

**State of California
California Regional Water Quality Control Board, Los Angeles Region**

**RESOLUTION NO. R11-XXX
March 3, 2011**

**Proposed Amendment to the *Water Quality Control Plan for the Los Angeles Region*
to Incorporate a Total Maximum Daily Load for Toxic Pollutants in Dominguez
Channel and Greater Los Angeles and Long Beach Harbor Waters**

WHEREAS, the California Regional Water Quality Control Board, Los Angeles Region, finds that:

1. The Federal Clean Water Act (CWA) requires the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) to establish water quality standards for each waterbody within its region. Water quality standards include beneficial uses, water quality objectives that are established at levels sufficient to protect those beneficial uses, and an antidegradation policy to prevent degrading waters. Waterbodies that do not meet water quality standards are considered impaired.
2. CWA section 303(d)(1) requires each state to identify the waters within its boundaries that do not meet water quality standards. Those waters are placed on the state's "303(d) List" or "Impaired Waters List". For each listed water, the state is required to establish the Total Maximum Daily Load (TMDL) of each pollutant impairing the water quality standards in that waterbody. Both the identification of impaired waters and TMDLs established for those waters must be submitted to the United States Environmental Protection Agency (U.S. EPA) for approval pursuant to CWA section 303(d)(2).
3. A consent decree between U.S. EPA, Heal the Bay, Inc. and Santa Monica BayKeeper, Inc. was approved on March 22, 1999, and amended in September 2010, which resolved litigation between those parties relating to the pace of TMDL development in the Los Angeles Region. The court order directs the U.S. EPA to ensure that TMDLs for all 1998-listed impaired waters in the Los Angeles Region be established within 13 years of the consent decree. The consent decree combined waterbody pollutant combinations in the Los Angeles Region into 92 TMDL analytical units. In accordance with the consent decree, the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters¹ Toxic Pollutants TMDL addresses the listings for cadmium, chromium, copper, mercury, lead, zinc, chlordane, dieldrin, toxaphene, DDT, PCBs, certain PAH compounds, benthic community effects and toxicity for analytical units 73, 74, 75, and 78. These impairments exist in one or more environmental media—water, sediment, or tissue. Based on the consent decree schedule, TMDLs for these analytical units must be approved or established by U.S. EPA by March 24, 2012.
4. The elements of a TMDL are described in 40 CFR 130.2 and 130.7 and section 303(d)(1)(C) and (D) of the CWA, as well as in U.S. EPA guidance documents (Report No. EPA/440/4-91/001). A TMDL is defined as the sum of the individual waste load

¹ Greater Los Angeles and Long Beach Harbor waters include Inner and Outer Harbors, Consolidated Slip, Fish Harbor, Cabrillo Marina, Inner Cabrillo Beach, Los Angeles River Estuary, and San Pedro Bay.

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allocations for point sources, load allocations for non-point sources and natural background (40 CFR 130.2). TMDLs must be set at levels necessary to attain and maintain the applicable narrative and numeric water quality standards with seasonal variations and a margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality (40 CFR 130.7(c)(1)). 40 CFR 130.7 also dictates that TMDLs shall take into account critical conditions for stream flow, loading and water quality parameters. TMDLs typically include one or more numeric “targets”, i.e., numerical translations of the existing water quality standards, which represent attainment of those standards, contemplating the TMDL elements described above. Since a TMDL must represent the “total” load, TMDLs must account for all sources of the relevant pollutants, irrespective of whether the pollutant is discharged to impaired or unimpaired upstream reaches.

