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February 17, 2011

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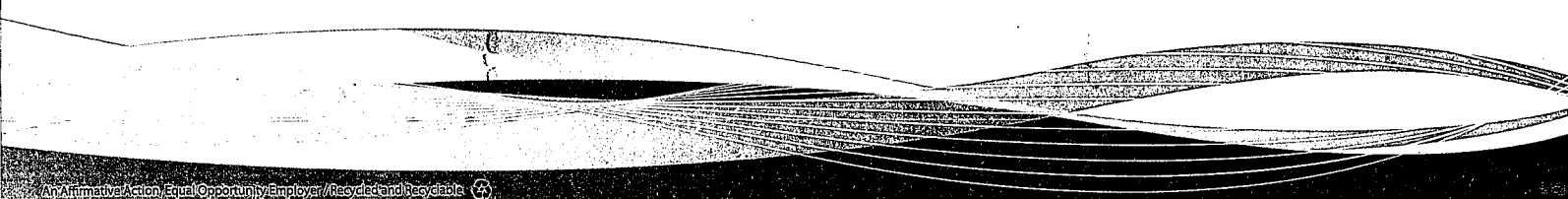
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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

Dear Ms. Nguyen:

SUBJECT: PORT OF LOS ANGELES COMMENTS ON DOMINGUEZ CHANNEL AND GREATER LOS ANGELES AND LONG BEACH HARBOR WATERS TOXIC POLLUTANTS DRAFT TOTAL MAXIMUM DAILY LOAD AND RELATED DOCUMENTS

The Port of Los Angeles (Port) appreciates the opportunity to participate in the development of the Dominguez Channel and Greater Los Angeles and Long Beach Harbor Waters Toxic Pollutants Total Maximum Daily Load (TMDL). Since 2001 we have supported the development of this program through data collection, model development, special studies, and active participation in technical reviews and stakeholder meetings. In addition to the countless hours spent by our staff, the Port has contributed significant financial resources in an effort to advance the science needed to develop a meaningful TMDL. We appreciate the U.S. EPA Region 9 (EPA) and the Los Angeles Regional Water Quality Control Board's (Regional Board) willingness to collaborate with the Port in order to advance our understanding of this complex ecosystem and to find the best way to protect its resources.

The Port is committed to the protection and improvement of the Harbor waters as evidenced by our participation in this process as well as the numerous water and sediment programs the Port has implemented over the last few decades. Most recently, the Port, in conjunction with the neighboring Port of Long Beach, the Regional Board, EPA and other interested stakeholders, developed a Water Resources Action Plan (WRAP), which provides a road map for the Ports to meet and exceed National Pollutant Discharge Elimination System (NPDES) and TMDL program requirements. The WRAP is the culmination of several years of special studies undertaken with the goal of generating sound scientific information for input into the TMDL process. Such studies included the development (with major funding from the State Water Resources



Control Board) of a hydrodynamic and water quality model for the purpose of predicting pollutant transport in the Dominguez Estuary and greater harbor complex.

As you know, TMDLs are being issued for the purpose of restoring beneficial uses to specific water bodies that have been deemed impaired. TMDLs are derived by first establishing water quality objectives that are protective of the beneficial uses of a specific water body. The water quality objectives are numeric concentrations of individual chemical pollutants in water, sediments and fish tissues. Second, sampling data is reviewed to determine how far current conditions are from the water quality objectives. In the case of the harbor, water quality meets the objectives but sediments and fish tissues do not. Finally, limits are derived for the amount of individual contaminants that can be introduced to the water body on a daily basis (TMDL) so that the water quality objectives are achieved in a reasonable time.

Derivation of meaningful TMDLs requires a thorough understanding of the unique nature and dynamics of the water body including its ability to assimilate contaminants and its interaction with the perceived sources of those contaminants. Models are used to predict the introduction of contaminants from various sources and the accumulation of those contaminants in the water and sediments. Clearly the integrity of the model is crucial to the efficacy of the TMDL process. For example, atmospheric deposition is a significant source of contaminants to the harbor. If the TMDL model assumes that 100% of contaminants from the atmosphere accumulate in harbor sediments, when in fact only a portion does, then the TMDL will underestimate the assimilative capacity of the water body and over-restrict the introduction of those contaminants from other sources. Similarly, if the TMDL model assumes that sedimentation only results from the deposition of particulate matter in a discharge stream, when in fact certain dissolved contaminants actually coagulate and settle once they reach the open harbor, the TMDL would underestimate the introduction of that contaminant. Finally, when the water quality objective is stated as the concentration of a chemical in fish tissue, a misunderstanding of fish migration and/or feeding habits can, and in this case likely has, lead to a TMDL that will yield no improvement because the TMDL is not addressing the proper source.

