

EXHIBIT “46”

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3 HEAL THE BAY, INC., SANTA MONICA)
4 BAYKEEPER, INC., and TERRY TAMMINEN,)

5 Plaintiffs,)

No. C 98-4825 SBA

6 v.)

7 CAROL BROWNER, Administrator of the)
8 United States Environmental)
9 Protection Agency, FELICIA MARCUS,)
10 Regional Administrator of the United)
11 States Environmental Protection)
12 Agency, Region IX, and the UNITED)
13 STATES ENVIRONMENTAL PROTECTION)
14 AGENCY,)

15 Defendants.)
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AMENDED CONSENT DECREE

24 A. WHEREAS, Heal the Bay, Inc., Santa Monica BayKeeper,
25 Inc., and Terry Tamminen (collectively, "Plaintiffs") filed a
26 complaint in this action ("Complaint") against Defendants Carol
27 Browner, in her official capacity as the Administrator of the
28 United States Environmental Protection Agency; Felicia Marcus, in
29 her official capacity as Regional Administrator of the United
30 States Environmental Protection Agency, Region IX; and the United
31 States Environmental Protection Agency (collectively, "EPA"),
32 pursuant to, inter alia, Section 303(d) of the Clean Water Act
33 ("Act" or "CWA"), 33 U.S.C. 1313(d);

34 B. WHEREAS, Section 303(d) of the Act and EPA's implementing
35 regulations, 40 CFR 130.7(b)-(e), provide for, among other

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things: (1) identification of waters for which applicable technology-based effluent limitations and other required controls are not stringent enough to implement water quality standards; (2) establishment of a priority ranking for such waters; and (3) establishment of total maximum daily loads ("TMDLs") for those waters;

C. WHEREAS, the subject of this action concerns EPA's alleged duty to either approve or disapprove TMDLs submitted to EPA by the State of California ("State") for waters in that region of the State administered by the Los Angeles Regional Water Quality Control Board (hereinafter referred to as the "Los Angeles Region"), and certain related claims, as set forth in the Complaint filed herewith. The geographic boundaries of the Los Angeles Region are set forth in Attachment 1 hereto;

D. WHEREAS, overall, storm water and urban runoff constitute the most significant sources of pollution to the waters of the Los Angeles Region. However, these sources of pollution have not been sufficiently controlled to date;

E. WHEREAS, storm water and urban runoff in the Los Angeles Region contain high levels of pollutants of concern, including, but not limited to, heavy metals, sediment, nutrients, and pathogens;

1 F. WHEREAS, the establishment of total maximum daily loads
2 must account for, among other things, all significant sources of
3 pollutants, including pollutants in storm water and urban runoff,
4 and, accordingly, the parties agree to direct attention to
5 reducing these significant sources of pollutants to the waters of
6 the Los Angeles Region;

7 G. WHEREAS, "water quality standards" ("WQS") has the
8 meaning provided at 40 CFR 130.2(d) and 130.3 as codified as of
9 the Effective Date of this Amended Consent Decree ("Consent
10 Decree") or as subsequently amended;

11 H. WHEREAS, 40 CFR 130.7(b)(3) states that the terms "water
12 quality standard applicable to such waters" and "applicable water
13 quality standards" refer to those water quality standards
14 established under Section 303 of the Act, including numeric
15 criteria, narrative criteria, waterbody uses and anti-degradation
16 requirements;

17 I. WHEREAS, 40 CFR 122.26(b)(13) defines "storm water" to
18 mean "storm water runoff, snow melt runoff, and surface runoff
19 and drainage."

20 J. WHEREAS, 40 CFR 122.1(b)(2) provides, in part, that
21 "[d]ischarges of storm water as set forth in § 122.26" are "point
22 sources requiring NPDES permits for discharges;"

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1 K. WHEREAS, 40 CFR 130.2(h) defines "Wasteload allocation
2 (WLA)," in part, as "[t]he portion of a receiving water's loading
3 capacity that is allocated to one of its existing or future point
4 sources of pollution."

5 L. WHEREAS, in order to resolve this lawsuit, the parties
6 also have entered into an Amended Settlement Agreement
7 ("Settlement Agreement") which has been filed separately with the
8 Court; its terms are not incorporated into this Consent Decree;

9 M. WHEREAS, the parties have agreed to a settlement of this
10 action without an admission of fact or law, which they consider
11 to be a just, fair, adequate and equitable resolution of the
12 claims raised in this action;

13 N. WHEREAS, in particular, Plaintiffs state that their
14 consent to this Consent Decree is predicated upon facts
15 including, without limitation, that the Consent Decree provides
16 for remedies that will be implemented without delay, including
17 the near-term establishment of TMDLs to remedy critical water-
18 quality related environmental and public health problems;

19 O. WHEREAS, therefore, the parties understand that,
20 notwithstanding any other provision herein, if the Consent Decree
21 is not approved for any reason within 90 days of submission,
22 Plaintiffs may withdraw their consent to entry of the Consent
23 Decree; thereafter, neither the Consent Decree nor Plaintiffs'

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1 agreement to lodge it shall preclude Plaintiffs from litigating
2 claims including those asserted in the Complaint and seeking
3 whatever remedy may be consistent with law. In any such
4 litigation, EPA reserves all of its defenses, and the parties
5 agree that the Consent Decree may not be used in support of any
6 fact or matter of law.

7 P. WHEREAS, it is in the interest of the public, the parties
8 and judicial economy to resolve the issues in this action without
9 protracted litigation, including a trial; and

10 Q. WHEREAS, the Court finds that this Consent Decree
11 represents a just, fair, adequate and equitable resolution of the
12 claims raised in this action.

13 NOW, THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED
14 as follows:

15 GENERAL TERMS

16 1. The obligations arising under this Consent Decree are
17 to be performed by EPA and not by Carol Browner or Felicia Marcus
18 in their respective individual capacities. This Consent Decree
19 applies to, is binding upon, and inures to the benefit of
20 Plaintiffs (and their successors, assigns, and designees) and of
EPA.

21 2. For the purposes of this Consent Decree,
22 a. "Water Quality Limited Segment" ("WQLS") has the
23 meaning provided at 40 CFR 130.2(j), as codified as of the

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1 Effective Date of this Consent Decree or as subsequently amended;

2 b. "Total Maximum Daily Load" ("TMDL") has the meaning
3 provided at 33 U.S.C. Section 1313(d) and 40 CFR 130.2(i), as
4 codified as of the Effective Date of this Consent Decree or as
5 subsequently amended. A TMDL shall be established with "a margin
6 of safety which takes into account any lack of knowledge
7 concerning the relationship between effluent limitations and
8 water quality", pursuant to 33 U.S.C. 1313(d)(1)(C). A TMDL
9 "shall be established at a level necessary to implement the
10 applicable water quality standards with seasonal variations",
11 pursuant to 33 U.S.C. 1313(d)(1)(C);

12 c. "TMDL Analytical Unit" means a group, listed in
13 Attachment 2, of related WQLSs and associated pollutants for
14 which TMDLs will be developed;

15 d. "Effective Date" means the date upon which this
16 Consent Decree is entered by the Court; and

17 e. "Continuing planning process" ("CPP") has the
18 meaning provided at Section 303(e) of the CWA, 33 U.S.C. 1313(e),
19 and at 40 CFR 130.5, as codified as of the Effective Date of this
20 Consent Decree or as subsequently amended.