5. Neither TMDLs nor their targets or other components are water quality objectives, and thus their establishment does not implicate California Water Code section 13241. Rather, under California Law, TMDLs are programs to implement existing standards (including objectives), and are thus established pursuant to California Water Code section 13242. Moreover, they do not create new bases for direct enforcement against dischargers apart from the existing water quality standards they translate. Like most other parts of the Water Quality Control Plan for the Los Angeles Region (Basin Plan), TMDLs are not generally self-implementing. The targets merely establish the bases through which load allocations (LAs) and waste load allocations (WLAs) are calculated. The LAs and WLAs may be implemented in any manner consistent with the Water Quality Control Policy for Addressing Impaired Waters: Regulatory Structure and Options, adopted by the State Water Resources Control Board (State Board) on June 16, 2005 (Resolution 2005-0050). Federal regulations also require that National Pollutant Discharge Elimination System (NPDES) permits be consistent with the assumptions and requirements of available WLAs (40 C.F.R. 122.44(d)(vii)(B)). US EPA has provided guidance on its expectations regarding how WLAs should be incorporated into permits, including Municipal Separate Storm Sewer System (MS4) Permits (US EPA Memorandum dated November 8, 2010).
6. As envisioned by California Water Code section 13242, the TMDL contains a “description of surveillance to be undertaken to determine compliance with objectives.” The Compliance Monitoring element of the TMDL recognizes that monitoring will be necessary to assess the progress of pollutant load reductions and improvements in water, fish tissue, and sediment quality in Dominguez Channel and Greater Los Angeles and Long Beach Harbor waters. The TMDL establishes the types of information that will be necessary to secure. The Regional Board’s Executive Officer will ensure that appropriate entities develop and submit monitoring programs and technical reports necessary to achieve the purposes of the TMDL. The Executive Officer will determine the scope of these programs and reports, taking into account any legal requirements, including this TMDL, and if necessary issue appropriate orders to appropriate entities.
7. Upon establishment of TMDLs by the State or U.S. EPA, the State is required to incorporate, or reference, TMDLs in the State Water Quality Management Plan (40 CFR 130.6(c)(1), 130.7). The Basin Plan and applicable statewide plans serve as the State Water Quality Management Plans governing the watersheds under the jurisdiction of the Los Angeles Regional Board. Attachment A to this resolution contains the language to be incorporated into the Basin Plan for this TMDL.

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8. The watershed of the Dominguez Channel and the Los Angeles and Long Beach Harbors is an important industrial, commercial and residential area with unique and important historical and environmental resources. The area includes 18 municipalities within and including Los Angeles County and roughly 1 million residents. Prior to its development, the area was largely marshland and now almost no wetland nor original coastline exists. Water quality decreased with increased development in the 1970s. Since then, the water quality has improved but there are still significant water quality and sediment quality challenges.

The Dominguez Channel Watershed drains an area of approximately 133 square miles in southwestern Los Angeles. The watershed is composed of two hydrologic subunits. The two subunits drain primarily via an extensive network of underground storm drains. The northern subunit drains into the Dominguez Channel while the southern subunit drains directly into the Los Angeles and Long Beach Harbor Area. The headwaters of the Dominguez Channel consist of an underground storm drain system, which daylight approximately 0.25 mile north of the Hawthorne Municipal Airport. The Dominguez Channel drains approximately 62 percent of the watershed before discharging to Los Angeles Harbor.

The Ports of Los Angeles and Long Beach occupy over 10,500 acres of land and water. The Inner Harbors contain piers for ship loading and unloading and several marinas. The outer part of both harbors has been less disrupted than the inner areas and supports a great diversity of marine life. It is open to the ocean at its eastern end and receives much greater ocean flushing than inner harbor areas.

San Pedro Bay receive the discharges of the Dominguez Channel and Los Angeles and San Gabriel Rivers, although the latter two watersheds are not focus of this TMDL. The Los Angeles River is largely wastewater flow and the watershed is 834 square miles, with 66% of its land area developed. The San Gabriel River is 689 square miles (including the Los Cerritos Channel and Alamitos Bay) and is largely developed in the downstream end.

The Dominguez Channel watershed is dominated by urban land uses such as residential, industrial, commercial, and transportation, which comprise as much as 85% of the land area. Very little vacant and open space areas are present in the watershed. The watershed is approximately 60% impervious based on assumptions of impervious areas in each land use type. The highest population density in the watershed appears to be in the communities of Inglewood and Hawthorne.