This TMDL is particularly challenging due to the complex nature of Los Angeles and Long Beach harbors and the watersheds that surround them. The Port is concerned that the Regional Board has 1) by using old data, started with an inaccurate assessment of current conditions and 2) by using an oversimplified model, is overstating potential contaminant sources, overlooking other contaminant sources, and overlooking actions that could result in meaningful advancements toward attainment of the beneficial uses.

A misunderstanding of the ecosystem and poorly formulated TMDLs could drive the Port to undertake projects that actually cause greater environmental harm than benefit. Large storm water treatment systems might need to be constructed at great expense in

order to meet effluent limits applied to this TMDL but these systems would yield little or no improvement in the marine environment because our ambient water already meets criteria. Millions of cubic yards of sediments would need to be dredged from the inner and outer harbor in order to meet the numerical targets chosen for sediments but such dredging would result in the removal of sediments that are not causing environmental harm and would also destroy the thriving marine ecosystem already in place.

It is critical that the TMDL be scientifically sound, technically, logistically and economically feasible, and executed in a manner that avoids environmentally harmful and unwarranted remedial actions. We believe the TMDL can be written to meet the beneficial uses without causing undo harm and meaningless actions. The solution lies in the selection of appropriate targets, accurate linkages between sources and impairments, and the engagement of all the stakeholders in the development of implementable actions. Some of our particular concerns follow, and additional detailed comments are included in the attachments to this letter.

1. The TMDL Uses Old Data And Neglects Recent Improvements In Water Quality.

The TMDL does not accurately summarize the current condition of the harbors as it was developed from inaccurate and outdated information. The Harbor has shown vast improvement in water quality in recent years, yet the inadequate weight was given to the most recent and reliable data. For instance, evaluating the most recent, relevant data per the SQO Part 1 methodology, the current harbor sediment condition is healthy with some isolated areas requiring more study (see SQO map in Attachment 1). In contrast, the TMDL relies on the outdated assessment method which looks at only a single line of evidence, ERLs.

2. Sediment Quality Objectives¹ (SQOs) Rather Than NOAA's Effect Range Low² Values (ERLs) Should Define Sediment Targets.

The establishment of appropriate targets is perhaps the most critical element of a TMDL. With respect to sediments, the TMDL uses a measure that was never intended for use in regulation and that has been abandoned by the State Water Resources Board.

The author/developers of the ERLs admit that ERLs have insufficient predictive ability to be useful in setting remedial goals. Studies reveal that too often, ERL exceedances are observed without corresponding biological effects (false positive) or that concentrations below ERLs are observed in conjunction with a biological

¹ The SQO standard is set forth in the Water Quality Control Plan For Enclosed Bays and Estuaries - Part 1 Sediment Quality (SQO Part 1) adopted by the State Water Resources Control Board (State Board) on August 25, 2009.

² ERLs are sediment screening guidelines developed by Long et.al (1995).

effect (false negative).³ ERL is not a threshold above which sediment impairment is likely. It is merely a concentration at the extreme low end of a continuum roughly relating bulk chemistry with toxicity. Any relationship between the exceedance of an ERL and a biological effect is coincidental, not necessarily causal. Categorizing sediments on the basis of whether individual chemical concentrations include one or more ERL exceedances leads to misperceptions of the actual probability that sediments are toxic. This is confirmed by data in the harbor, where sediment chemistry indicates numerous ERM and ERL exceedances but little or no corresponding toxicity or benthic effects are observed.⁴ Hence our concern that use of ERLs as a sediment target would lead to unnecessary and environmentally damaging dredging.

