the entire fish. How was carp chosen as the species used to demonstrate compliance? Is this the species that poses the greatest risk to the health of other species higher up the food web? EPA should take into account frequency of consumption of different species by developing targets for fish that are caught and eaten the most frequently. Hence, staff should review surveys related to fish capture for this waterbody to ensure fish that are consumed and pose the highest risk to human and ecological health are monitored. In addition, since EPA recommends fish tissue monitoring a frequency of once every three years, multiple species should be monitored. Selected species should be representative of those that dwell in the various conditions within the Oxnard Drain. Also, because the TMDL contains no WLAs for fish tissue, it must be clearly stated that fish tissue targets must be met in order for responsible parties to be considered in compliance with the TMDL.</p>	<p>ingested species.</p> <p>The Oxnard Drain 3 TMDL implementation and monitoring measures will be developed by the Regional Water Quality Control Board, not EPA. The Implementation Recommendations section suggests monitoring carp because local fishers catch carp and prior monitoring data exists for carp. Additionally carp are bottom feeders that stir up sediment as they forage. Carp are a recommended Sediment Quality Objective indicator species.</p> <p>EPA revised Section 6 of the TMDL to confirm that “TMDL compliance will be measured according to achievement of all numeric targets (including fish tissue concentration) in addition to compliance with waste load allocations and load allocations.”</p>
6.10	<p>An explicit Margin of Safety (“MOS”) should apply to all LAs and WLAs in the TMDL.</p> <p>We believe the EPA must apply an explicit MOS to all of the waste load allocations in the TMDL. EPA reasons that the LAs and WLAs that do not have an explicit MOS are given an implicit MOS based on conservative assumptions made in their development. We argue that the many uncertainties and other non-conservative assumptions may outweigh any aspect considered an “implicit margin of safety.” For instance, as mentioned above, USEPA’s recommendation to use skin off fillets to measure compliance with fish tissue targets is a non-conservative approach. Also, EPA maintains that there is an implicit margin of safety in the choice of sediment quality guideline targets to ensure achievement of the 2008 OEHHA FCG targets in fish tissue. However, there are flaws in the 2008 FCGs, such as an increase in the acceptable cancer risk from the previous FCGs by an order of magnitude, which result in less protective goals and prevent this from providing an adequate margin of safety. EPA reasons that choosing the more protective of the freshwater and saltwater targets for water and sediment to protect brackish species constitutes an implicit MOS. We support these targets, but we do not agree they provide an adequate MOS in and of themselves. Likewise, we support the choice of CTR human health criteria for setting numeric targets for OC pesticides and PCBs because they are the most protective of the CTR criteria established. However, even these CTR criteria have associated uncertainties, such as the fact that these CTR criteria were not developed to provide protection to wild species that consume aquatic species as their primary food source. Therefore, an explicit MOS is needed. The area around the Oxnard Drain is an Area of Special Biological Significance utilized by 200 migratory bird species, including endangered species such as the Western Snowy Plover (<i>Charadrius alexandrius</i></p>	<p>EPA believes the conservative assumptions incorporated into the Oxnard Drain 3 TMDLs provide an adequate margin of safety.</p>

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	<p><i>nivosus</i>), California Least Tern (<i>Sterna antillarum</i> (= <i>albifrons</i>) <i>browni</i>), Brown Pelican (<i>Pelecanus occidentalis californicus</i>), and Belding's Savannah Sparrow (<i>Passerculus sandwichensis beldingi</i>). To be adequately protective of these and other species that consume aquatic life in the Drain, and to account for any non-conservative assumptions and uncertainties associated with this TMDL, an explicit 10% margin of safety should be added to the WLAs by reducing the numeric targets by 10%.</p> <p>There are precedents for applying explicit margins of safety to sediment TMDLs within Region 9. For instance, the TMDL for Colorado Lagoon OC Pesticides, PCBs, Sediment Toxicity, PAHs, and Metals incorporated a 10% explicit margin of safety to mass-based waste load allocations. The mass-based WLAs for ammonia in the Calleguas Creek Nitrogen and Related Effects TMDL include a 10% explicit margin of safety to account for uncertainty concerning the relationships between WLAs and attainment of the water quality standards addressing algae and other listed stressors associated with nutrient loads. Also, a 10% explicit MOS was applied to LAs for the Machado Lake Pesticides and PCBs TMDL, approved by the Los Angeles Regional Water Quality Control Board September 2, 2010. Thus, USEPA must go further by including an explicit MOS for all WLAs to be consistent with these other TMDLs.</p>	
7	Marathon Land, Inc. and Southland Sod Farms Operations, Inc.	
7.1	<p>EPA Has Not Provided Sufficient Opportunity For Meaningful Public And Stakeholder Participation In Development Of These Draft TMDL's.</p> <p>EPA's draft document acknowledges that development of the Draft TMDL's is in response to a consent decree deadline arising out of a litigation settlement reached almost twelve years ago. Despite the fact that EPA has had years to develop a draft document, and to provide early and meaningful public and stakeholder participation, EPA has instead chosen to employ a last-minute process which allows little, if any, time for thoughtful data collection and exchange of views.</p> <p>EPA's 2000 Guidance For Developing TMDL's in California provides three models of public participation. Unfortunately, rather than providing any meaningful stakeholder consultation, EPA has instead elected to employ a minimal process of public notice and comment. EPA only provided notice to the public of the Draft TMDL's on February 16, 2011 and conducted a public meeting attended by our client on February 28, 2011, with public comments due by March 21, 2011. This "bare minimum" approach is inconsistent with EPA's exhortation in its own guidance document that the State of California "communicate with the public earlier in the process of developing a particular TMDL to discuss the TMDL approach and stakeholder involvement opportunities."</p> <p>In this case, meaningful public participation and stakeholder involvement would have provided key information to EPA prior to development of the Draft TMDL's, thereby allowing</p>	<p>The Regional Water Quality Control Board originally planned to write all of the TMDLs related to the consent decree (Heal the Bay Inc., et al. v. Browner, et al. C 98-4825 SBA, March 22, 1999). However, due to the state's significant resource constraints and its longer administrative process, EPA must assist the State and complete TMDLs by the decree deadline.</p> <p>On January 25, 2010, EPA Region 9 staff held a public workshop in our Southern California Field Office presenting information on TMDLs to be established by EPA R9 or adopted by the Los Angeles Regional Water Quality Control Board in the next two years. Oxnard Drain 3 was included in this presentation.</p> <p>EPA discussed the Oxnard Drain 3 watershed with many organizations prior to writing the draft TMDLs. Much of the data reviewed comes from VCAILG, the Navy, and the Regional Board. EPA held a public meeting on February 28, 2011 to discuss the draft TMDL with stakeholders. EPA concludes that</p>