21 ESTABLISHMENT OF TMDLS

22 3. The parties understand that California has the initial
23 opportunity pursuant to Section 303(d) of the Act to adopt and
24 submit to EPA for approval TMDLs to be established under this
Consent Decree. However, EPA agrees to ensure that a TMDL will
be completed for each and every pairing of a WQLS and an
associated pollutant in the Los Angeles Region set forth in

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1 Attachment 2 (incorporated herein as if set forth in full, and
2 referred to herein as "the List of Waters and Pollutants Covered
3 by the Consent Decree") by completing the following:

4 (a) Schedule for Specified Waters. With respect to each
5 and every pairing of a WQLS and an associated pollutant set forth
6 in each TMDL Analytical Unit identified in the "Schedule for
7 Specified Waters" (Attachment 3, incorporated herein as if set
8 forth in full), EPA shall either:

9 (i) approve a TMDL submitted by the State by the
10 date identified in Attachment 3, or

11 (ii) if EPA has not approved a TMDL by the date
12 identified in Attachment 3, establish a TMDL within one (1) year
13 after the date identified in Attachment 3, unless the State
14 submits and EPA approves a TMDL prior to EPA establishing the
15 TMDL within EPA's one year backstop period; and

16 (b) Minimum Pace Requirement. EPA shall assure that a
17 minimum pace for TMDL development is achieved by either, (i)
18 approving, by the following deadlines, a TMDL for each and every
19 pairing of a WQLS and an associated pollutant set forth in the
20 following aggregate number of "TMDL Analytical Units" (Attachment
21 2) submitted by the State:

<u>Date</u>	<u>Cumulative</u> <u>TMDL Analytical Units</u>
1 year after the Effective Date	1
2 years " " " "	4
3 years " " " "	9
4 years " " " "	14

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1	5 years	"	"	"	"	19
2	6 years	"	"	"	"	24
3	7 years	"	"	"	"	29
4	8 years	"	"	"	"	34
5	9 years	"	"	"	"	39
6	10 years	"	"	"	"	44
7	11 years	"	"	"	"	53
8	12 years	"	"	"	"	58;

8 or, (ii) establishing, within one (1) year of each deadline set
9 forth above, a TMDL for each and every pairing of a WQLS
10 and an associated pollutant needed to complete the aggregate
11 number of TMDL Analytical Units required for that deadline,
12 unless the State submits and EPA approves a TMDL prior to EPA
13 establishing the TMDL within EPA's one year backstop period; and

13 (c) Final Deadline. By thirteen (13) years after the
14 Effective Date, approve or establish a TMDL for each and every
15 remaining pairing of a WQLS and an associated pollutant in the
16 Los Angeles Region set forth in the List of Waters and Pollutants
17 Covered by the Consent Decree (Attachment 2). If EPA finds it
18 necessary to utilize year thirteen (13) of this schedule to
19 satisfy this obligation, EPA shall assure that TMDLs approved or
20 established in year thirteen (13) are for low priority WQLSS
21 covered by this Consent Decree, TMDLs for higher priority WQLSS
22 covered by this Consent Decree having been approved or
23 established in years one (1) through twelve (12) of the schedule.
24 "Low priority" and "higher priority" herein refer to priorities
set forth in the California 1998 Section 303(d) List, as approved

1 by EPA, October, 1998, although the inclusion of one or more
2 "low" priority WQLS(s) and associated pollutant(s) in an
3 Analytical Unit contained in Attachment 3 is not intended to
4 affect, nor affects, the schedule required therein.

5 4. Where the parties mutually consent to any revision of
6 Attachments 2 and/or 3, such revision shall be effected by
7 written agreement submitted to the Court for approval, except for
8 extensions of sixty (60) days or less, which revision may be
9 effected by written agreement of the parties and notice to the
10 Court.

10 MEASURING COMPLIANCE WITH TMDL DEADLINES

11 5. The approval or establishment by EPA of a TMDL for each
12 and every pairing of a WQLS and an associated pollutant listed
13 within any TMDL Analytical Unit counts as completion of that TMDL
14 Analytical Unit for purposes of compliance with subparagraph
15 3(b), above. By way of illustration and example, credit under
16 paragraph 3(b) of the Consent Decree for completion of TMDL
17 Analytical Unit # 7 accrues when EPA approves or establishes 5
18 TMDLs: one TMDL for PCBs for each of the 5 listed WQLSs in TMDL
19 Analytical Unit # 7. Where a deadline for a specified TMDL
20 Analytical Unit is provided in Attachment 3, the approval or
21 establishment by EPA of a TMDL for each and every pairing of a
22 WQLS and an associated pollutant listed within that specified
23 TMDL Analytical Unit counts as completion of the specified TMDL
24 Analytical Unit for purposes of subparagraph 3(a), above, and
also for purposes of the milestones required by paragraph 3(b).
By way of illustration and example, credit under paragraph 3(a)

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1 of the Consent Decree for completion of TMDL Analytical Unit # 56
2 accrues when EPA approves or establishes 3 TMDLs: 1 TMDL for
3 lead (Pb), 1 TMDL for copper (Cu), and 1 TMDL for zinc (Zn) for
4 the listed WQLS, Marina del Rey Harbor - Back Basins.

5 Thereafter, this TMDL Analytic Unit also counts toward the
6 milestones required by paragraph 3(b).

7 6. EPA and the Plaintiffs understand that future
8 Section 303(d) Lists for the Los Angeles Region may include
9 additional WQLSs or pollutants ("Additional WQLSs or Pollutants")
10 that may warrant TMDL development prior to TMDL development for
11 some WQLSs or pollutants listed in Attachment 2. EPA's
12 obligation, if any, with respect to such Additional WQLSs or
13 Pollutants is not within the scope of this Consent Decree.
14 However, to the extent that EPA seeks credit under the Consent
15 Decree for completing a TMDL for an Additional WQLS or Pollutant,
16 it must follow the procedure described in Paragraph 7 to obtain
17 such credit.

18 7. After obtaining Plaintiffs' written agreement, which
19 consent Plaintiffs may at their sole discretion withhold, EPA
20 may, after Court approval, substitute one or more such Additional
21 WQLSs or Pollutants for an agreed upon number of WQLSs or
22 pollutants set forth in Attachment 2 and, after approving or
23 establishing a TMDL for each such Additional WQLS or Pollutant,
24 EPA may count that approved or established TMDL, in accordance
with the parties' agreement, for purposes of compliance with the
milestones contained in this Consent Decree. No implication

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1 shall be drawn as a result of Plaintiffs' rejection of a request
2 to substitute Additional WQLSs or Pollutants.

3 8. In fulfilling its obligations under this Consent
4 Decree, EPA is under no obligation to establish TMDLs for any
5 pairing of a WQLS and a pollutant that EPA determines for
6 purposes of this Decree only, consistent with Section 303(d) of
7 the Act and its implementing regulations, including 40 CFR
8 130.7(b), as codified as of the Effective Date of this Consent
9 Decree or as subsequently amended, does not require a TMDL or
10 which has been removed after the Effective Date from an EPA
11 approved California Section 303(d) list of waters requiring TMDLs
12 pursuant to Section 303(d)(1) of the Act, consistent with the
13 provisions of the Act and EPA's implementing regulations.

14 Accordingly, if it complies with the notification procedure
15 required by paragraph 9 of this Consent Decree, for the purposes
16 of measuring EPA's compliance with the milestones described in
17 paragraph 3, EPA may also count toward TMDL development any
18 pairing of a WQLS and a pollutant set forth in Attachments 2:
19 (i) after it is removed from a Section 303(d) list of waters
20 requiring a TMDL pursuant to Section 303(d)(1) (approved by EPA
21 after the Effective Date); or (ii) after EPA determines for
22 purposes of this Decree only, consistent with Section 303(d) and
23 40 CFR 130.7, as codified as of the Effective Date or this
24 Consent Decree or as subsequently amended, that a TMDL is not
required.

22 9. If EPA makes a determination pursuant to paragraph
23 8(ii) of the Consent Decree that a TMDL is not required for any
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1 pairing of a WQLS and a pollutant, EPA shall notify Plaintiffs
2 within thirty (30) days of EPA's determination and provide
3 Plaintiffs with the basis for its determination. EPA's
4 determination under paragraph 8(ii) is not a final agency action
5 subject to review independent of this Consent Decree. However,
6 if Plaintiffs do not concur with EPA's determination under
7 paragraph 8(ii), EPA agrees that the Court may solely for
8 purposes of determining EPA's compliance with the requirements of
9 paragraph 3 of this Consent Decree, and pursuant to a request by
10 Plaintiffs under paragraph 23 of the Consent Decree ("Dispute
11 Resolution"), review the record of EPA's determination under
12 paragraph 8(ii) and decide whether or not EPA's determination is
13 consistent with the Clean Water Act and its implementing
14 regulations, including 40 CFR 130.7, as codified as of the
15 Effective Date of this Consent Decree or as subsequently amended.
16 If the Court disapproves EPA's determination under paragraph
17 8(ii), then within six (6) months after that ruling (or if the
18 pairing of a WQLS and an associated pollutant is listed on
19 Attachment 3, then the later of six (6) months after the ruling
20 or the date the TMDL is scheduled to be complete), EPA shall
21 either: (i) approve a state established TMDL for each pairing of
22 a WQLS and an associated pollutant at issue or (ii) establish a
23 TMDL for each pairing of a WQLS and an associated pollutant at
24 issue.