The State Water Resources Control Board has abandoned the ERL and ERM approaches to sediment quality guidelines owing to their intrinsic unreliability and has opted instead for SQOs, an integrated assessment of concentration of selected chemicals, measured toxicity, and alterations in benthic organism assemblages for the evaluation of sediments quality. The SQO standard is set forth in the Water Quality Control Plan For Enclosed Bays and Estuaries - Part 1 Sediment Quality (SQO Part 1) adopted on August 25, 2009. The State Water Resources Control Board determined that the SQOs provided "scientifically-defensible sediment quality objectives for bays and estuaries, which can be consistently applied statewide to assess sediment quality, regulate waste discharges that can impact sediment quality, and provide the basis for appropriate remediation activities."⁵

SQOs were developed pursuant to Water Code sections 13240 through 13247, which require, among other factors: consideration of past, present and probable future beneficial uses of estuarine and bay waters that can be impacted by toxic pollutants in sediments; environmental characteristics of waters; water quality conditions that can reasonably be achieved through the control of all factors affecting sediment quality; and economic considerations. SQOs were developed precisely because the legislature recognized the need to develop a better means of regulating sediment impairment in bays and estuaries.⁶ SQOs are more closely aligned with the goals of the TMDL and should replace ERLs as the sediment target value.

³ Long et al., 1995; Long et al., 1998; NOAA, 2010; Field et al., 1997; O'Connor et al., 1998; Shine et al., 2003; and Vidal and Bay, 2005.

⁴ (See comparison of ERL exceedance map and benthic health map in Attachment 1). (Comment Table 2 regarding Sections 3.2. and 3.3, and Attachment 3 provide further discussion)

⁵ State Board Resolution No. 2008-0070-14.

⁶ (Water Code § 13393.5.)

3. OEHHA's Advisory Tissue Levels (ATLs) Rather Than OEHHA's Fish Contaminant Goals⁷ (FCGs) Should Define Sediment Goals And The TMDL Should Be Based On Site Specific Linkage Between Fish Tissue And Sediment Quality.

OEHHA's Advisory Tissue Levels (ATLs) provide a more appropriate basis than Fish Contaminant Goals (FCGs) because ATLs include the benefits of fish consumption (e.g., protection from cardiovascular disease, stroke, cognitive impairment, etc.) as an offset to the potentially harmful effects of contaminants. FCGs were not intended to be used as numeric targets and are considered overly conservative because they do not pose any greater health risk to people than the ATLs.

In addition to selecting an overly conservative target for fish tissue, the TMDL was developed without establishing the required site-specific linkage between the sediment and fish tissue targets. As a result, this TMDL bears no relationship to the fish tissue-related sediment cleanup targets set by the EPA⁸ for the Palos Verde shelf, which are 20 times higher than the numeric targets assigned to the harbor in this TMDL. If, as we suspect, the TMDL's assumption that contaminants observed in fish tissue are sourced in harbor sediments is wrong (i.e. the fish migrated and/or do not feed in the harbor), then dredging to achieve sediment compliance would not result in any fish tissue improvement.

4. The TMDL Uses A Flawed Model That Does Not Accurately Describe The Linkage Between Contaminant Sources And Water Body Impairments.

The TMDL does not provide the required, comprehensive, science-based assessment of the source of contaminants to the harbor impairments, and does not provide adequate analyses to link pollutant sources to the sediment impairments. The TMDL was thus derived without determining which specific watershed sources are contributing to harbor sediments and the source allocations are therefore arbitrary and inaccurate.

By way of example, this is confirmed by the resulting negative allocations for sediments in the harbor, which contradicts the definition of an allocation (i.e., the portion of the pollutant you are allowed to discharge). A fair share of allocations would result in each input being controlled. As the TMDL is currently written, no effort is made to reduce air inputs, which the TMDL states are the largest

⁷ OEHHA (Office of Environmental Health Hazard Assessment), 2008. Development of Fish Contaminant Goals and Advisory Tissue Levels for Common Contaminants in California Sport Fish: Chlordane, DDTs, Dieldrin, Methylmercury, PCBs, Selenium, and Toxaphene. California Environmental Protection Agency. June 2008.

⁸ USEPA, 2009a. Palos Verdes Shelf Operable Unit 5 of the Montrose Chemical Corporation Superfund Site Feasibility Study. May 2009. & USEPA, 2009b. Interim Record of Decision Palos Verdes Shelf Operable Unit 5 of the Montrose Chemical Corporation Superfund Site Los Angeles County, California. September 2009.

contributor. As a result of negative allocations, material already in water bodies would have to be removed annually to compensate for the air deposition inputs.