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	<p>EPA to consider other options (as outlined elsewhere herein) and the opportunity to avoid significant deficiencies in the subject draft. This is especially the case where, as the comments letter submitted by VCAILG highlights, there is a close relationship between these Draft TMDL's and implementation of the already-existing TMDL's for the Calleguas Creek Watershed ("CCW"). The Draft TMDL's for Oxnard Drain 3 essentially ignore the existence of the CCW TMDL's, thereby potentially leading, as the VCAILG comments note, to inconsistent TMDL requirements and significant adverse implications for agricultural dischargers in the Oxnard Drain 3 watershed.</p> <p>We strongly support VCAILG's view that the Draft TMDL's are unnecessary given the implementation of the CCW TMDL's, MS4 NPDES permit and Conditional Waiver for Irrigated Lands ("Conditional Waiver") provisions in at least the majority of the subject watershed. Conversely, if EPA intends to move forward with the Draft TMDL's, we request that EPA first take a step back and provide extra time for meaningful stakeholder participation, within the context of and as incorporated into the CCW TMDL's. Again, providing a 35-day comment period near the end of an approximate 12-13 year time period for development of TMDL's eliminates any opportunity for meaningful public and stakeholder participation.</p>	<p>sufficient opportunities for public participation were provided.</p>
7.2	<p>The draft is inconsistent regarding the deadline date, e.g. the Executive Summary describes the date as March 2012, while the Section 1.1 (pg. 2) of the text indicates that the date is March 24, 2013.</p>	<p>The Executive Summary date was corrected to March 2013.</p>
7.3	<p>The Draft TMDL's Are Unnecessary, Since Oxnard Drain 3 Impairments Are Currently Being Addressed Through The CCW TMDL's And Conditional Waiver Process.</p> <p>EPA expressly acknowledges in the Draft TMDL's (Sec. 2.1, p. 4) that Oxnard Drain 3 is located within the Calleguas Creek watershed. As VCAILG sets forth in its comments letter to the Draft TMDL's, some if not all of the Oxnard Drain 3 watershed is covered by the CCW TMDL's. We further understand that all of the acreage within Oxnard Drain 3 is included within the cost proration element of the CCW TMDL. As EPA may be aware, the CCW TMDL is a multi-year TMDL process conducted by the California Regional Water Quality Control Board-Los Angeles Region and, unlike EPA's effort, marked by substantial and meaningful public and stakeholder participation.</p> <p>Other than a passing reference to the Calleguas Watershed Management Plan "in the neighboring [geographic] area" (Section 7.1, p. 38), EPA's document appears to ignore the CCW TMDL's which, as the VCAILG comments letter attests, are inextricably related to the Draft TMDL's. Consequently, the Draft TMDL's represent an inefficient "stand alone" product without any informed input from, or consideration of relationships to, the CCW TMDL's. As the VCAILG comments letter further demonstrates, this raises the distinct potential for inconsistent and conflicting technical information and approaches in the respective TMDL's, including but not limited to differing targets and allocations between the two TMDL's.</p>	<p>See response 4.3 and 11.1.</p> <p>The Regional Water Quality Control Board plans to update the Calleguas Creek Basin Plan Amendment in 2016.</p>

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	Accordingly, for the reasons set forth by VCAILG, we urge EPA to: (a) forego development of a separate TMDL for Oxnard Drain 3, and instead place this area (Analytical Unit #8) in Category 4B, Water Quality Limited Segments being addressed by actions other than TMDL's; or (b) if this first option is infeasible, incorporate the Draft TMDL's into the CCW TMDL's.	
7.4	<p>The Draft TMDL's Fail To Acknowledge Prior Dredging of Sediments Within The Oxnard Drain 3 Watershed Area.</p> <p>The Draft TMDL's ignore the previous dredging of sediments conducted within the watershed area of Oxnard Drain 3, and fail to consider this activity in informing the analysis and conclusions drawn in the Draft TMDL's. This fully-permitted dredging was conducted in or about November 2003. During this process, approximately 17,000 cubic yards of soil/sediment were dredged from the Oxnard Drainage District No. 2 Canal (upstream from the Arnold Road bridge) and appropriately disposed. As set forth elsewhere herein, the document's inferred contaminant levels relative to this portion of the watershed are misrepresentative of actual conditions "upstream" of Drain 3. The actual levels of contaminants in the sediments in this area are far lower than the levels "documented" in the Arnold Road testing. Consequently, the essentially blanket inference in the draft document that existing contaminant sediment concentrations throughout the Oxnard Drain 3 watershed are high is, at a minimum, inaccurate. Consequently, the waste load and load allocations analyses [Sec. 6, pp. 31-35], together with the implementation recommendations [Sec. 7, pp. 37-39] are flawed.</p>	EPA understands the comment to contend that the draft TMDL inferred that contaminant levels in Oxnard Drain 3 are representative of contaminant levels throughout the watershed. EPA further understands the comment to contend that the draft TMDL inferred that contaminant levels are high throughout the Oxnard Drain 3 watershed. EPA does not agree that the draft TMDL made such inferences. EPA understands that contaminant levels in some areas of the watershed (e.g., areas that were dredged and backfilled with clean sand) are much lower than the levels found in the samples identified in the TMDL. The TMDL allocations do not depend on the watershed sampling results. EPA developed the TMDL's implementation recommendations with the understanding that contaminant levels in the watershed vary.
7.5	<p>We Agree With VCAILG That The Draft TMDL's Contain Numerous Inappropriate Measures By EPA. We hereby incorporate by reference into this letter, as if set forth in full, all of the well-stated comments set forth in the March 18, 2011 letter (including attachments thereto) submitted by VCAILG to EPA regarding the Draft TMDL's. A copy of VCAILG's letter is attached. In addition to VCAILG's specific contentions noted earlier herein, we concur with VCAILG that:</p> <p>(1) Unlike the CCW TMDL, the fish tissue targets in the Draft TMDL were based not on the California Toxics Rule (CTR), but on Fish Contaminant Goals (FCG's) recently developed by the Office of Environmental Health Hazard Assessment (OEHHA). As VCAILG contends, FCG's are only goals, not established criteria, and their use by EPA is inappropriate since other established criteria, i.e. the CTR-based tissue targets, is available.</p> <p>(2) The sediment targets used by EPA are based on ERL's and TEC's, which is inappropriate given the development and existence of Sediment Quality Objectives (SQO's) by the State of California and, as VCAILG makes clear, the clear intent of the CCW TMDL's to incorporate the SQO's. As set forth elsewhere herein, there also exist material technical deficiencies with the use of ERL's and TEC's as TMDL targets.</p> <p>(3) The water column criteria utilized in the Draft TMDL's will lead to duplicative targets and the CCW water column targets should instead be used.</p> <p>(4) The use of three load allocations in the Draft TMDL's, rather than the one load allocation</p>	See responses to VCAILG comments.