TMDL PROGRESS REPORTS AND DOCUMENTATION

10. Beginning one year after the Effective Date and
continuing every year thereafter until fourteen (14) years after

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1 the Effective Date, EPA shall provide Plaintiffs, and any
2 interested party upon written request, with an annual written
3 progress report covering the one-year period just ended. Each
4 report shall be provided within ninety (90) days after the end of
5 the period that is the subject of the progress report, and with
6 respect to the Los Angeles Region shall identify:

7 a. the TMDLs submitted by the State during the
8 reporting period, the date of each submission, EPA action taken
9 on each submission and the date of the action taken;

10 b. the TMDLs that EPA established during the reporting
11 period; and

12 c. all WQLSs, and pollutants associated with each WQLS,
13 that are on the 1998 Section 303(d) list that are not included on
14 the most recent EPA approved Section 303(d) lists or which EPA
15 determined consistent with Section 303(d) and 40 CFR 130.7, as
16 codified as of the Effective Date of this Consent Decree or as
17 subsequently amended, do not need a TMDL.

18 11. Six (6) months after the Effective Date, and annually
19 thereafter for each of the next three (3) years, EPA shall by
20 conference call inform Plaintiffs of the general status of
21 actions to comply with the Consent Decree, including TMDLs
22 submitted, EPA action taken on each submission and the date of
23 that action, TMDLs approved or established by EPA, and all WQLSs
24 (and pollutants associated with those WQLSs) that are on the 1998
Section 303(d) list that are not included on the most recent EPA
approved Section 303(d) list or which EPA determined consistent
with Section 303(d) and 40 CFR 130.7, as codified as of the

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1 Effective Date of this Consent Decree or as subsequently amended,
2 do not need TMDLs.

3 12. These provisions do not limit Plaintiffs' rights under
4 the Freedom of Information Act or other public information
5 provisions of law.

6 CONTINUING PLANNING PROCESS

7 13. By three (3) months from the Effective Date:

8 a. EPA will provide Plaintiffs a copy of the State's
9 Continuing planning process ("CPP");

10 b. EPA will keep at EPA Region IX a copy of the most
11 recent State CPP reviewed by EPA for public review during the
12 pendency of this Consent Decree; and

13 c. EPA will publish in the Federal Register a notice
14 informing the public that: the CPP is available for public
15 review; that by six months from entry of the Consent Decree EPA
16 will prepare and make available to interested parties upon
17 request for their review and comment EPA's preliminary written
18 summary of its review of that portion of the CPP related to the
19 Section 303(d) program; and interested parties may request copies
20 of the CPP and EPA's preliminary written summary when available.

21 14. By six (6) months from the Effective Date, EPA will:

22 (a) review that portion of the CPP related to the Section 303(d)
23 program to determine whether it is consistent with Section 303(e)
24 of the Act, 33 U.S.C. 1313(e), and EPA's implementing regulations
at 40 CFR 130.5, as codified as of the Effective Date or as
subsequently amended; (b) prepare a preliminary written summary
of its review, including any recommendations for improvement;

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1 (c) provide the preliminary written summary to the Plaintiffs and
2 the State for comment; and (d) make the preliminary written
3 summary available for comment to other parties upon written
4 request. EPA will consider any comments on the preliminary
5 written summary submitted not later than forty-five (45) days
6 after the preliminary written summary is provided to the
7 Plaintiffs and the State for comment.

8 15. By nine (9) months from the Effective Date, EPA will
9 determine whether that portion of the CPP related to the Section
10 303(d) program is consistent with the Act and its implementing
11 regulations, and it will provide Plaintiffs and the State, and
12 any other interested persons upon request, with a final written
13 summary of EPA's review of the CPP that will include any
14 recommendations for improvement.

15 16. If the State does not modify its CPP to be consistent
16 with any EPA recommendations, the Act and its implementing
17 regulations, EPA shall take appropriate action as provided under
18 the Act and accompanying regulations.

19 **REPORT REGARDING MONITORING, ASSESSMENT AND LISTING**

20 17. By one (1) year from the Effective Date, EPA will
21 develop a final report evaluating and making any recommendations
22 regarding the Los Angeles Regional Water Quality Control Board's
23 water quality monitoring and assessment program and
24 Section 303(d) listing process. At least sixty (60) days prior
to finalizing the report, EPA will provide a preliminary copy of
the report to Plaintiffs and the Los Angeles Regional Water
Quality Control Board for comment. At that same time EPA will

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1 make a copy available for comment to other interested parties
2 upon prior written request. EPA will consider any comments on
3 the preliminary report submitted not later than forty-five (45)
4 days after the preliminary report is provided to Plaintiffs and
5 the Los Angeles Regional Water Quality Control Board for comment.

6 18. EPA will consider the final report, among other things,
7 to be existing and readily available water quality-related
8 information to be used in reviewing the next State Section 303(d)
9 list for the Los Angeles Region submitted after the Effective
10 Date of this Decree and for determining whether that list can be
11 approved under CWA Section 303(d) and EPA's implementing
12 regulations.

13 FORCE MAJEURE

14 19. The possibility exists that circumstances outside the
15 reasonable control of EPA could delay compliance with the
16 timetables contained in this Consent Decree. Such circumstances
17 may include, but are not limited to, catastrophic environmental
18 events requiring immediate and/or time-consuming response by EPA.
19 In addition, the parties recognize that the performance of the
20 Consent Decree is subject to fiscal and procurement laws and
21 regulations of the United States, which include, but are not
22 limited to, the Anti-Deficiency Act, 31 U.S.C. §§ 1341, et seq.
23 ("ADA"). Circumstances where the expenditure of funds may violate
24 the ADA and/or fiscal and procurement laws and regulations of the
United States include, but are not limited to, sufficient funds
not being appropriated as requested or appropriated funds not
being available for expenditure. Should a delay occur due to

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1 force majeure circumstances, any resulting failure to meet the
2 timetables set forth herein shall not constitute a failure to
3 comply with the Consent Decree. EPA will provide notice to the
4 Plaintiffs after EPA becomes aware of the need for such delay,
5 and will provide Plaintiffs with an explanation of EPA's basis
6 for invoking this term. Plaintiffs may challenge the invocation
7 of this term of the Consent Decree under the dispute resolution
8 terms of this Consent Decree, and EPA shall bear the burden of
9 justifying its invocation of this term.

9 MODIFICATIONS AND EXTENSIONS

10 20. Any dates set forth in this Consent Decree may be
11 extended by written agreement of the parties and notice to the
12 Court. To the extent the parties are not able to agree to an
13 extension, either party may seek a modification to the Consent
14 Decree for good cause shown and in accordance with the procedures
15 specified below:

16 a. If a party files a motion requesting modification of
17 a date or dates established by the Consent Decree and provides
18 notice to the other party at least thirty (30) days prior to
19 filing such motion, and files the motion at least sixty (60) days
20 prior to the date for which modification is sought, then the
21 filing of such motion shall, upon request, automatically extend
22 the date for which modification is sought. Such extension shall
23 remain in effect until the earlier to occur of (i) a dispositive
24 ruling by the Court on such motion, (ii) the date sought in the
modification, or (iii) sixty (60) days after the original date
for which modification is sought. The party may move the Court

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3 for a longer extension. In the absence of a dispositive ruling
4 from the Court, only one such automatic stay shall be permitted
5 for each deadline for which modification is sought.

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7 b. If a party files a motion requesting modification of
8 a date or dates established by the Consent Decree totaling thirty
9 (30) days or less, provides notice to the other party at least
10 thirty (30) days prior to the filing of such motion, and files
11 the motion at least seven (7) days prior to the date for which
12 modification is sought, then the filing of such motion shall,
13 upon request, stay the date for which modification is sought.
14 Such stay shall remain in effect until the earlier to occur of
15 (i) a dispositive ruling by this Court on such motion, or (ii)
16 the date sought in the modification. In the absence of a
17 dispositive ruling from the Court, only one such automatic stay
18 shall be permitted for each deadline for which modification is
19 sought.

20 c. If a party seeking modification does not provide
21 notice pursuant to subparagraphs a. or b., above, that party may
22 move the Court for a stay of the date for which modification is
23 sought. The party seeking modification under this subparagraph
24 shall give notice to the other party as soon as possible of its
intent to seek a modification and/or stay of the date sought to
be modified.

d. Any motion to modify the schedule established in
this Consent Decree shall be accompanied by a motion for
expedited consideration.