5. TMDL Action Items Are Biased Toward Remedial Action.

The Port believes that the TMDL's action items show a bias toward remediation efforts within the harbor as opposed to the control of upstream dischargers. It is premature to consider dredging harbor sediments without an accurate understanding of the linkage between upstream discharges and their potentially adverse effects. Without this linkage, the Port would have to dredge the harbor repeatedly to manage ongoing contamination from upstream sources.

Furthermore, if the TMDL is enforced as written, dredging or dredging then capping are the only implementation alternatives that could possibly achieve the sediment targets in the implementation time frame. However, sediment remediation programs will not be completed within the 20-year timeline due to the logistical constraints of construction programs in an active port. The areas requiring management will be identified and actions will be made to promote the remediation actions, but tenant relocation, alignment with port projects to accommodate the material being dredged, EIR/EIS approval, and permitting will ultimately dictate remediation schedules.

We refer you to the attached comments, supporting documents, and scientific references for additional detail. We ask that you respond to each comment as listed in the accompanying matrix, taking into account the supporting material. We are cognizant of the effort that a full response will require; however, our comments reflect the importance the Port places on achieving a meaningful TMDL and effort we have invested to date.

For each issue of concern, we have also provided a carefully considered alternative, leading to a more effective TMDL. Thus, included in our comment package are actual TMDL text rewrites of key sections, providing further clarification regarding TMDL implementation and compliance. The suggested alternatives provide the necessary flexibility and ongoing adaptive management strategies to attain the goals of the TMDL and to achieve a net environmental benefit.

Thank you for the opportunity to review and comment on this important document. We look forward to our continued coordination on this TMDL program. Please call Ms. Kathryn Curtis if you have questions regarding our overall comment submittal.

Sincerely,


GERALDINE KNATZ
Executive Director

GK:MC:KM:CC:KKC:yo
ADP No.: 970203-532

Enclosure(s): TMDL comment package, including TMDL section rewrites, Comment tables, and Supporting materials (Attachments 1-12)

cc: Shahram Kharaghani, City LA Bureau of Sanitation, Watershed Protection Div.
Rick Cameron, Port of Long Beach
Peter Kozelka, U.S. EPA Region 9

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2011 FEB 22 PM 4 04
CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD
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Dear Ms. Nguyen:

SUBJECT: SUPPLEMENTAL ENVIRONMENTAL DOCUMENT FOR THE DOMINGUEZ CHANNEL AND GREATER LOS ANGELES AND LONG BEACH HARBOR WATERS TOXIC POLLUTANTS TMDL

The Port of Los Angeles (Port) provides the following general comments on the draft Supplemental Environmental Document (SED) which evaluates potential impacts associated with implementation of the Dominguez Channel and Los Angeles and Long Beach Harbors Toxics TMDL. Additionally, more detailed and specific comments are attached. Please note that the Port's comments on the TMDL document itself, as well as the related staff report and Basin Plan amendment have been transmitted under separate cover and that package contains some additional background supporting material.

The Port's overriding concern with the SED is that it fails to adequately identify and analyze the potential environmental impacts of implementing the TMDL as currently written. The TMDL may result in more harm to the environment than good. The SED also fails to provide sufficient mitigation for the impacts that it does identify and fails to consider alternatives that would be equally protective of the harbor waters but cause less damage to the existing ecosystem. As a result, the SED does not meet the substantive requirements of CEQA. Given the significant regional and local impacts associated with the implementation of this TMDL including large-scale dredging for sediment remediation and the installation of storm water treatment infrastructure, it is especially important that the SED contain the requisite analysis to enable both the decision makers and the public to understand the significant environmental repercussions. The cursory analyses provided in the draft SED precludes the decision makers from determining whether the benefits of the proposed TMDL outweigh the

significant and unavoidable environmental impacts. These inadequacies require a recirculation of the draft document once it has corrected its deficiencies.

I. The SED Fails to Disclose the Significant Adverse Impacts Associated with Implementation of the TMDL

CEQA requires that the SED serve as a disclosure document that analyzes the potential environmental impacts of the TMDL such that decision makers, other regulatory agencies and the public are informed in a meaningful way. The SED fails in this basic CEQA obligation as there is no salient analysis of the environmental impacts that allow for the determination that these significant unavoidable impacts are outweighed by the benefits.