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	<p>expressed as a sediment concentration in the CCW TMDL's, will lead to significant confusion, inconsistency of implementation, and a materially higher and unnecessary cost burden for agricultural dischargers in the subject watershed.</p> <p>(5) Neither bifenthrin nor chlorpyrifos were identified in the original consent decree or in the most recent 303(d) list, and therefore should not be included in the Draft TMDL's unless and until the impairments have been fully evaluated through the 303(d) process. We concur with VCAILG that EPA's use of draft criteria developed by the California Regional Water Quality Control Board-Central Valley Region, without first following a formal listing process, is inappropriate. We additionally discuss this point below.</p> <p>(6) Some implementation recommendations identified in the Draft TMDL's ~ dredging of agricultural drains, sediment capping] are inconsistent with the existing Conditional Waiver requirements and should be removed.</p> <p>(7) For the reasons set forth by VCAILG, dieldrin and PCB allocations should be removed from the Draft TMDL's.</p>	
7.6	<p>The Draft TMDL's Suffer From Some Of The Same Deficiencies As The Pending Dominguez Channel And Greater Los Angeles And Long Beach Harbor Waters Toxic Pollutants TMDL's. It is our view that many of the same mistakes in methodology and analysis contained in the recent draft TMDL's for the Dominguez Channel And Greater Los Angeles And Long Beach Harbor Waters Toxic Pollutants Draft TMDL ["Harbor Waters TMDL"] have been repeated in the Oxnard Drain 3 TMDL's. We hereby incorporate by reference herein, as if fully set forth, the February 22, 2011 comments letter (including attachments thereto) made by the Port of Long Beach ("Port") to the Harbor Waters TMDL. A copy of the referenced letter ["Port Comments Letter"] is attached and sets forth the Port's well-articulated contentions in detail. For the reasons set forth in the Port Comments letter, we adopt each and every contention of the Port applicable to these Draft TMDL's, specifically including, but expressly not limited to, the following:</p>	<p>Responses to comments from the Port of Long Beach on the Harbor TMDLs are available at http://www.waterboards.ca.gov/losangeles/board_decisions/basin_plan_amendments/technical_documents/66_New/11_0426/08%20Main%20RTC%20Matrix%20Final.pdf</p>
7.7	<p>The TMDL employs measurements, targets, and methods that are overly conservative, not achievable (i.e. unattainable), and potentially harmful. [Port Comments Letter, pp. 2 through 10 respectively.] We respectfully suggest that EPA's approach is akin to building an unsupportable house of cards. In particular, EPA in its discussion of numeric targets for sediment toxicity, and without any peer review for appropriateness consistent with 40 CFR 130.7, has utilized criteria from the San Francisco Bay [Sec. 3, p. 20] having no relationship whatever to the conditions existing in the subject TMDL area. EPA repeats the same error with its use of various target criteria from other geographic areas having no demonstrated relationship to the subject area, e.g. the California Regional Water Quality Control Board-Central Valley Region criteria [see, ~ Sec. 2, pp. 11, 17 respectively] and Maryland's Anacostia River [see, ~ Sec. 6.5, p. 35]. EPA's use of a "one size fits all" approach and non site-specific criteria is arbitrary and not based on sound science.</p>	<p>The "criteria from the San Francisco Bay" referenced by the comment are not criteria, and EPA did not propose to apply them as criteria in the TMDL. As the draft TMDL explained, in order to set a consistent and objective target for sediment toxicity, EPA was proposing an approach based upon the State Water Resources Control Board's Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List. As the draft TMDL further explained, the TMDL implemented the State Board's guidance in a manner similar to the State Board's Bay Protection and Toxic Cleanup Program (BPTCP). If the comment contends that EPA should not have sought to develop the TMDL in that manner, EPA disagrees.</p>

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		<p>The decision regarding the Anacostia River to which the draft TMDL referred is <i>Friends of the Earth, Inc. v. Environmental Protection Agency</i>, 446 F.3d 140 (D.C. Cir. 2006). The decision was referenced to explain the rationale for including “daily” loads in the TMDL. The reference to the decision does not represent the use of target criteria from a geographic area with no demonstrated relationship to Oxnard Drain 3.</p> <p>EPA believes that the rationale for the TMDL’s allocations and targets is adequately explained in the TMDL. See particularly, TMDL secs. 2, 3, 5 and 6, and the references cited therein.</p> <p>See also, response 1.7.</p>
7.8	<p>Although strictly speaking, the subject area (Oxnard Drain 3) is itself not a bay or estuary, for the reasons set forth above sediment quality objectives (SQO), and not ERL's, are more appropriate and should be used. [Cf. Port Comments Letter, pp. 3 through 5.] As that letter stated: "[t]he TMDL's use of Estimate Range Lows (ERL's) as sediment targets results in an incorrect indicator of sediment health and grossly underestimates the actual sediment quality" of the area in question. [Id. at 3.]</p>	<p>See response 1.4.</p>
7.9	<p>Methodologies used to create the draft TMDL are flawed and not based on accurate or current data. [Port Comments Letter, pp. 5-7] In particular, EPA appeared to employ no peer reviews in its development of the subject TMDL (including sediment fish targets, linkage analyses, and load allocations).</p>	<p>See response 7.7. As explained in the TMDL, EPA relied on data from quality controlled sampling studies conducted from 2007 through 2010, as well as earlier periods.</p> <p>The targets and allocations were derived from peer-reviewed literature, State documents, and standards.</p>
7.10	<p>Targets regarding fish tissue are not environmentally sound and require significant revision. [Port Comments Letter, pp. 7-9] As in the Harbor Waters TMD (and above), the FCG's used in the subject TMDL are non site-specific and were not intended by OEHHHA to be used as numeric targets. Further, as set forth above, the sediment targets are generic in nature, have no relationship to extant conditions in Oxnard Drain 3, and should be deferred until an SQO process is completed. Finally, as the Port Comments letter notes, there "is no scientific link between ERL's, which were derived based on data related to direct toxicity to benthic organisms, and fish tissue concentration." [Id. at 8]</p>	<p>See responses 7.7, 1.3 and 1.4.</p> <p>EPA calculated biota-sediment accumulation factor (BSAF) concentrations for Oxnard Drain 3, and considered using them as the TMDL’s sediment targets. In order to protect both benthic organisms and human health, the lower of the ERL or BSAF-derived target were selected as the sediment targets.</p>
7.11	<p>The TMDL fails to demonstrate necessary linkages. [Port Comments Letter, p. 9]</p>	<p>EPA disagrees. See Section 5 of the TMDLs.</p>
7.12	<p>Sediment targets are not intended to be remedial action goals, cleanup levels, or levels to which individual dredging projects will be held. [Port Comments Letter, p. 10] As those comments note, any such levels should be determined through a risk-based SQO approach.</p>	<p>The Regional Water Quality Control Board (RWQCB), not EPA, has the authority to write implementation plans.</p>