9. Applicable water quality objectives for this TMDL are narrative objectives for Chemical Constituents, Bioaccumulation, Pesticides, and Toxicity in the Basin Plan and the numeric water quality criteria promulgated in 40 CFR section 131.38 (the California Toxics Rule (CTR)). In addition, sediment condition objectives were determined by the State Water Quality Control Plan for Enclosed Bays and Estuaries – Part 1 Sediment Quality (SQO Part 1) and the sediment quality guidelines of Long and Arch ET&C.
10. The Regional Board’s goal in establishing the TMDL for toxic pollutants in Dominguez Channel and Greater Los Angeles and Long Beach Harbor waters is to protect aquatic life beneficial uses designated in these waters, including the marine habitat use (MAR) and rare, threatened or endangered species habitat use (RARE). In addition, the estuaries (EST) are recognized as areas for spawning, reproduction and/or early development (SPWN), migration of aquatic organisms (MIGR), and wildlife habitat (WILD).

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Dominguez Channel also has an existing designated use of warm freshwater habitat (WARM) and the Los Angeles River Estuary has the designated use of wetland habitat (WET). Beneficial uses associated with human use of these waters include recreational use for water contact (REC1), non-contact water recreation (REC2), industrial service supply (IND), navigation (NAV), commercial and sport fishing (COMM), and shellfish harvesting (SHELL).

11. Given the scope and complexity of this TMDL, the Regional Board has been working closely and collaboratively with EPA Region 9 on the development of this TMDL. EPA Region 9 provided substantial resources and expertise to the development of this TMDL.
12. U.S. EPA and Regional Board staff have also worked with stakeholders during the development of a detailed technical document that analyzes and describes the specific necessity and rationale for the development of this TMDL. The technical document entitled "Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL" is an integral part of this Regional Board action and has been reviewed by the Regional Board before acting. The technical document provides the detailed factual basis and analysis supporting the problem statement, numeric targets, source analysis, linkage analysis, waste load allocations (for point sources), load allocations (for nonpoint sources), margin of safety, and seasonal variations and critical conditions of this TMDL.
13. On [Insert Date], prior to the Board's action on this resolution, a public hearing was conducted on the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Water Toxic Pollutants TMDL. Notice of the hearing was published in accordance with the requirements of California Water Code Section 13244. This notice was published in the Los Angeles Times on December 17, 2010 and the Long Beach Press Telegram on December 17, 2010.
14. The public has had a reasonable opportunity to participate in the review of the amendment to the Basin Plan. A draft of the TMDL was released for public comment on [Insert Date]; a Notice of Hearing and Notice of Filing were published and circulated 45 days preceding Board action. The draft of the TMDL was made available on both the Regional Board and EPA Region 9 websites. Regional Board staff responded to oral and written comments received from the public; and the Regional Board held a public hearing on [Insert Date] to consider adoption of the TMDL.
15. In amending the Basin Plan to establish this TMDL, the Regional Board considered the requirements set forth in Sections 13240 and 13242 of the California Water Code.
16. Because the TMDL implements existing narrative and numeric water quality objectives (i.e., water quality objectives in the Basin Plan), the Regional Board (along with the State Board) has determined that adopting a TMDL does not require the Regional Board to consider the factors of California Water Code section 13241. The consideration of the Water Code section 13241 factors, by section 13241's express terms, only applies "in establishing water quality objectives." Here the Regional Board is not establishing water quality objectives, but as required by section 303(d)(1)(C) of the Clean Water Act is adopting a TMDL that will implement the previously established objectives that have not been achieved. In making this determination, the Regional Board has considered and relied upon a legal memorandum from the Office of Chief Counsel to the State Board's basin planning staff detailing why TMDLs cannot be considered water quality objectives.

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(See Memorandum from Staff Counsel Michael J. Levy, Office of Chief Counsel, to Ken Harris and Paul Lillebo, Division of Water Quality: *The Distinction Between a TMDL's Numeric Targets and Water Quality Standards*, dated June 12, 2002.)