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21. Nothing in this Consent Decree shall be construed to
limit the equitable powers of the Court to modify the Consent
Decree's terms upon a showing of good cause by any party. Good
cause may include, but is not limited to, changes in the law,
including implementing regulations, affecting EPA's actions
under this Consent Decree.

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CONTINUING JURISDICTION

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22. The Court retains jurisdiction for the purposes of
resolving any disputes arising under this Consent Decree, and
issuing such further orders or directions as may be necessary or
appropriate to construe, implement, modify or enforce the terms
of this Consent Decree, and for granting any further relief as
the interests of justice may require.

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DISPUTE RESOLUTION

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23. In the event of a disagreement between the parties
concerning the interpretation or performance of any aspect of the
Consent Decree (including requirements related to the CPP), the
dissatisfied party shall provide the other party with written
notice of the dispute and a request for negotiations. The
parties shall meet and confer in order to attempt to resolve the
dispute within thirty (30) days of the written notice, or such
time thereafter as is mutually agreed upon. If the parties are
unable to resolve the dispute within sixty (60) days of such
meeting, or such time thereafter as may be mutually agreed, then
either party may petition the Court to resolve the dispute.

AMENDED CONSENT DECREE:

Heal the Bay, Santa Monica BayKeeper, et al. v. Browner, et al.

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NOTICE

26. Any notice required or made with respect to the Consent Decree shall be in writing and shall be effective upon receipt. For any matter relating to the Consent Decree, the contact persons are:

For the Plaintiffs:

David S. Beckman
Alex N. Helperin
Natural Resources Defense Council, Inc.
6310 San Vicente Blvd., Suite 250
Los Angeles, CA 90048

Mark Gold, Executive Director
Steve Fleischli, Law and Policy Analyst
Heal the Bay
2701 Ocean Park Blvd., Suite 150
Santa Monica, CA 90405

Terry Tamminen, Executive Director
Santa Monica BayKeeper
P.O. Box 10096
Marina del Rey, CA 90295

For the United States:

Associate General Counsel, Water Law Office
Office of General Counsel, 2355
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Director
Water Division
U.S. Environmental Protection Agency,
Region 9
75 Hawthorne St.
San Francisco, CA 94105

AMENDED CONSENT DECREE:

Heal the Bay, Santa Monica BayKeeper, et al. v. Browner, et al.

1
2 Regional Counsel
3 EPA Region 9
4 U.S. Environmental Protection Agency,
5 Region 9
6 75 Hawthorne St.
7 San Francisco, CA 94105

8 and

9 Chief
10 Environmental Defense Section
11 Environment & Natural Resources Division
12 United States Department of Justice
13 P.O. Box 23986
14 Washington, D.C. 20026-3986

15 Upon written notice to the other parties, any party may designate
16 a successor contact person for any matter relating to the Consent
17 Decree.

18 **REPRESENTATIVE AUTHORITY**

19 27. Each undersigned representative of a party to the
20 Consent Decree certifies that he or she is fully authorized by
21 the party to enter into and execute the terms and conditions of
22 the Consent Decree, and to legally bind such party to the Consent
23 Decree. By the signatures below, all of the Plaintiffs and EPA
24 consent to entry of this Consent Decree.

SECURING COURT APPROVAL

25 28. Upon signature of each undersigned representative of
26 each party to this Consent Decree, Plaintiffs and EPA agree to
27 join in and support such legal proceedings as necessary to secure
28 the Court's timely approval and entry of this Consent Decree.

AMENDED CONSENT DECREE:

Heal the Bay, Santa Monica BayKeeper, et al. v. Browner, et al.

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SEVERABILITY

29. If any provision of the Consent Decree is deemed invalid or unenforceable, the balance of the Consent Decree shall remain in full force and effect.

ENTIRE AGREEMENT

30. This Consent Decree and the Settlement Agreement are the entire agreement between Plaintiffs and EPA in this case. All prior conversations, meetings, discussions, drafts and writings of any kind are specifically superseded by this Consent Decree and the Settlement Agreement.

MUTUAL DRAFTING

31. It is hereby expressly understood and agreed that this Consent Decree was jointly drafted by Plaintiffs and EPA. Accordingly, the parties hereby agree that any and all rules of construction to the effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Consent Decree.

COUNTERPARTS

32. This Consent Decree may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by a party's undersigned representative shall have the same force and effect as if that undersigned representative had signed all other counterparts.

AMENDED CONSENT DECREE:

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EFFECTIVE DATE

33. This Consent Decree shall become effective upon the date of its entry by the Court; however, the obligation to join in and support such legal proceedings as necessary to secure the Court's timely approval and entry of this Consent Decree accrues upon signature of the agreement by each undersigned representative of each party. If for any reason the Court does not enter this Consent Decree, this Consent Decree shall not become effective.

RELEASE BY PLAINTIFFS

34. Upon entry by the Court of the Consent Decree, the Consent Decree and accompanying Settlement Agreement shall constitute a final resolution between Plaintiffs and EPA of all counts of the Complaint. Except for claims which may arise under the provisions of the Consent Decree and/or the Settlement Agreement, and/or claims that are reserved by provisions of the Consent Decree (including without limitation paragraph 35) and/or the Settlement Agreement, Plaintiffs hereby release, discharge, and covenant not to assert (by way of the commencement of an action, the joinder of EPA in an existing action or in any other fashion) any and all claims, causes of action, suits or demands of any kind whatsoever in law or in equity which it may have had, or may now or hereafter have, against EPA based upon matters which have been asserted in the Complaint.

AMENDED CONSENT DECREE:

Heal the Bay, Santa Monica BayKeeper, et al. v. Browner, et al.

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RESERVATION OF RIGHTS

35. This Consent Decree and the Settlement Agreement do not waive or limit in any way Plaintiffs' rights except as expressly provided therein. Nothing in the Consent Decree or Settlement Agreement shall be construed to waive or limit any right to challenge or file suit on matters including, but not limited to, (1) California's 1998 or subsequent Section 303(d) Lists, whether such Section 303(d) Lists are prepared by California or by EPA; (2) any TMDLs, whether such TMDLs are established by California or by EPA, and/or TMDL implementation; (3) non-TMDL CWA obligations, such as the issuance, reissuance, modification, or revocation and reissuance of NPDES permits; or (4) the failure to establish TMDLs for waters and/or pollutants outside the Los Angeles Region or for Additional WQLSs or Pollutants in the Los Angeles Region. EPA reserves all of its claims and defenses in any such action.

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USE OF CONSENT DECREE

36. This Consent Decree shall not constitute an admission or evidence of any fact, wrongdoing, misconduct, or liability on the part of the United States, its officers, or any person affiliated with it.

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APPLICABLE LAW

37. This Consent Decree shall be governed and construed under the laws of the United States.

AMENDED CONSENT DECREE:

Heal the Bay, Santa Monica BayKeeper, et al. v. Browner, et al.

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THIRD-PARTY BENEFICIARIES

38. Nothing in this Consent Decree shall be construed to make any other person or entity not executing the Consent Decree a third-party beneficiary to the Consent Decree.

TERMINATION OF CONSENT DECREE AND DISMISSAL OF CLAIMS

39. The Consent Decree shall terminate after fulfillment of all the obligations of EPA under the Consent Decree. Upon termination of the Consent Decree, this case shall be dismissed with prejudice. EPA and Plaintiffs shall jointly file the appropriate notice with the Court so that the Clerk of the Court may close the file.

COSTS

40. EPA agrees that Plaintiffs are entitled to reasonable attorneys' fees and costs accrued as of the Effective Date of the Consent Decree and fees reasonably incurred in obtaining those fees. The parties shall make a good faith effort to reach agreement as to the appropriate amount of the recovery. If the parties cannot reach agreement, Plaintiffs shall file any request for attorneys' fees within ninety (90) days of the Effective Date of the Consent Decree. EPA shall have forty-five (45) days to respond to Plaintiffs' fee request. Nothing herein limits the right of Plaintiffs to seek recovery of reasonable attorneys' fees and costs for monitoring or enforcement of this Consent Decree after the Effective Date to the extent permitted by law, nor limits EPA's right to oppose any such request.

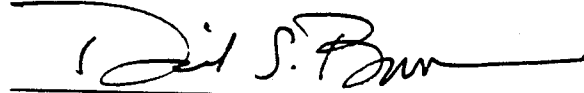
AMENDED CONSENT DECREE:

Heal the Bay, Santa Monica BayKeeper, et al. v. Browner, et al.