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	[Id.] EPA's apparent bias toward dredging of allegedly contaminated drain sediments from agricultural drains in the watershed [see, e.g. Sec. 7, pp. 36-37] is not supported by sound science; would potentially conflict with the monitoring and natural attenuation focus of the current Calleguas TMDL efforts; is infeasible; may not achieve what appear to be unattainable remediation goals, and would be prohibitively expensive and economically disastrous for involved parties.	Both natural attenuation and dredging are discussed as remediation options. A recommendation to further measure the depth and dispersion of the pollution in Oxnard Drain 3 was added to Section 7. This information would better inform the RWQCB whether dredging or monitored natural attenuation is the best way forward.
7.13	For the same reason set forth in the Port Comments Letter [p. 10], the subject TMDL's for Oxnard Drain 3 fail to show appropriate, demonstrated linkages between contaminants and specific water body impairments. EPA has failed to demonstrate any reasonable rationale for end-of-pipe effluent limitations and sampling. [Sec. 7.1, p. 38]	EPA disagrees. See Section 5 of the TMDLs. The end-of-pipe monitoring locations are recommendations to the RWQCB.
7.14	Based on the contentions of VCAILG and the Port set forth in this Section 4, it is our belief that the Draft TMDL does not provide an appropriate (or defensible) level of technical analysis supporting all of the TMDL elements.	EPA disagrees. See response 7.7.
7.15	<p>Incorporation Of Contentions In Other Comments Letters To The Draft TMDL's.</p> <p>We additionally incorporate by reference herein the comments set forth in letters we anticipate will be submitted by the parties implementing the CCW TMDL's (CCW MOA), and the Oxnard Harbor District.</p>	See responses to Parties Implementing TMDLs on the Calleguas Creek Watershed and the Oxnard Harbor District.
7.16	<p>EPA's Approach Regarding Pollutants In The Draft TMDL's Ignores Recommendations Contained In Its Own Funded Studies.</p> <p>In a 2007 Duke University study partially funded by EPA, the Nicholas Institute recognized that "the uncertainty in TMDL forecasts and in the predictions of the efficacy for control actions is often large, with the consequence that implementation actions for water quality improvements might be ineffective and therefore wasteful of limited water quality program resources." [<i>Adaptive Implementation of Water Quality Improvement Plans: Opportunities and Challenges</i>, Kenneth Reckhow, Nicholas Institute, Duke University, September 2007, p. 4] The study further noted that an adaptive implementation approach is required where nonpoint sources cannot be clearly defined or where there are legacy sources of pollutants (as is the case in the Draft TMDL). [Id. at 36-38] The study concludes that in a situation involving sediments contaminated with legacy pollutants: "[a]n adaptive implementation approach would dictate that legacy and uncontrollable loads...be addressed under another regulatory program or authority. The pollutant control implementation plan would require BMP's or other pollutant minimization actions." [Id. at 38] Accordingly, in this instance, if it moves forward with the Draft TMDL, EPA should limit its scope through BMP's or other pollutant minimization options, while addressing sediment contamination due to legacy pollutants under a different regulatory program or authority.</p>	If the comment is contending that sediment contamination in Oxnard Drain 3 should not be addressed solely by a TMDL, but should be addressed by other regulatory programs as well, EPA agrees. If the comment is contending that sediment contamination should not be addressed by a TMDL, EPA disagrees. Criteria for determining whether a TMDL is required are set forth in Clean Water Act, sec. 303(d), and 40 CFR 130.7. Those criteria are met with respect to Oxnard Drain 3. Establishing a TMDL to address a waterbody impaired due to contaminated sediment is neither infeasible nor unique to Oxnard Drain 3. See, e.g.: the TMDLs for organochlorine pesticides, PCBs, and siltation in the Calleguas Creek Watershed and Mugu Lagoon. If the comment contends that the scope of the TMDL should be limited to a description of "BMPs or other pollutant minimization options", EPA also disagrees. The required elements of a TMDL are addressed in Clean Water Act, sec. 303(d), and 40 CFR 130.7.
8	Naval Base Ventura County	
8.1	General Comment - The proposed TMDL does not take into account that compliance in ODD	See response 1.2.

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	<p>#3 cannot be reached until TMDL compliance is achieved for each common contaminant in the much larger adjacent Calleguas Creek reach of Mugu Lagoon. Water column and fish tissue targets for legacy pesticides, PCBs, Chlorpyrifos, and diazinon, are numerically lower in ODD #3 than the corresponding levels in Mugu Lagoon. The largest water input to the saline portions of ODD #3 is tidal flow through Mugu Lagoon. It will be impossible to reach TMDL targets in the saline portions of ODD #3 until the corresponding targets are reached in Mugu Lagoon. The Navy strongly recommends that all corresponding target levels for water column, sediment, and fish tissue for the ODD #3 be revised to match the targets in the already promulgated Calleguas TMDLs. If the proposed targets remain lower than those in Mugu Lagoon, the ODD #3 TMDL will essentially highjack the Calleguas TMDLs at the moment Mugu Lagoon reaches all of its TMDL targets, Mugu Lagoon will become an ongoing source of contamination to ODD #3.</p>	
8.2	<p>Figure 1 and Figure 2 - The section of ODD #3 shown going under the runway does not exist. The channel only goes around the southern end of the runway.</p>	<p>All maps have been updated.</p>
8.3	<p>Section 2.1 - The wetlands surrounding ODD #3 are not an ASBS. The ASBS in the vicinity of Point Mugu is offshore from Laguna Point eastward to Latigo Point.</p>	<p>EPA deleted the referenced statement.</p>
8.4	<p>Section 2.1 - Fishing has been prohibited in ODD #3 on Navy property since 1996 as part of a CERCLA response action.</p>	<p>Although fishing has been prohibited on Navy property, fishing continues to occur near the Arnold Road bridge. Also, shellfish harvesting and commercial and sport fishing beneficial uses apply to Oxnard Drain 3 and Mugu Lagoon.</p>
8.5	<p>Figure 2 - The boundary presented in the vicinity of the Duck Hunting Clubs is incorrect. The southern Duck Hunting Club was included as part of the Oxnard Drainage Ditch #2 inclusion in the greater Calleguas Creek TMDL (LARWQCB 2005). See attached LARWQCB Memo (OC_8_ODD2_ditchmemo[1]Feb 05.pdf) and separate "map A.pdf". You are proposing to double regulate this land.</p>	<p>Lands that have water runoff in multiple directions can be regulated differently depending on where it's flowing. EPA spoke with Jason Stedler from the Ventura County Game Preserve prior to writing the draft TMDL. Mr. Stedler confirmed that during high flow water flows from the Ventura County Game Preserve into Navy property which then connects to Oxnard Drain 3.</p>
8.6	<p>Figure 2 - The boundary portion on Navy property is incorrect. Please see attached storm water map for Naval Base Ventura County Point Mugu (Mugu SWPPP Exhibit 2004.pdf). The drainage area referred to as DA-1 is the correct boundary for ODD #3 on Navy property.</p>	<p>All maps have been updated.</p>
8.7	<p>Categorizing the entire watershed reaches being brackish is not true. On the Navy base, ODD #3 and its surrounding wetlands are primarily a saline estuary. Off Navy property the water is better categorized as freshwater. It is important to apply the appropriate salinity value at each of the monitoring points used to determine progress towards achieving TMDL targets. The most likely monitoring stations are at Arnold Rd. (fresh water) and at the eastern terminus of ODD #3 (saline). Please note that there is already a Calleguas Creek TMDL monitoring station at the eastern terminus of ODD #3 and a VCAILG Ag waiver monitoring point at Arnold Rd.</p>	<p>According to the California Toxics Rule, "(1) The freshwater criteria apply at salinities of 1 part per thousand and below at locations where this occurs 95% or more of the time; (2) saltwater criteria apply at salinities of 10 parts per thousand and above at locations where this occurs 95% more of the time; and (3) at salinities between 1 and 10 parts per thousand the more stringent of the two apply unless EPA approves the application of the freshwater or saltwater</p>