17. While the Regional Board is not required to consider the factors of California Water Code section 13241, it nonetheless has developed and received significant information pertaining to the California Water Code section 13241 factors and has considered that information in developing and adopting the technical documents supporting this Basin Plan amendment. Section 13241, at a minimum, requires that water quality objectives ensure reasonable protection of beneficial uses. The designated beneficial uses for Dominguez Channel and Greater Los Angeles and Long Beach Harbor waters include aquatic life habitat uses, water contact recreation, and non-water contact recreation, navigation, commercial and sport fishing, and shellfish harvesting. The estuaries are recognized as areas for spawning, reproduction and/or early development, migration of aquatic organisms, and wildlife habitat. Dominguez Channel also has an existing designated use of warm freshwater habitat and the Los Angeles River Estuary has the designated use of wetland habitat. The past, present and probable future beneficial uses of water have been considered in that Dominguez Channel and Greater Los Angeles and Long Beach Harbor waters are designated for a number of beneficial uses in the Basin Plan.

The environmental characteristics of Dominguez Channel and Greater Los Angeles and Long Beach Harbor waters are spelled out at length in the Basin Plan and in the technical documents supporting this Basin Plan amendment, and have been considered in developing this TMDL.

The Regional Board has considered sediment, fish tissue, and water quality conditions that could be reasonably achieved through the coordinated control of implementation actions including non-structural and structural BMPs, diversion and treatment to reduce sediment transport from the watershed to Dominguez Channel and Greater Harbor waters, and sediment removal activities. TMDL implementation will be carried out by responsible parties including, but not limited to, NPDES-permitted dischargers to the Dominguez Channel and Greater Harbor waters identified in Attachment A of this resolution. Implementation will likely focus on removal of highly contaminated sediment, reduction of stormwater loadings by placement of stormwater treatment devices such as infiltration trenches, vegetated swales, and/or filter strips at critical points in the watershed to reduce sediment loading, diversion of low flows during the dry season to the sanitary sewer or capture and storage of runoff and then diversion to a location for treatment. Responsible agencies also have several options for implementing structural and nonstructural BMPs to attain fish tissue, sediment, and water quality objectives. Attainment of the water quality standards through removal of contaminated sediment, redirection of flows, and BMPs is a reasonably achievable water quality condition for Dominguez Channel and Greater Los Angeles and Long Beach Harbor waters. To the extent that there would be any conflict between the consideration of the factors in Water Code section 13241, subdivision (c), if the consideration were required, and the Clean Water Act, the Clean Water Act would prevail.

Economic considerations were considered throughout the development of the TMDL. Some of these economic considerations arise in the context of Public Resources Code section 21159 and are equally applicable here. The implementation program for this

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TMDL recognizes the economic limitations on achieving immediate compliance and allows a flexible implementation schedule of 20 years.

The need for housing within the region has been considered, but this TMDL is unlikely to affect housing needs. Whatever housing impacts could materialize are ameliorated by the flexible nature of this TMDL and the 20-year implementation schedule.

This TMDL is consistent with the goals of the Recycled Water Policy, State Water Resources Control Board Resolution No. 2009-0011.

18. The amendment is consistent with the State Antidegradation Policy (State Board Resolution No. 68-16), and the federal Antidegradation Policy (40 CFR 131.12), in that it does not allow degradation of water quality, but requires restoration of water quality and attainment of water quality standards.
19. Pursuant to Public Resources Code section 21080.5, the Resources Agency has approved the Regional Boards' basin planning process as a "certified regulatory program" that adequately satisfies the California Environmental Quality Act (CEQA) (Public Resources Code, § 21000 et seq.) requirements for preparing environmental documents (14 California Code Regs. § 15251(g); 23 California Code Regs. § 3782). The Regional Board staff has prepared "substitute environmental documents" for this project that contain the required environmental documentation under the State Board's CEQA regulations. (23 California Code Regs. § 3777.) The substitute environmental documents include the TMDL staff report entitled "Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDL", the environmental checklist, the comments and responses to comments, the basin plan amendment language, and this resolution. The project itself is the establishment of TMDLs for metals, pesticides, PCBs, DDT, and PAHs in water, fish tissue and sediment in Dominguez Channel and Greater Los Angeles and Long Beach Harbor waters. While the Regional Board has no discretion to not establish a TMDL (the TMDL is required by federal law), the Board does exercise discretion in assigning waste load allocations and load allocations, determining the program of implementation, and setting various milestones in achieving the water quality standards. The CEQA checklist and other portions of the substitute environmental documents contain significant analysis and numerous findings related to impacts and mitigation measures.
20. A CEQA Scoping meeting was conducted on September 21, 2006 at the Los Angeles Regional Water Quality Control Board Office, 320 West 4th Street, Los Angeles, California 90013. A notice of the CEQA Scoping meeting was sent to interested parties within the watersheds.
21. In preparing the substitute environmental documents, the Regional Board has considered the requirements of Public Resources Code section 21159 and California Code of Regulations, title 14, section 15187, and intends those documents to serve as a tier 1 environmental review. This analysis is not intended to be an exhaustive analysis of every conceivable impact, but an analysis of the reasonably foreseeable consequences of the adoption of this regulation, from a programmatic perspective. The "Lead" agencies for tier 2 projects will assure compliance with project-level CEQA analysis of this programmatic project. Project level impacts will need to be considered in any subsequent environmental analysis performed by other public agencies, pursuant to Public Resources Code section 21159.2.