The TMDL and its implementation, according to the evidence found in the SED and record generally, will likely have a significant physical adverse impact on the environment both temporarily and as an ongoing matter. These significant adverse impacts require further analysis and possible mitigation. However, there is scant discussion of any kind in the SED of the significant adverse environmental impacts of the TMDL.

II. The TMDL / SED's Baseline is Inaccurate and Does Not Comply with CEQA

In order to properly identify the environmental effects of implementing the TMDL CEQA requires that baseline conditions be established. The analysis must begin with a proper understanding of current environmental conditions:

"An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they *exist at the time the notice of preparation is published*, or if no notice of preparation is published, *at the time environmental analysis is commenced*, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." (*Sunnyvale West Neighborhood Association v. City of Sunnyvale City Council*, (2010) 190 Cal. App.4th 12 (quoting CEQA Guidelines section 15125(a)).

As extensively documented in the Port's technical comments on the TMDL, the chemistry relied upon to establish the baseline condition for the TMDL and the SED is obsolete and not reflective of existing conditions when environmental analysis began - which is improper under CEQA. In fact, vast improvements in water quality and sediment chemistry at the Port have been achieved which the data relied upon in the SED fails to reflect. Consequently, as the *Sunnyvale* decision makes clear, the SED's analysis of significant impacts is necessarily flawed under CEQA as the baseline does not represent the relevant conditions. The SED should use the most current data available and tailor its analysis to the actual environmental setting.

III. The SED Fails to Analyze the Feasibility of Its Implementation Methods.

The SED's analysis of the TMDL must consider the feasibility of methods identified for achieving the objectives of protecting and restoring fish tissue and sediment quality in the watershed. The feasibility of methods of compliance set forth in the TMDL must be analyzed at specific sites as required by the California Code of Regulations (Title 23, Division 3, Chapter 27, Section 3777).

Due to its lack of analysis, the SED fails to recognize the infeasibility, of the infiltration systems, vegetative swales, and low flow diversion systems suggested in the TMDL. These systems are not feasible at the ports due to the shallowness and/or salinity of groundwater and consequently will not obtain the CTR targets found in the TMDL for General NPDES discharges, or the WLA for MS4s. Indeed the only feasible method of compliance with water quality WLA's in the context of the ports is treatment control BMPs. As this is reasonably foreseeable, the lead agency must quantitatively analyze the environmental impacts at both ports and throughout the watershed pursuant to CEQA.

IV. Reasonably Foreseeable Environmental Impacts of TMDL Compliance are not Analyzed as Required by CEQA

To meet the compliance deadlines imposed by the TMDL massive dredging projects or dredging and capping projects would have to be undertaken. Because such projects are reasonably foreseeable, the SED must analyze their environmental impacts. However, the level of analysis in the SED fails to meet CEQA requirements as it fails to accurately depict the scale of the dredging that would be necessary to meet the TMDLs and to identify methods for meeting the CTR standards imposed on stormwater. The SED must contain a discussion of the reasonably foreseeable environmental effects of the actions the TMDL necessitates. Without such an analysis and discussion the document fails in its basic purpose as a public disclosure device. The public and the decision makers who rely upon this document must have an accurate and fully analyzed CEQA document to understand the true environmental picture. Implementation of the TMDL will cause foreseeable and significant environmental impacts and the public and the decision makers have a right, as CEQA demands, to an accurate picture of those impacts. It is only when those significant impacts are recognized and analyzed that the public and decision makers can decide whether or not the negative impacts inherent in the TMDL are worth its benefits.

The dredging impacts are of particular note. The SED inaccurately describes the necessary dredging as small in scale with impacts that are less than significant or non-existent. However, to comply with the TMDL's fish tissue targets approximately 40 million cubic yards of material would have to be dredged (roughly the equivalent of the amount of debris caused by hurricane Katrina) within 15 years. Dredging on

this scale would have massive negative impacts upon air quality, animal and plant life, traffic, and other areas. The underestimation of the impacts of the dredging necessitated by the TMDL is glaring and the SED should be revised to rectify these deficiencies. An analysis of the issues attendant to dredging on this scale must, under CEQA, include detailed analysis of the impacts of and information about the amount dredged (40 million cubic yards), the methods of dredging (clamshell or hydraulic), the methods of disposal (an estimated 2.6 million round trip truck trips), and location of disposal. Likewise, the SED's discussion of capping is inadequate. It fails to describe the magnitude of the construction project that capping entails and all of its incumbent impacts. Finally, it does not analyze the impact massive dredging will have on existing plant and animal life in the harbor – such as the harbor's eelgrass habitat, which is not even mentioned in the SED.