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		<p>criteria based on an appropriate biological assessment.”</p> <p>In Oxnard Drain 3, salinity measurements by EPA and VCAILG were all between 1 and 10 parts per thousand. Thus, the more stringent of the freshwater and saltwater criteria applies.</p>
8.8	Figure 6 - See comment 5 regarding the Southern Duck Club’s inclusion in the ODD #2 addition to the Calleguas OC pesticide and toxicity TMDL.	See response 8.5.
8.9	Table 2 - The Navy recommends that the Water Quality targets for the ODD #3 TMDL should be identical to those already promulgated in the Calleguas Creek OC pesticide, PCB, and siltation TMDL. The Navy recommends using freshwater values for the upper part of the reach and saline values for the lower part of the reach.	<p>See response 1.5.</p> <p>See response 8.7.</p>
8.10	Table 3 - The sediment target values should be identical to the sediment targets in the Calleguas Creek OC pesticide, PCB, and siltation TMDL. DDT congeners should be listed separately instead of in aggregate.	See responses 1.4 and 1.6.
8.11	Table 4 - The fish tissue target values should be identical to the sediment targets in the Calleguas Creek OC pesticide, PCB, and siltation TMDL. DDT congeners should be listed separately instead of in aggregate. Also, fishing and collection of shellfish is prohibited in ODD #3 on Navy property.	<p>See response 1.3.</p> <p>See response 8.4.</p>
8.12	The Navy recommends no targets or allocations for Dieldrin or PCB's for water, sediment, or tissue. The EPA conclusion that multiple lines of evidence indicate continued impairment is scientifically invalid. The multiple lines of evidence in fact point to the opposite conclusion that there is no longer impairment from Dieldrin or PCBs.	See response 1.9.
8.13	Table 10 - The Navy recommends that the TMDL targets be made identical to those that already exist in the Calleguas Creek OC pesticide, PCB, and siltation TMDL.	See response 1.2.
8.14	Section 4.1.2 - General NPDES permit (R4-2005-0030, CI 9099 and 8955) is not located within the ODD #3 reach boundary. It is the Calleguas Creek Mugu Lagoon reach. Please remove all references to it from the proposed TMDL.	All references to General NPDES permit (R4-2005-0030, CI 9099 and 8955) were removed.
8.15	Table 13 - The Navy believes it is inappropriate to list the Navy RCRA (hazardous Waste Generator ID number), TRI (Toxics Release Inventory, Naval Base Ventura County (NBVC) does report on any of the chemicals included in the proposed TMDL), and CWA ICP (A spill response plan related to the storage of petroleum oil at NBVC) as point source permits. None of them are permits that allow the discharge of any of the contaminants listed in the proposed TMDL. Please remove all references to them from the proposed TMDL.	The references to RCRA, TRI, and CWA ICP permits were removed.
8.16	Section 4.2 - The Non-Point source, Source analysis section is inadequate. The widespread use of non-detect data to calculate percent reductions required is scientifically questionable. The Navy recommends that EPA use the source analysis used for the Calleguas Creek OC pesticide, PCB, and siltation TMDL to augment section 4.2.	The percent reductions in the source analysis section are estimates. As noted in the TMDL, with regard to nonpoint sources, “In order to quantitatively understand the sources of these pollutants, water and sediment samples were collected in June 2010 in the Oxnard Drain 3 watershed. Source analysis sampling

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		locations were Mugu Lagoon, a groundwater well in the duck club, and agricultural drains along Arnold Road, Edison Road, and Casper Road” That sampling identified concentrations of the pollutants of concern, as well as non-detects. EPA does not agree that its use of the non-detect data to calculate the estimates were improper. Further, EPA believes that the accuracy of the estimates is sufficient, particularly given the limited consequences of the estimates in this case. The TMDL’s numeric targets and allocations are based on concentrations that are protective of aquatic life, benthic organisms, and human health, and are not calculated from the percent reduction estimates. EPA does not believe that further augmenting the TMDL’s linkage analysis with the linkage analysis used for the Calleguas Creek TMDL is warranted.
8.17	Section 5 - The linkage analysis section is inadequate. The Navy recommends that the EPA use the linkage analysis used for the Calleguas Creek OC pesticide, PCB, and siltation TMDL to augment section 5.	EPA disagrees. Section 5 sufficiently explains linkages.
8.18	Table 16 - The Navy recommends that the TMDL numeric targets used for wasteload and load allocations be adjusted to match the existing numeric targets contained in the Calleguas Creek OC pesticide, PCB, and siltation TMDL.	See response 1.2.
8.19	Table 17 - Repeat of comments 14 and 15: General NPDES permit (R4-2005-0030, CI 9099 and 8955) is not located within the ODD #3 reach boundary. The TRI, RCRA, and CWA ICP “permits” for the Navy are not discharge permits. Please remove reference to them from the proposed TMDL.	Table 17 was revised.
8.20	Section 6.2 - The Navy strongly disagrees in the assignment of load allocations for legacy pollutant mass stored in the Oxnard Drain 3 bed sediment. Removal of these bed sediments (~6 acres) will do nothing to reduce impairment to fish tissue due to its proximity to Mugu Lagoon. The 6 acres represent 0.24 % of the total area of Mugu Lagoon (~2500 acres). The Implementation Plan for the Calleguas Creek OC pesticide, PCB, and siltation TMDL relies on source controls, implementation of Agricultural BMPs, monitoring, and natural attenuation to reach numeric targets. Removal of ODD #3 sediments prior to Mugu lagoon achieving its numeric targets will lead to recontamination of sediments via tidal flow. The Navy strongly recommends that the ODD #3 TMDL remove load allocations for bed sediment and implementation recommendations should mirror those of the Calleguas Creek OC pesticide, PCB, and siltation TMDL Implementation Plan.	<p>Load allocations for the Oxnard Drain 3 bed sediment are appropriate because they are a significant pollutant source.</p> <p>Both natural attenuation and dredging are discussed as remediation options. Additional language was added to the implementation section recommending that an additional study be conducted to determine the most appropriate remediation option for the pollution in Oxnard Drain 3 bed sediment. This information obtained from the study would better inform the RWQCB whether dredging or monitored natural attenuation is the best way forward.</p> <p>Additional language was added to the implementation</p>