1 On behalf of the party or parties designated below, the
2 undersigned agree to the foregoing Consent Decree, and consent to
3 its entry as an order of the Court forthwith.

4
5 For: SANTA MONICA BAYKEEPER, INC., and
6 TERRY TAMMINEN

7 Date: 2/19/99




8 DAVID S. BECKMAN
9 ALEX N. HELPERIN
10 Natural Resources Defense Council
11 6301 San Vicente Blvd., Suite 250
12 Los Angeles, CA 90048

13
14 Counsel for PLAINTIFFS SANTA MONICA
15 BAYKEEPER, INC., and TERRY TAMMINEN

16 For: HEAL THE BAY, INC.

17 Date: 2/19/99



18 STEVEN FLEISCHLI
19 Heal the Bay, Inc.
20 2701 Ocean Park Blvd., Suite 150
21 Santa Monica, CA 90405

22 Counsel for Plaintiff HEAL THE BAY,
23 INC.

FOR CAROL BROWNER, FELICIA MARCUS, and THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

LOIS J. SCHIFFER
Assistant Attorney General
Environmental and Natural
Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Date: 2/19/99



S. RANDALL HUMM
Environmental Defense Section
Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986

Counsel for Carol Browner, Felicia
Marcus, and the United States
Environmental Protection Agency

AMENDED CONSENT DECREE:

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ORDER

UPON CONSIDERATION OF THE FOREGOING, the Court hereby finds that this Amended Consent Decree is fair and reasonable, both procedurally and substantively, consistent with applicable law, in good faith, and in the public interest. THE FOREGOING Amended Consent Decree is hereby APPROVED AND ENTERED AS FINAL JUDGMENT.

SIGNED and ENTERED this _____ day of _____, 1999.

JUDGE, UNITED STATES DISTRICT COURT

AMENDED CONSENT DECREE:

Heal the Bay, Santa Monica BayKeeper, et al. v. Browner, et al.

ATTACHMENT 1

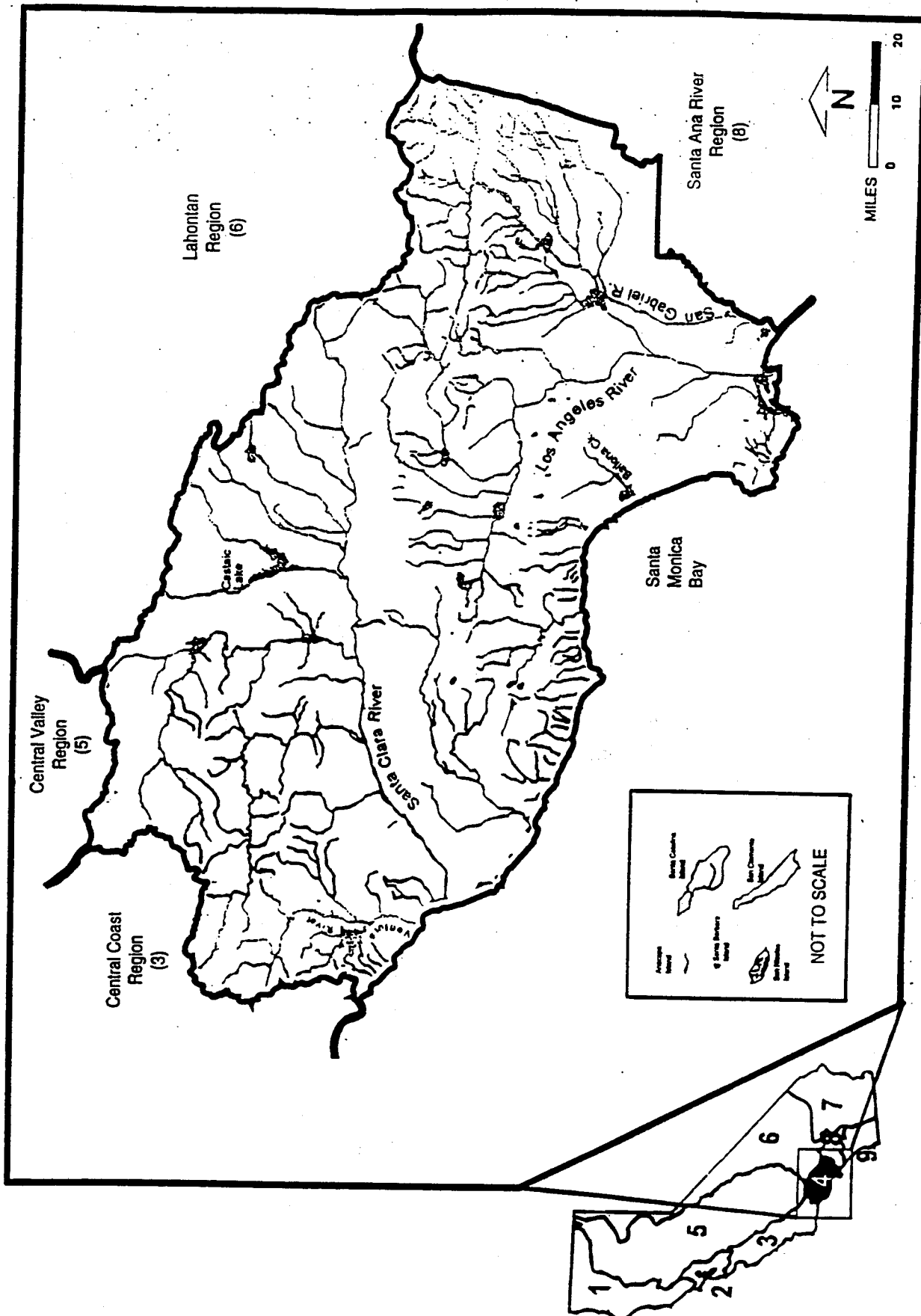


Figure 1-1. Regional Map: Regional Water Quality Control Board, Los Angeles Region.

ATTACHMENT 2

ATTACHMENT 2
LIST OF WATERS AND POLLUTANTS COVERED BY THE CONSENT DECREE¹

TMDL ANALYTICAL UNIT#	Watershed	List of Water Quality Limited Segments Requiring TMDL(s)	Associated 303(d) Listed Pollutant(s) for which TMDL(s) shall be completed
1	Calleguas Creek	Fox Barranca Arroyo Las Posas Reach 1 (Lewis/Somis Rd. to Fox Barranca) Arroyo Las Posas Reach 1 (Lewis/Somis Rd. to Fox Barranca) Arroyo Las Posas Reach 2 (Fox Barranca to Moorpark Fwy (23)) Arroyo Las Posas Reach 2 (Fox Barranca to Moorpark Fwy (23)) Arroyo Simi Reach 1 (Moorpark Fwy (23) to Brea Cyn) Calleguas Creek Reach 1 (estuary to 0.5 mi. S. of Broome Rd.) Calleguas Creek Reach 1 (estuary to 0.5 mi. S. of Broome Rd.) Calleguas Creek Reach 2(0.5 mi. S. of Broome Rd. to Potrero Rd.) Calleguas Creek Reach 2(0.5 mi. S. of Broome Rd. to Potrero Rd.) Calleguas Creek Reach 3 (Potrero to Somis Rd.) Conejo Creek/Arroyo Conejo N. Fork Conejo Creek Reach 1 (confl. Calleguas to Santa Rosa Rd) Conejo Creek Reach 1 (confl. Calleguas to Santa Rosa Rd) Conejo Creek Reach 1 (confl. Calleguas to Santa Rosa Rd) Conejo Creek Reach 2 (Santa Rosa Rd. to Tho. Oaks city limit) Conejo Creek Reach 2 (Santa Rosa Rd. to Tho. Oaks city limit) Conejo Creek Reach 2 (Santa Rosa Rd. to Tho. Oaks city limit) Conejo Creek Reach 3 (Tho. Oaks city limit to Lynn Rd.) Conejo Creek Reach 3 (Tho. Oaks city limit to Lynn Rd.) Conejo Creek Reach 3 (Tho. Oaks city limit to Lynn Rd.) Conejo Creek Reach 4 (above Lynn Rd.) Conejo Creek Reach 4 (above Lynn Rd.) Conejo Creek Reach 4 (above Lynn Rd.) Revolon Slough Main Branch (Mugu Lagoon to Central Ave.) Revolon Slough Main Branch (Mugu Lagoon to Central Ave.) Beardsley Channel (above Central Ave.) Beardsley Channel (above Central Ave.) Mugu Lagoon Duck pond agric. drain/Mugu Drain/Oxnard Drain #2	nitrate + nitrite NH3 nitrate + nitrite NH3 nitrate + nitrite NH3 NH3 nitrogen NH3 nitrogen nitrate + nitrite NH3 NH3 NH3 algae low DO/org. enrichment NH3 algae low DO/org. enrichment NH3 algae low DO/org. enrichment NH3 algae Low DO/org. enrichment nitrogen algae nitrogen algae nitrogen nitrogen