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22. The foreseeable methods of compliance for this TMDL in Dominguez Channel and Greater Los Angeles and Long Beach Harbor waters entail construction and operation of stormwater management practices such as placement of stormwater treatment devices designed to reduce sediment loading, such as infiltration trenches, vegetated swales, and/or filter strips. Structural BMPs may also include removal of contaminated sediment, diversion and treatment facilities to divert runoff directly, or capture and storage of runoff and then diversion to a location for treatment.

Foreseeable methods of compliance at the ports specifically are identified in the *Water Resources Action Plan* (WRAP), including improvement of existing non-structural BMPs to reduce stormwater pollution including more frequent/extensive sweeping; more rigorous spill prevention procedures for mobile fueling operations; more frequent trash collection; and enhanced dust and runoff control at recyclable metal terminals. New BMPs detailed in the WRAP to be instituted where appropriate may also include: requiring periodic zero-discharge pavement cleaning in key areas; providing covered storage of materials and idle equipment where necessary and feasible; instituting operational controls such as modified cargo storage, cargo loading/unloading, and materials handling and storage protocols; employing dust and runoff controls at auto dismantling and boat yards where they are not already employed; employing sustainable landscaping materials and practices to reduce water, fertilizer, and pesticide use; and introducing sustainable materials and practices in building and structure maintenance.

A comprehensive approach to managing water quality in the Ports also considers potentially polluting on-water activities as well. Vessels discharge fishing wastes, trash, cooling water, and may, despite laws to the contrary, discharge bilge water, black water, and gray water. Leaching from bottom paint and corrosion also releases contaminants from vessels. Leaks and spills from on-water vessel fueling activities also occur. The Port of Long Beach and the Port of Los Angeles will work together to develop guidance manuals for on-water activities and conduct outreach to distribute the manuals and educate the stakeholders; develop port policy and standards for maintenance, in-kind replacement, and eventual phasing out of exposed treated pilings from in-water applications; and develop BMPs and port standards for zinc-based cathodic protection of port structures and vessels.

Potential structural BMPs at the Ports to improve water and sediment quality may include construction/installation of: secondary containment berms, oil water separators, storm drain inserts, stormwater retention tanks, valve-controlled storm drain units, contained hazardous material storage areas, awnings or roofs, and hydrodynamic separation-type stormwater treatment units. Potential structural BMPs may also include diversion of process water or water from maintenance area drainage to the sanitary sewer system and capped storm drains, prohibiting discharge from high-risk areas.

23. Consistent with the Regional Board's substantive obligations under CEQA, the substitute environmental documents do not engage in speculation or conjecture, and only consider the reasonably foreseeable environmental impacts, including those relating to the methods of compliance, reasonably foreseeable feasible mitigation measures to reduce those impacts, and the reasonably foreseeable alternative means of compliance, which would avoid or reduce the identified impacts.