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		section recommending that a modified Calleguas Creek Watershed Management Plan incorporate the Oxnard Drain 3 TMDLs.
8.21	<p>Section 7 - Navy strongly disagrees with the recommendation to use dredging for source removal of bed sediments for the following reasons:</p> <ol style="list-style-type: none"> 1) ODD #3 is within the habitat for the federally endangered Salt Marsh Bird's Beak, the Light footed Clapper Rail, and the California Least Tern. Dredging will likely cause unmitigatable affects to these species. 2) Dredging of ODD #3 will not reduce impairments to fish tissue due to its proximity to the much larger Mugu lagoon. 3) Fish tissue impairment levels have dropped ~ one order of magnitude in the last 20 years based on the data presented in the proposed TMDL. Natural attenuation is clearly working, albeit slowly. 4) Dredging of ODD #3 would likely have CERCLA implications. 	<p>Language was added to the Implementation section regarding the potential adverse impacts to endangered bird habitat due to dredging activities.</p> <p>See Response 8.20.</p> <p>Natural attenuation is already discussed in the implementation recommendations section.</p> <p>Oxnard Drain 3 is not a Superfund site. To the extent that the TMDL's "Implementation Recommendations" section includes recommendations regarding dredging, they are simply recommendations. The CERCLA implications to which the comment refers may be appropriately addressed when California and the other implementing agencies determine the means by which they will implement the TMDL.</p>
9	Oxnard Drainage District #2	
9.1	<p>The District is an agricultural drainage district formed under California's Drainage District Act of 1903. The Act provides for the formation and organization of special districts, the sole purpose of which is to drain agricultural lands.</p> <p>The District was formed in 1926 to operate and maintain sub-surface drains to lower the water table within the District's boundaries to allow the surface lands to be used for agriculture. The drains generally consist of clay or tile pipe approximately six to ten feet below the ground. Each landowner also maintains its own sub-surface drains, which connect with the drains maintained by the District. Given the District's modest responsibilities and budget, the District maintains no permanent staff. All maintenance of the drains is performed by contractors.</p> <p>A portion of the District's territory is located within the watershed boundaries of Oxnard Drain #3 as defined in the draft TMDL document. The District, however, owns no property within the watershed. Rather, the District is the beneficiary of easements through which it operates its drainage system.</p> <p>Within the District's territory within the watershed, the sub-surface drainage aggregates into a single drain line that ultimately empties into a surface ditch at a location equidistant from Edison Road and Arnold Road approximately 500 yards north of Oxnard Drain #3. The</p>	<p>Oxnard Drainage District #2 operates the sub-surface drainage system which discharges into a surface agricultural drain, which directly discharges to Oxnard Drain 3. EPA believes the water and sediment in the agricultural drain is a source of contamination to Oxnard Drain 3. As the operator of the sub-surface drains, Oxnard Drainage District #2 is responsible for routine maintenance, including inspections, clean outs, and other activities. Moreover, Oxnard Drainage District #2 has the authority to install pollutant controls at the points of entry to its facilities, or within its facilities. These activities are a feasible means of preventing pollutants from discharging to Oxnard Drain 3.</p> <p>Because Oxnard Drainage District #2 operates a drain that conveys pollutants contributing to Oxnard Drain 3's impairments, the TMDL identifies Oxnard Drainage District #2 as a "responsible jurisdiction",</p>

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	<p>surface ditch, which is presently maintained by an adjacent property owner, thereafter flows into Oxnard Drain #3.</p> <p>The draft TMDL document states that "[t]he Oxnard Drainage District 2 in conjunction with the Agricultural Waiver program is responsible for water and sediment that flow into Oxnard Drain 3 from agricultural fields that are not covered under a permit." <i>See</i> Oxnard Drain 3 TMDLs at 34. We are unclear as to any implications intended by the draft TMDL from the use of the term "responsible." In any event, we do not believe use of that term is accurate.</p> <p>More specifically, all of the landowners within both the District boundaries and the Oxnard Drain 3 watershed are subject to the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (the so-called "Ag Waiver") adopted by the Los Angeles Regional Water Quality Control Board in 2005 and renewed in 2010. The Ag Waiver requires owners of irrigated lands to measure and control discharges from their property, including discharges from sub-surface tile drains. Any discharges from these landowners to the District's drainage system are therefore subject to the Ag Waiver conditions and remain the responsibility of the landowners.</p> <p>Proposed load allocations to the District in the draft TMDL document would be duplicative of proposed load allocations to the Agriculture Dischargers within the District. As noted above, any discharge by the District into the Oxnard Drain 3 watershed is the result of the aggregation of discharges from the irrigated lands within the District. Indeed, Table 18 (of the draft TMDL document) notes that the input for both the District and the Agriculture Dischargers is "discharges from agricultural drains." Therefore, the draft TMDL document appears to propose to issue duplicative load allocations to the same inputs.</p> <p>As the load allocations for the Agriculture Dischargers will most certainly be implemented through the Ag Waiver program, there is no need to issue a separate load allocation to the District. There is an existing regulatory structure to implement the TMDLs with regard to the Agriculture Dischargers. As a result, any action that might require the District to separately implement the TMDL would result in unnecessary duplication and expense with no concurrent benefit. The District therefore requests that the EPA reconsider its apparent decision to issue load allocations to the District.</p> <p>In sum, the proposed load allocation to the District is both unnecessary and duplicative. As the District simply aggregates the discharges from the property owners within its boundaries - who are also the subject of proposed load allocation - there is no benefit to issuing a separate load allocation to the District.</p>	<p>and assigns an allocation to it. According to the State Board's Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program, the Regional Board must implement the load allocations through waste discharge requirements, waivers of waste discharge requirements, a basin plan prohibition, or some combination of those administrative tools. Therefore, Oxnard Drainage District #2 will likely be subject to one of those regulatory mechanisms. The Regional Board may also require the remediation of bed sediment in agricultural drains through a Cleanup and Abatement Order and require monitoring through authority under water code section 13267.</p> <p>The allocations are not duplicative because they are expressed as concentrations. Each responsible jurisdiction must achieve the same concentration.</p>
9.2	<p>The District has other concerns regarding the proposed TMDLs for Oxnard Drain #3. In particular, the District believes that there has been insufficient public participation by the stakeholders in this process, which has resulted in proposed TMDLs that are incompatible</p>	<p>See response 7.1.</p> <p>See responses to Marathon Land and Ventura County</p>

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	with the existing TMDLs for the Calleguas Creek watershed. Such concerns - as well as the technical objections to the targets selected by the EPA - have been effectively covered by comments submitted by other parties, including VCAILG and Marathon Land. As such, the District will not reiterate them and will only note that it joins in and supports those comments.	Agriculture Irrigated Lands Group comments.
10	Oxnard Harbor District	
10.1	<p>The OHD owns property within the Oxnard Drain 3 drainage area and is therefore potentially impacted by this TMDL. We are concerned that if inappropriate or unattainable targets are used in this TMDL, our future use of these properties may be limited, which would potentially have negative consequences for our business and the economy of this region. Our greatest concern is the targets proposed in this TMDL for fish tissue and sediment concentrations. We believe the use of these values may set a precedent for other TMDLs that may impact us more directly by affecting operations at the Port of Hueneme.</p> <p>We have closely followed the development of the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters TMDL and shares in the concerns stated by the Ports of Long Beach and Los Angeles in their comments regarding the use of Effect Range Low (ERL) sediment quality guidelines and Office of Environmental Health Hazard Assessment [OEHHA] Fish Contaminant Goals (FCGs). As with the Dominguez Channel TMDL this TMDL employs sediment and fish targets that are overly conservative, not achievable, and potentially harmful. Alternative targets, approved by regulators and supported scientifically (e.g., California Sediment Quality Objectives [SQOs] and OEHHA Advisory Tissue Levels [ATLs]) are available and should be used.</p> <p>We are committed to the protection and improvement of the harbor waters, as demonstrated through our leadership in a recent contaminated sediment removal project at the Port of Hueneme and our continued application of best management practices (BMPs) at our berths and upland facilities. Our concerns, like the concerns of other stakeholders, are brought forward to you to ensure that the TMDLs being developed are scientifically sound, technically, logistically and economically feasible, and executed in a manner that ensures environmentally harmful and economically damaging actions are not required.</p>	See responses 1.3, 1.4, and 1.6.
11	Parties Implementing TMDLs on the Calleguas Creek Watershed	
11.1	<p>Listings are already being addressed through CCW TMDL Implementation</p> <p>In 2006, Toxicity and OC Pesticide and PCB TMDLs for the Calleguas Creek watershed were established that address chlordane, chlorpyrifos, DDT, DDE, DDD, dieldrin, PCBs, sediment toxicity, and toxaphene. The agencies participating in the CCW MOA led the development of the TMDLs through a collaboration with the Los Angeles Regional Water Quality Control Board (RWQCB) and USEPA. During TMDL development, there was concern that Analytical Unit #8 Rio de Santa Clara Drain/Oxnard Drain #3 might include stakeholders that had not been participating in the development of the TMDL so Analytical Unit #8 was not specifically identified as being addressed in the Calleguas Creek Toxicity and OC Pesticide and PCB</p>	EPA's 2008 integrated report guidance provides a recommended structure for addressing 4b demonstrations, which includes the following elements: 1) Identification of segment and statement of problem causing the impairment, 2) Description of pollution controls and how they will achieve water quality standards, 3) An estimate or projection of the time when WQS will be met, 4) Schedule for implementing pollution controls, 5) Monitoring plan to track effectiveness of pollution controls, and 6)