List of Water Quality Limited Segments
Requiring TMDL(s)

Associated 303(d) Listed Pollutant(s) for
which TMDL(s) shall be completed

2

Conejo Creek Reach 1 (confl. Calleguas to Santa Rosa Rd)
 Conejo Creek Reach 2 (Santa Rosa Rd. to Tho. Oaks city limit)
 Conejo Creek Reach 3 (Tho. Oaks city limit to Lynn Rd.)
 Conejo Creek Reach 4 (above Lynn Rd.)
 Calleguas Creek Reach 1 (estuary to 0.5 mi. S. of Broome Rd.)
 Calleguas Creek Reach 2(0.5 mi. S. of Broome Rd. to Potrero Rd.)
 Duck pond agric. drain/Mugu Drain/Oxnard Drain #2
 Revolon Slough Main Branch (Mugu Lagoon to Central Ave.)
 Revolon Slough Main Branch (Mugu Lagoon to Central Ave.)
 Beardsley Channel (above Central Ave.)
 Beardsley Channel (above Central Ave.)

toxicity
 toxicity
 toxicity
 toxicity
 toxicity
 toxicity
 toxicity
 toxicity
 chlorpyrifos
 toxicity
 chlorpyrifos

3

Tapo Canyon Reach 1
 Arroyo Simi Reach 1 (Moorpark Fwy (23) to Brea Cyn)
 Arroyo Las Posas Reach 2 (Fox Barranca to Moorpark Fwy (23))
 Arroyo Las Posas Reach 1 (Lewis/Somis Rd. to Fox Barranca)
 Calleguas Creek Reach 3 (Potrero to Somis Rd.)
 Conejo Creek Reach 2 (Santa Rosa Rd. to Tho. Oaks city limit)
 Conejo Creek Reach 4 (above Lynn Rd.)

chloride
 chloride
 chloride
 chloride
 chloride
 chloride
 chloride

4

Fox Barranca
 Tapo Canyon Reach 1
 Arroyo Simi Reach 1 (Moorpark Fwy (23) to Brea Cyn)
 Arroyo Simi Reach 2 (above Brea Canyon)
 Arroyo Las Posas Reach 1 (Lewis/Somis Rd. to Fox Barranca)
 Arroyo Las Posas Reach 2 (Fox Barranca to Moorpark Fwy (23))
 Calleguas Creek Reach 3 (Potrero to Somis Rd.)
 Conejo Creek/Arroyo Conejo N. Fork
 Conejo Creek Reach 1 (confl. Calleguas to Santa Rosa Rd)
 Conejo Creek Reach 2 (Santa Rosa Rd. to Tho. Oaks city limit)
 Conejo Creek Reach 3 (Tho. Oaks city limit to Lynn Rd.)
 Conejo Creek Reach 4 (above Lynn Rd.)

Boron, sulfate, TDS
 Boron, sulfate, TDS
 Boron, sulfate, TDS
 Boron, sulfate, TDS
 sulfate, TDS
 sulfate, TDS
 TDS
 sulfate, TDS
 sulfate, TDS
 sulfate, TDS
 sulfate, TDS
 sulfate, TDS
 sulfate, TDS

Watershed

List of Water Quality Limited Segments
Requiring TMDL(s)

Arroyo Las Posas Reach 1 (Lewis/Somis Rd. to Fox Barranca)
 Arroyo Las Posas Reach 2 (Fox Barranca to Moorpark Fwy (23))
 Conejo Creek/Arroyo Conejo N. Fork
 Conejo Creek Reach 1 (confl. Calleguas to Santa Rosa Rd)
 Conejo Creek Reach 2 (Santa Rosa Rd. to Tho. Oaks city limit)
 Conejo Creek Reach 3 (Tho. Oaks city limit to Lynn Rd)
 Conejo Creek Reach 4 (above Lynn Rd.)
 Calleguas Creek Reach 1 (estuary to 0.5 mi. S. of Broome Rd.)
 Calleguas Creek Reach 1 (estuary to 0.5 mi. S of Broome Rd.)
 Calleguas Creek Reach 2 (0.5 mi. S. of Broome Rd. to Potrero Rd.)
 Calleguas Creek Reach 2 (0.5 mi. S of Broome Rd. to Potrero Rd.)
 Duck pond agric. drain/Mugu Drain/Oxnard Drain #2
 Revolon Slough Main Branch (Mugu Lagoon to Central Ave.)

Beardsley Channel (above Central Ave.)

Mugu Lagoon

Mugu Lagoon

Duck pond agric. drain/Mugu Drain/Oxnard Drain #2

Mugu Lagoon

Arroyo Simi Reach 1 (Moorpark Fwy (23) to Brea Cyn)
 Conejo Creek Reach 3 (Tho. Oaks city limit to Lynn Rd.)
 Conejo Creek Reach 2 (Santa Rosa Rd. to Tho. Oaks city limit)
 Conejo Creek Reach 1 (confl. Calleguas to Santa Rosa Rd)

Mugu Lagoon

Mugu Lagoon

Arroyo Simi Reach 1 (Moorpark Fwy (23) to Brea Cyn)

Revolon Slough Main Branch (Mugu Lagoon to Central Ave.)

Calleguas Creek Reach 1 (estuary to 0.5 mi. S of Broome Rd.)

Calleguas Creek Reach 2 (0.5 mi. S of Broome Rd. to Potrero Rd.)

Revolon Slough Main Branch (Mugu Lagoon to Central Ave.)

Beardsley Channel (above Central Ave.)

Mugu Lagoon

Associated 303(d) Listed Pollutant(s) for
which TMDL(s) shall be completed

DDT

DDT

chlordan, DDT

ChemA, dachal, DDT, endosulfan, toxaphene

ChemA, dachal, DDT, endosulfan, toxaphene

ChemA, dachal, DDT, endosulfan, toxaphene

ChemA, dachal, DDT, endosulfan, toxaphene

sediment toxicity

ChemA, chlordan, DDT, endosulfan, toxaphene

sediment toxicity

ChemA, chlordan, dachal, DDT, endosulfan, toxaphene

ChemA, DDT, chlordan, toxaphene

ChemA, chlordan, dachal, DDT, dieldrin, endosulfan, toxaphene

ChemA, chlordan, dachal, DDT, dieldrin, endosulfan, toxaphene

siltation

sediment toxicity

sediment toxicity

Chlordan, dachal, DDT, endosulfan, toxaphene

Cr, Ni, Ag, Zn

Cd, Cr, Ni, Ag

Cd, Cr, Ni, Ag

Cd, Cr, Ni, Ag

Hg

Cu, Ni, Zn

Se

Se

PCBs

PCBs

PCBs

PCBs

PCBs

**TMDL
ANALYTICAL
UNIT#**

Watershed

**List of Water Quality Limited Segments
Requiring TMDL(s)**

**Associated 303(d) Listed Pollutant(s) for
which TMDL(s) shall be completed**

8

Rio de Santa Clara/OxnardDrain #3
Rio de Santa Clara/OxnardDrain #3
Rio de Santa Clara/OxnardDrain #3

PCBs
Chema, chlordan, DDT, toxaphene
sediment toxicity

9

Revolon Slough Main Branch (Mugu Lagoon to Central Ave.)
Beardsley Channel (above Central Ave.)