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24. The proposed amendment could have a potentially significant adverse effect on the environment. However, there are feasible alternatives, feasible mitigation measures, or both, that if employed, would substantially lessen the potentially significant adverse impacts identified in the substitute environmental documents; however such alternatives or mitigation measures are within the responsibility and jurisdiction of other public agencies, and not the Regional Board. California Water Code section 13360 precludes the Regional Board from dictating the manner in which responsible parties comply with any of the Regional Board's regulations or orders. When the parties responsible for implementing this TMDL determine how they will proceed, the parties responsible for those parts of the project can and should incorporate such alternatives and mitigation into any subsequent projects or project approvals. These feasible alternatives and mitigation measures are described in more detail elsewhere in the substitute environmental documents. (14 California Code Regs. § 15091(a)(2).)
25. The substitute documents for this TMDL, and in particular the Environmental Checklist and staff's responses to comments, identify broad mitigation approaches that should be considered at the project level.
26. To the extent significant adverse environmental effects could occur, the Regional Board has balanced the economic, legal, social, technological, and other benefits of the TMDL against the unavoidable environmental risks and finds that specific economic, legal, social, technological, and other benefits of the TMDL outweigh the unavoidable adverse environmental effects, such that those effects are considered acceptable. The basis for this finding is set forth in the substitute environmental documents. (14 California Code Regs. § 15093.)
27. The regulatory action meets the "Necessity" standard of the Administrative Procedures Act, Government Code, section 11353, subdivision (b). As specified above, federal law and regulations require that TMDLs be incorporated into the state's water quality management plan. The Regional Board's Basin Plan is the Regional Board's component of the state's water quality management plan, and the Basin Plan is how the Regional Board takes quasi-legislative, planning actions. Moreover, the TMDL is a program of implementation for existing water quality objectives, and is, therefore, appropriately a component of the Basin Plan under California Water Code section 13242. The necessity of developing a TMDL is established in the TMDL staff report, the section 303(d) list, and the data contained in the administrative record documenting the sediment, water, and fish tissue impairments of Dominguez Channel and Greater Los Angeles and Long Beach Harbor waters.
28. The Basin Plan amendment incorporating a TMDL for Toxic Pollutants in Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters must be submitted for review and approval by the State Board, the State Office of Administrative Law (OAL), and the U.S. EPA. The Basin Plan amendment will become effective upon approval by OAL and U.S. EPA. A Notice of Decision will be filed with the Resources Agency.
29. If during the State Board's approval process Regional Board staff, the State Board or State Board staff, or OAL determine that minor, non-substantive modifications to the language of the amendment are needed for clarity or consistency, the Executive Officer should make such changes consistent with the Regional Board's intent in adopting this TMDL, and should inform the Board of any such changes.

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30. Considering the record as a whole, this Basin Plan amendment is expected to result in an effect, either individually or cumulatively, on wildlife resources.

THEREFORE, be it resolved that pursuant to sections 13240 and 13242 of the California Water Code, the Regional Board hereby amends the Basin Plan as follows:

1. The Regional Board hereby approves and adopts the CEQA substitute environmental documentation, which was prepared in accordance with Public Resources Code section 21159 and California Code of Regulations, title 14, section 15187, and directs the Executive Officer to sign the environmental checklist.
2. Pursuant to Sections 13240 and 13242 of the California Water Code, the Regional Board, after considering the entire record, including oral testimony at the hearing, hereby adopts the amendments to Chapter 7 of the Water Quality Control Plan for the Los Angeles Region, as set forth in Attachment A hereto, to incorporate the elements and implementation schedule of the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants TMDLs.
3. The Executive Officer is directed to forward copies of the Basin Plan amendment to the State Board in accordance with the requirements of section 13245 of the California Water Code.
4. The Regional Board requests that the State Board approve the Basin Plan amendment in accordance with the requirements of sections 13245 and 13246 of the California Water Code and forward it to OAL and the U.S. EPA.
5. If during the State Board's approval process, Regional Board staff, the State Board or State Board staff, or OAL determine that minor, non-substantive modifications to the language of the amendment are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Board of any such changes.
6. The Executive Officer is authorized to request a "No Effect Determination" from the Department of Fish and Game, or transmit payment of the applicable fee as may be required to the Department of Fish and Game.

I, Samuel Unger, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Los Angeles Region, on [Insert Date].

Samuel Unger, PE
Executive Officer

Date _____

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