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	<p>TMDLs. Subsequent to the adoption of the TMDLs, a number of things occurred that resulted in the majority of the stakeholders in the Oxnard Drain #3 watershed participating in the CCW MOA group to implement the TMDLs. When implementation began, the Oxnard Drain #3 subwatershed was not split out of the watershed boundaries used to define the area in which implementation actions would occur. Additionally, the Conditional Waiver for Irrigated Lands was adopted and the CCW was defined for implementation of the waiver to include the Oxnard Drain #3 subwatershed. As a result, the CCW TMDLs are being implemented based on the entire CCW, including the majority of the Oxnard Drain #3 watershed defined in the Oxnard Drain #3 TMDL. As a result, the majority of the responsible parties outlined in the Oxnard Drain #3 TMDL are active, participating, and paying members of the CCW MOA. The actions being taken by the CCW MOA to implement the CCW TMDLs are designed to address all of the impairments identified in Analytical Unit #8 on the Consent Decree. As such, we feel that the impairments are already being addressed through the CCW MOA implementation process. Establishing a separate TMDL for Oxnard Drain #3 will establish a second set of targets and wasteload allocations for the same location, creating an undue burden and confusion among responsible parties that have been actively implementing the CCW TMDLs for four years. Following is a more detailed discussion of the overlap between the CCW TMDL implementation and the Oxnard Drain #3 TMDL.</p> <p><i>Watershed Definition</i></p> <p>The majority of the Oxnard Drain #3 watershed identified in the TMDL is contained within the Calleguas Creek watershed as defined by the State of California in their GIS files for the Cal Water defined watersheds (see map in Attachment A). The CCW MOA has developed all implementation actions based on the watershed definition shown in the attached map. Additionally, the allocation of funding for the implementation actions is based on the watershed boundaries in Attachment A. As a result, the CCW MOA parties have been implementing actions to address the impairments in the majority of the Oxnard Drain #3 watershed since 2006. The stakeholders that are not participants in the CCW MOA are identified in the following table. However, the entities in italics are covered by a general permit for which there are allocations in the CCW TMDLs.</p> <p>Additionally, in 2005, the Los Angeles Regional Water Quality Control Board (RWQCB) issued a memo defining the watershed for Mugu Drain/Duck Ponds/Oxnard Drain #2 that was covered by the CCW TMDLs. The memo (Attachment B) indicates some, if not all, of the Oxnard Drain #3 watershed is covered by the CCW TMDLs. The memo references Oxnard Drain #3 in a footnote and the included figure, though not specific enough for a direct comparison, appears to include much of the Oxnard Drain #3 watershed defined in this TMDL.</p> <p>In general, the drainage in that area is complex and separately defining the watershed for Oxnard Drain #3 to implement a TMDL with different targets and allocations from the CCW</p>	<p>Commitment to revise pollution controls, as necessary. EPA agrees that the CCW TMDL implementation plan, MS4 NPDES permit, and Conditional Waiver provisions address some of the elements to be considered under the guidance when a State identifies a waterbody as no longer needing a TMDL. However, not all elements identified in the guidance are met. In particular, EPA does not believe the existing control requirements “will attain WQS within a reasonable period of time”. The Oxnard Drain 3 bed sediment is a significant source of pollutant loading which remains inadequately controlled. Natural attenuation will take decades, which EPA does not consider a reasonable timeframe in this case.</p> <p>Also, the Calleguas Creek Watershed Management Plan’s Monitoring and Reporting Program Plan for the Nitrogen, OC and PCBs, Toxicity, and Metals and Selenium Total Maximum Daily Loads currently has no monitoring or compliance points within Oxnard Drain 3. The compliance point 01_BPT_14 mentioned in the comment is in Mugu Lagoon, not Oxnard Drain 3.</p> <p>VCAILG has one monitoring site (01T_ODD3_ARN) in Oxnard Drain 3 near the Arnold Road bridge. However, no VCAILG monitoring sites currently exists in the Oxnard Drain 3 southern subwatershed. The 2008 VCAILG water quality management plan identifies Oxnard Drain 3 as a second tier priority drainage. Thus while some implementation actions are occurring within the Oxnard Drain 3 watershed, most education and BMP implementation resources are targeting other areas.</p> <p>Significant overlap in the Oxnard Drain 3, Oxnard Drain 2, and Mugu watersheds occur because the land is highly managed. On the same piece of land, water can flow in different directions depending on whether it travels through surface ditches, tile drains, or</p>

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	<p>TMDLs would be challenging and result in implementation conflicts and confusion within the CCW MOA group.</p> <p><i>TMDL Implementation</i> As stated above, the CCW MOA implementation has included the majority of the Oxnard Drain #3 watershed since 2006. The majority of the responsible parties identified in the Oxnard Drain #3 TMDL are active participants in the CCW MOA working towards compliance with the CCW TMDLs. The responsible parties have been proactively participating in the CCW MOA to address these constituents through source identification studies, special studies to identify areas of higher concentrations of these constituents to assist with BMP prioritization, implementation of pesticide and hazardous waste collection programs, and compliance with provisions in the MS4 permit and conditional waiver to meet the TMDL allocations.</p> <p>Additionally, the TMDL watershed monitoring program includes a TMDL compliance location in Mugu Lagoon at the base of Oxnard Drain #3 (01_BPT_14). Samples for sediment and fish tissue for OC Pesticides and PCBs are collected at this location every three years. Additionally, a site on Oxnard Drain #3 upstream of Arnold Road was included in a Special Study for the OC Pesticides and PCBs TMDL to identify locations of higher concentrations of pollutants (HCAs) to assist with identification of priority areas for BMP implementation. This study is currently in its second year of monitoring and will likely be completed at the end of this year (depending on the results of the monitoring) and will provide recommendations for BMP implementation.</p> <p>More importantly, the CCW TMDLs have been incorporated into the National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Permit (R4-2010-0108). The language in the NPDES MS4 permit requires compliance with the CCW TMDLs, but does not specify the area covered by the TMDLs. The permit does identify the MS4 permittees that must comply with the CCW TMDLs, which includes MS4 permittees who own or operate an MS4 within the Oxnard Drain #3. “MS4 permittees discharging to Calleguas Creek, its tributaries and Mugu Lagoon (Ventura County Watershed Protection District, County of Ventura, and the cities of Camarillo, Moorpark, Oxnard, Simi Valley and Thousand Oaks) (“Calleguas MS4 permittees”) shall implement BMPs to achieve the following MS4 WLAs:”</p> <p>The NPDES MS4 permit identifies and requires the “MS4 permittees discharging to Calleguas Creek, its tributaries and Mugu Lagoon” to comply with wasteload allocation, actions and special studies for Calleguas Creek TMDLs. Since the MS4 permittees in the Oxnard Drain #3 watershed drain to Mugu Lagoon, this language can be interpreted to mean that the MS4 permittees are already required to implement BMPs to address impairments in the Oxnard Drain #3 watershed through implementation of the CCW TMDLs. The following language</p>	<p>overflows berms.</p> <p>Due to the tight consent decree deadline, there is not enough time for the Regional Board to re-open and include the Oxnard Drain 3 TMDLs into the CCW TMDLs. After the Regional Board TMDL approval process, there is also a State Board approval process. The entire process often takes over two years. Thus, EPA is writing many of the TMDLs which remain on the consent decree schedule.</p>