trash
trash

10

Rio de Santa Clara/OxnardDrain #3

nitrogen

Los Angeles River

11

Tujunga Wash (d/s Hansen Dam to Los Angeles River)
Tujunga Wash (d/s Hansen Dam to Los Angeles River)
Los Angeles River Reach 5 (within Sepulveda Basin)
Los Angeles River Reach 5 (within Sepulveda Basin)
Los Angeles River Reach 5 (within Sepulveda Basin)
Los Angeles River Reach 4 (Sepulveda Dam to Riverside Dr.)
Los Angeles River Reach 4 (Sepulveda Dam to Riverside Dr.)
Los Angeles River Reach 4 (Sepulveda Dam to Riverside Dr.)
Los Angeles River Reach 3 (Riverside Dr. to Figueroa St.)
Los Angeles River Reach 3 (Riverside Dr. to Figueroa St.)
Los Angeles River Reach 3 (Riverside Dr. to Figueroa St.)
Los Angeles River Reach 2 (Figueroa St. to u/s Carson St.)
Los Angeles River Reach 2 (Figueroa St. to u/s Carson St.)
Los Angeles River Reach 2 (Figueroa St. to u/s Carson St.)
Los Angeles River Reach 1 (u/s Carson St. to estuary)
Los Angeles River Reach 1 (u/s Carson St. to estuary)
Los Angeles River Reach 1 (u/s Carson St. to estuary)
Los Angeles River Reach 1 (u/s Carson St. to estuary)
Burbank Western Channel
Burbank Western Channel
Burbank Western Channel
Verdugo Wash (Reaches 1 & 2)

NH3
scum, odors
NH3
scum, odors
nutrients (algae)
NH3
scum, odors
nutrients (algae)
NH3
odors, scum
nutrients (algae)
NH3
odors, scum
nutrients (algae)
NH3
pH
scum
nutrients (algae)
NH3
Algae
odors, scum
algae

TMDL
ANALYTICAL
UNIT#

Watershed

List of Water Quality Limited Segments
Requiring TMDL(s)

Associated 303(d) Listed Pollutant(s) for
which TMDL(s) shall be completed

algae

Arroyo Seco Rch 1 (d/s Devil's Gate Dam) & Rch 2 (W. Holly Ave. to Devil's Gate)
Rio Hondo Reach 1 (Santa Ana Fwy to Los Angeles River)
Rio Hondo Reach 1 (Santa Ana Fwy to Los Angeles River)
Rio Hondo Reach 2 (from Whittier Narrows Flood Control Basin to Spreading Grounds)
Compton Creek

NH3

pH

NH3

pH

12

Tujunga Wash (d/s Hansen Dam to Los Angeles River)
Los Angeles River Reach 5 (within Sepulveda Basin)
Los Angeles River Reach 4 (Sepulveda Dam to Riverside Dr.)
Los Angeles River Reach 3 (Riverside Dr. to Figueroa St.)
Los Angeles River Reach 2 (Figueroa St. to u/s Carson St.)
Los Angeles River Reach 1 (u/s Carson St. to estuary)
Burbank Western Channel
Verdugo Wash (Reaches 1 & 2)
Arroyo Seco Reach 1 (d/s Devil's Gate Dam) & Reach 2 (W. Holly Ave. to Devil's Gate)
Rio Hondo Reach 1 (Santa Ana Fwy to Los Angeles River)

trash

trash

trash

trash

trash

trash

trash

trash

trash

trash

trash

13

Tujunga Wash (d/s Hansen Dam to Los Angeles River)
Compton Creek
Burbank Western Channel
Los Angeles River Reach 1 (u/s Carson St. to estuary)
Los Angeles River Reach 2 (Figueroa St. to u/s Carson St.)
Los Angeles River Reach 4 (Sepulveda Dam to Riverside Dr.)
Rio Hondo Reach 1 (Santa Ana Fwy to Los Angeles River)
Rio Hondo Reach 1 (Santa Ana Fwy to Los Angeles River)
Monrovia Cyn Creek
Aliso Canyon Wash

Cu

Cu, Pb

Cd

Pb

Pb

Pb

Cu, Zn

Pb

Pb

Se

14

Los Angeles River Reach 5 (within Sepulveda Basin)

chlorpyrifos

15

Tujunga Wash (d/s Hansen Dam to Los Angeles River)
Los Angeles River Reach 6 (u/s of Sepulveda Basin)

coliform

coliform

TMDL
ANALYTICAL
UNIT#

Watershed

List of Water Quality Limited Segments
Requiring TMDL(s)

Associated 303(d) Listed Pollutant(s) for
which TMDL(s) shall be completed

16	Los Angeles River Reach 4 (Sepulveda Dam to Riverside Dr.) Los Angeles River Reach 2 (Figueroa St. to u/s Carson St.) Los Angeles River Reach 1 (u/s Carson St. to estuary) Verdugo Wash (Reaches 1 & 2) Arroyo Seco Rch 1 (d/s Devil's Gate Dam) & Rch 2 (W. Holly Ave. to Devil's Gate) Rio Hondo Reach 1 (Santa Ana Fwy to Los Angeles River) Rio Hondo Reach 2 (from Whittier Narrows Flood Control Basin to Spreading Grounds) Compton Creek Bell Creek	coliform coliform coliform Coliform Coliform coliform coliform coliform coliform
17	Peck Rd Lake Echo Park Lake Lincoln Park Lake Peck Rd Lake Peck Rd Lake Lincoln Park Lake Lincoln Park Lake Lincoln Park Lake Lincoln Park Lake Echo Park Lake Echo Park Lake Echo Park Lake Lake Calabasas Lake Calabasas Lake Calabasas Lake Calabasas Lake Calabasas	trash trash trash low DO, org. enrichment odors NH3 Low DO/org. enrichment Eutroph. odors pH Eutroph., NH3, algae odors NH3 Eutroph. Low DO, org. enrichment pH odors
18	Los Angeles River Reach 5 (within Sepulveda Basin)	Chema
19	Echo Park Lake Peck Rd Lake	PCBs DDT, chlordane

**TMDL
ANALYTICAL
UNIT#**

Watershed

**List of Water Quality Limited Segments
Requiring TMDL(s)**

**Associated 303(d) Listed Pollutant(s) for
which TMDL(s) shall be completed**

20	Lake Calabajas Peck Rd Lake Lincoln Park Lake Echo Park Lake Lake Calabajas	DDT Pb Pb Cu, Pb Cu, Zn
21	Los Angeles River Reach 5 (within Sepulveda Basin) Los Angeles River Reach 2 (Figueroa St. to u/s Carson St.)	oil oil
22	Los Angeles River Reach 6 (u/s of Sepulveda Basin)	Volatile organics
23	Miscellaneous Ventura Coastal Waters WMA McGrath Beach McGrath Beach Mandalay Beach Santa Clara River Estuary Beach/Surfers Knoll)	Coliform beach closures beach closures coliform
24	Ventura Harbor: Ventura Keys	Coliform
25	McGrath Lake McGrath Lake	chlordan, DDT, other pesticides sediment toxicity
26	Port Hueneme Harbor	DDT, PCBs
27	Port Hueneme Harbor	PAHs
28	Port Hueneme Harbor	Zn
29	Channel Islands Harbor	Pb, Zn
30	Port Hueneme Harbor	TBT

TMDL
ANALYTICAL
UNIT#

Watershed

List of Water Quality Limited Segments
Requiring TMDL(s)

Associated 303(d) Listed Pollutant(s) for
which TMDL(s) shall be completed

Santa Clara River

31

Santa Clara River Reach 3 (Dam to abv Sp. Crk./blw Timber Cyn)

chloride

32

Wheeler Canyon/Todd Barranca

nitrate + nitrite

Torrey Canyon Creek

nitrate + nitrite

Brown Barranca/Long Canyon

nitrate + nitrite

Mint Canyon Creek Reach 1

nitrate + nitrite

Santa Clara River Reach 9 (Bouquet Cyn Rd to abv Lang Gaging)

org. enrichment/lowDO

Santa Clara River Reach 8 (W Pier Hwy 99 to Bouquet Cyn Rd Bridge)

NH3, nitrate + nitrite

Santa Clara River Reach 8 (W Pier Hwy 99 to Bouquet Cyn Rd Bridge)

org. enrichment/lowDO

Santa Clara River Reach 7 (Blue Cut to West Pier Hwy 99)

NH3

Santa Clara River Reach 3 (Dam to abv Sp. Crk./blw Timber Cyn)

NH3

Santa Clara River Reach 7 (Blue Cut to West Pier Hwy 99)

nitrate + nitrite

33

Santa Clara River Estuary

Chema, toxaphene

34

Santa Clara River Reach 8 (W Pier Hwy 99 to Bouquet Cyn Rd Bridge)

coliform

Santa Clara River Estuary

Coliform

35

Elizabeth Lake

Eutroph.

Elizabeth Lake

DO, pH

Lake Hughes

Eutroph.

Lake Hughes

fish kills

Lake Hughes

algae

Lake Hughes

odors

Munz Lake

Eutroph.