V. The SED is Fraught with Conclusionary Findings Lacking the Required CEQA Analysis and Discussion Incumbent Upon a Disclosure Document

The SED often states its finding without any analysis. There are simple assertions that there will be no significant impact, no impact, or that impacts that can be mitigated without any explanation as to why such conclusion was reached. Due to this summary approach there is a lack of substantial evidence to support any findings of no significant impact or no impact. CEQA requires that such findings be supported by substantial evidence – this enables the public and decision makers to understand the true environmental impacts that are being recommended. Indeed, this information is the heart of CEQA; this form of explanation or analysis is what makes a CEQA document a disclosure document.

For example, the entire discussion of air emission and ambient air quality is less than two pages long. The environmental impacts and mitigation of dredging fails to analyze any of the salient issues:

Dredging or sediment capping requires the use of heavy equipment (i.e., the dredge itself and trucks to transport dredge material). The adverse impacts to ambient air quality may result from short-term operation of the dredge and an increase in truck traffic for dredge material transportation. These impacts are temporary and can be mitigated. Mitigation measures for increased air emissions due to increased vehicle trips or for heavy equipment due to hydraulic dredging operations may include, but are not limited to, the following: 1) use of construction and maintenance vehicles with lower-emission engines, 2) use of soot reduction traps or diesel particulate filters, 3) use of emulsified diesel fuel, 4) proper maintenance of vehicles and equipment so they operate cleanly and efficiently, and 5) construction equipment should be turned off when not in use. (SED 44)

There is no analysis here. The two most basic questions this section should answer are not addressed: What is being emitted into the atmosphere? What quantity of that material is being released into the atmosphere? There needs to be a discussion of how much needs to be dredged, what kind of equipment needs to be utilized, how long will it take to complete the dredging, what does the equipment emit into the atmosphere and how much does that equipment emit. Further, there is no analysis of how the mitigation measures would mitigate the significant environmental impact. In that there is no analysis of the nature and extent of the impact it follows that there can be no discussion of how proposed mitigation measures can mitigate them.

Similarly, in regard to land use impacts, the SED's assertion that "[t]he installation of infiltration systems, vegetated swales, stormwater capture systems, media filters, oil/water separators, diversion and/or treatment BMPs, and catch basin inserts are not expected to result in substantial alternations or adverse impacts to present or planned land use" stands without analysis. (SED 78) These BMPs would all have a substantial footprint at the port. Although the SED states that it would have no impact on present or planned land use – present or planned land use is not discussed or analyzed at all. There is no suggestion or discussion of where such devices might be placed at the port.

As indicated in the Port's detailed comments, similarly inadequate analyses occurs throughout the SED, specifically: Air Quality and Greenhouse gases (2.a, 2.c), Earth (1.a, 1.b, 1.c, 1.d), Plant and Animal Life (5.a, 5.b, 5.c), Noise (6.a), Transportation (13.a, 13.c, 13.d, 13.e), Human Health (17.a, 17.b), Economics, Water Quality, Public Services, the Significance Findings, Cumulative Impact Analysis, and the Statement of Overriding Consideration.

VI. Conclusion

The CEQA analysis does not meaningfully analyze the potential impacts of the TMDL implementation alternatives, nor does it provide any explanation of how proposed mitigation measures will lessen significant environmental impacts. It does not provide the necessary information and analysis to enable decision makers, other regulatory agencies, and the public to understand the significant adverse environmental impacts associated with implementation of the TMDL. The document deficiencies should be corrected and a revised SED should be recirculated for public review to provide a complete discussion of the environmental issues at stake.

Thank you for the opportunity to review and comment on this important supporting document. We look forward to our continued coordination with the Regional Board on this TMDL program. Please call Ms. Kathryn Curtis (310-732-3681) if you have questions regarding this comment submittal.

Sincerely,



THOMAS A. RUSSELL
General Counsel

TAR:JH

Enclosure(s): CEQA Comments Matrix and supporting documents

cc: Shahram Kharaghani, City LA Bureau of Sanitation, Watershed Protection Div.
Rick Cameron, Port of Long Beach
Peter Kozelka, U.S. EPA Region 9