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	<p>further enforces this: “Compliance with the WLAs is to be determined through the measurement of in-stream water quality at the base of each of the Calleguas Creek subwatersheds, in accordance with the Calleguas Creek Watershed TMDL Monitoring Program approved by the Executive Officer.”</p> <p>Since a compliance monitoring point for the TMDL monitoring program, approved by the Executive Officer, is located at the base of Oxnard Drain #3, compliance with WLAs for the CCW TMDLs from discharges in the Oxnard Drain #3 watershed will be evaluated through this monitoring location.</p> <p>In addition, the Conditional Waiver for Irrigated Lands (Order No. R4-2010-0186) includes requirements to comply with the CCW TMDLs. The Ventura County Agricultural Irrigated Lands Group (VCAILG) is a discharger group formed to comply with the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands. VCAILG, in conjunction with the RWQCB, has defined the boundaries of the CCW as shown in Attachment B. VCAILG members within the CCW are actively participating in the implementation of the CCW TMDLs and monitor a site on Oxnard Drain #3 for compliance with the Conditional Waiver provisions. As such, the provisions of the Conditional Waiver could be interpreted as already implementing requirements to address the impairments in the Oxnard Drain #3 TMDL.</p> <p>Given the fact that the majority of the watershed is included in the definition of the CCW that is being used to implement the CCW TMDLs and provisions of the MS4 NPDES permit and Conditional Waiver are effectively implementing requirements to address the impairments in Oxnard Drain #3, the CCW MOA requests that EPA place Analytical Unit #8 in Category 4B, Water Quality Limited Segments being addressed by actions other than TMDLs, and not promulgate a separate TMDL for the drain. If this is not feasible, we request that the Oxnard Drain #3 TMDL be incorporated into the CCW TMDLs.</p> <p><i>Requested Action: Place Analytical Unit #8 in Category 4B.</i></p>	
11.2	<p>Consistency with Calleguas Creek TMDLs</p> <p>As previously discussed, responsible parties are already implementing actions to address the targets and allocations outlined in the CCW TMDLs and the CCW MOA feels that the impairments in Oxnard Drain #3 will be addressed through this implementation. As a result, we feel that the targets and allocations in the Oxnard Drain #3 TMDL (or category 4B designation package) should be consistent with those previously established in the Calleguas Creek TMDLs. The CCW MOA requests the CCW TMDL targets and allocations as shown in the following tables replace the Oxnard Drain #3 TMDL targets and allocations to ensure consistency in implementation. The CCW TMDLs were developed through a comprehensive stakeholder process with extensive coordination with the RWQCB and USEPA and included</p>	See response 1.2.

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	<p>careful consideration of the TMDL targets and allocations and approval by both agencies. There is no reason to suggest that conditions are significantly different in Oxnard Drain #3 such that different targets and allocations are necessary for this TMDL. We feel that promulgation of a TMDL that includes different targets and allocations will prevent the CCW MOA from effectively defining compliance with the TMDLs.</p> <p>If different targets and allocations are assigned for the Oxnard Drain #3 TMDL, a conflict will arise in determining compliance with TMDL requirements for the same constituents between Oxnard Drain #3 and Mugu Lagoon, the waterbody to which the drain discharges. For example, the fish tissue targets vary between the Oxnard Drain #3 TMDL the CCW TMDLs. Fish that are collected in Oxnard Drain #3 have potentially spent some of their lifespan in Mugu Lagoon. Depending on where the fish is caught, it could be considered in compliance with one TMDL and out of compliance with the other TMDL. To resolve this issue, we request the CCW targets and allocations shown in the following tables replace the current Oxnard Drain #3 targets and allocations.</p> <p><i>Requested Action: Modify the TMDL to make targets and allocations consistent with the existing CCW TMDLs.</i></p>	
12	Port of Long Beach	
12.1	<p>As a stakeholder in a similar TMDL (Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters TMDL [Dominguez TMDL]) being developed by the Los Angeles Regional Water Quality Control Board (Water Board) and EPA, the Port has also been following the draft Oxnard TMDL closely. The Port is very concerned that by using identical targets, (i.e. Effect Range Low [ERL] for sediment, and Office of Environmental Health Hazard [OEHHHA] Fish Contaminant Goals [FCGs] for fish tissue) in both TMDLs, the EPA is establishing a precedent throughout California for the use of these wholly inappropriate and scientifically unjustifiable targets. As detailed in the Port's comments on the Dominguez TMDL (submitted to Peter Kozelka at EPA on February 22, incorporated here by reference) these numbers were not intended to be used as sediment targets, are overly conservative, not achievable, potentially harmful to the environment, and not scientifically justified for this use. Alternative targets such as the California Sediment Quality Objectives (SQO) and OEHHHA Advisory Tissue Levels (ATLs) which have been approved by regulators and are supported scientifically, should be considered if scientifically relevant site-specific values are not available.</p> <p>The Port is committed to the protection and improvement of Harbor Waters in Long Beach, as demonstrated in our many sediment and water quality programs. However, we are greatly concerned that the EPA's continued use of these inappropriate targets throughout California will result in the establishment of flawed, infeasible, and potentially harmful TMDLs. Therefore, the Port strongly urges the EPA to reconsider its use of the ERL and FCG targets in this and all TMDLs within California.</p>	See responses 1.3, 1.4, and 1.6.

In addition to the comments referenced above, EPA received: a letter dated June 29, 2011, on behalf of the Pyrethroid Working Group (“PWG”); and a letter dated July 22, 2011, on behalf of Dow Agrosiences, LLC (“DAS”). The public notice indicated that comments must be submitted on or before March 21, 2011, to be considered in this decision. In light of EPA’s January 2010 public workshop, its discussions with various organizations prior to preparing the draft TMDLs, the availability of the public notice through EPA’s website and through the Regional Board’s Lyris e-mail notification system, the February 2011 public hearing, and the additional opportunity to submit written comments thereafter, EPA believes that it provided appropriate opportunity for public participation. Many of the issues addressed in the material submitted after March 21, 2011, on behalf of PWG and DAS are addressed in the comments and responses referenced above, and EPA concludes that no additional response is warranted. EPA also received an e-mail dated July 15, 2011 from Ashli Desai addressing alternate allocations sought to be included in the TMDL; EPA concludes that no additional response is warranted with respect to that e-mail.