36

Elizabeth Lake

trash

Munz Lake

trash

Lake Hughes

trash

TMDL
ANALYTICAL
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Watershed

List of Water Quality Limited Segments
Requiring TMDL(s)

Associated 303(d) Listed Pollutant(s) for
which TMDL(s) shall be completed

San Gabriel River Watershed

37

San Gabriel River Reach 3 (Whittier Narrows to Ramona)
San Gabriel River Reach 2 (Firestone to Whittier Narrows Dam)
San Gabriel River Reach 1 (Estuary to Firestone)
San Gabriel River Reach 1 (Estuary to Firestone)
San Gabriel River Reach 1 (Estuary to Firestone)
San Jose Creek Reach 2 (Temple to I-10 at White Ave.)
San Jose Creek Reach 2 (Temple to I-10 at White Ave.)
San Jose Creek Reach 1 (SG confluence to Temple St.)
San Jose Creek Reach 1 (SG confluence to Temple St.)
Coyote Creek
Coyote Creek
Walnut Creek
Walnut Creek

toxicity
NH3
NH3
algae
toxicity
NH3
algae
NH3
algae
NH3
algae
toxicity
pH

38

San Gabriel River East Fork

trash

39

San Jose Creek Reach 2 (Temple to I-10 at White Ave.)
San Gabriel River Estuary
Coyote Creek

Pb
As
Ag

40

Legg Lake

trash

41

Puddingstone Reservoir

DDT, PCBs, chlordane

42

El Dorado Lakes
El Dorado Lakes
Puddingstone Reservoir
Legg Lake
Santa Fe Dam Park Lake

Hg
Cu, Pb
Hg
Cu, Pb
Pb, Cu

43

Coyote Creek
San Gabriel River Reach 1 (Estuary to Firestone)

abnormal fish histology
abnormal fish histology

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List of Water Quality Limited Segments
Requiring TMDL(s)

Associated 303(d) Listed Pollutant(s) for
which TMDL(s) shall be completed

44	San Gabriel River Estuary	abnormal fish histology
	El Dorado Lakes	algae, NH3, eutroph.
	El Dorado Lakes	pH
	Crystal Lake	org. enrichment/low DO
	Legg Lake	NH3
	Legg Lake	pH
	Legg Lake	odors
	Puddingstone Reservoir	low DO, org. enrichment
	Santa Fe Dam Park Lake	pH
45	San Jose Creek Reach 1 (SG confluence to Temple St.)	coliform
	San Jose Creek Reach 2 (Temple to I-10 at White Ave.)	coliform
	San Gabriel River Reach 2 (Firestone to Whittier Narrows Dam)	coliform
	San Gabriel River Reach 1 (Estuary to Firestone)	coliform
	Coyote Creek	coliform
46	Marina Del Rey Harbor Beach	beach closures
	Marina Del Rey Harbor Beach	coliform
	Marine del Rey Harbor - Back Basins	coliform
47	Medea Creek Reach 2 (abv. confl. with Lindero)	coliform
	Medea Creek Reach 1 (lake to confl. with Lindero)	coliform
	Las Virgenes Creek	coliform
	Malibu Lagoon	swimming restrictions
	Malibu Lagoon	coliform, enteric viruses
	Malibu Lagoon	shellfish harvesting ad.
	Malibu Creek: lagoon to Malibu Lake	coliform
	Stokes Creek	Coliform
	Lindero Creek Reach 1	coliform
	Lindero Creek Reach 2 (above lake)	coliform
	Palo Comado	Coliform

Watershed
List of Water Quality Limited Segments
Requiring TMDL(s)

Associated 303(d) Listed Pollutant(s) for
which TMDL(s) shall be completed

Malibu Beach	beach closures
Malibu Lagoon Beach (Surfrider)	beach closures
Malibu Lagoon Beach (Surfrider)	coliform
Dockweiler Beach	beach closures
Dockweiler Beach	coliform
Redondo Beach	beach closures
Redondo Beach	coliform
Santa Monica Beach	beach closures
Santa Monica Beach	coliform
Paradise Cove Beach	beach closures
Paradise Cove Beach	coliform
Topanga Beach	beach closures
Topanga Beach	coliform
Las Flores Beach	coliform
Torrance Beach	beach closures
Torrance Beach	coliform
Trancas Beach (Broad Beach)	beach closures
Trancas Beach (Broad Beach)	coliform
Will Rogers Beach	beach closures
Will Rogers Beach	coliform
Big Rock Beach	coliform
Big Rock Beach	beach closures
Cabrillo Beach (Outer)	beach closures
Cabrillo Beach (Outer)	coliform
Venice Beach	beach closures
Venice Beach	coliform
Manhattan Beach	beach closures
Hermosa Beach	beach closures
Dan Blocker Memorial Beach	coliform
Leo Carillo Beach (south of County line)	Beach closures
Leo Carillo Beach (south of County line)	coliform
Long Point Beach	coliform
Whites Point Beach	beach closures

Watershed

List of Water Quality Limited Segments
Requiring TMDL(s)

Associated 303(d) Listed Pollutant(s) for
which TMDL(s) shall be completed

Point Dume Beach	beach closures
Las Tunas Beach	beach closures
Point Vicente Beach	beach closures
Malaga Cove Beach	beach closures
Lunada Bay Beach	beach closures
Zuma (Westward Beach)	beach closures
Point Fermin Park Beach	beach closures
Puerco Beach	beach closures
Portugese Bend Beach	beach closures
Royal Palms Beach	beach closures
Sea Level Beach	beach closures
Rocky Point Beach	beach closures
Resort Point Beach	beach closures
Robert H. Meyer Memorial Beach	beach closures
Abalone Cove Beach	beach closures
Flat Rock Point Beach Area	beach closures
Escondido Beach	beach closures
Carbon Beach	beach closures
Castlerock Beach	beach closures
La Costa Beach	beach closures
Bluff Cove Beach	beach closures
Inspiration Point Beach	beach closures
Nicholas Canyon Beach	beach closures
Palos Verdes Shoreline Point Beach	Beach closures
Santa Monica Canyon	pathogens
Ashland Avenue Drain	coliform
Sepulveda Canyon	coliform
Pico Kenter Drain	coliform
	coliform, enteric viruses
Ballona Creek Estuary	coliform
Ballona Creek Estuary	shellfish harvesting adv.
Ballona Creek	coliform, enteric viruses
Malibu Lagoon	eutroph.

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**List of Water Quality Limited Segments
Requiring TMDL(s)**

**Associated 303(d) Listed Pollutant(s) for
which TMDL(s) shall be completed**

Malibu Creek: Lagoon to Malibu Lake	unnatural scum/foam
Malibu Creek: lagoon to Malibu Lake	nutrients (algae)
Las Virgenes Creek	nutrients (algae)
Las Virgenes Creek	unnatural scum/foam
Las Virgenes Creek	low DO, org. enrichment
Lindero Creek Reach 2 (above lake)	unnatural scum/foam
Lindero Creek Reach 2 (above lake)	algae
Medea Creek Reach 2 (abv. confl. with Lindero)	algae
Medea Creek Reach 1 (lake to confl. with Lindero)	algae
Lindero Creek Reach 1	unnatural scum/foam
Lindero Creek Reach 1	algae
Mailbou Lake	algae, eutroph.
Mailbou Lake	low DO, org. enrichment
Lake Lindero	eutroph., algae
Lake Lindero	odors
Westlake Lake	NH3
Westlake Lake	eutroph., algae
Westlake Lake	low DO, org. enrichment
Lake Sherwood	NH3
Lake Sherwood	Eutroph., algae
Lake Sherwood	low DO, org. enrichment
Ballona Wetland	trash
Ballona Creek	trash
Santa Monica Bay Nearshore and Offshore Zone	Hg
Santa Monica Bay Nearshore and Offshore Zone	Cd, Cu, Pb, Ni, Ag, Zn
Santa Monica Bay Nearshore and Offshore Zone	chlordanes
Marina del Rey Harbor - Back Basins	DDT, PCBs, chlordanes
Marina del Rey Harbor - Back Basins	dieldrin
Marina del Rey Harbor - Back Basins	benthic comm. effects
Marina del Rey Harbor - Back Basins	fish consumption advisory

51

52

53

54

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**List of Water Quality Limited Segments
Requiring TMDL(s)**

**Associated 303(d) Listed Pollutant(s) for
which TMDL(s) shall be completed**

Malibu Lagoon Beach (Surfrider)

La Costa Beach

Big Rock Beach

Bluff Cove Beach

Cabrillo Beach (Outer)

Carbon Beach

Castlerock Beach

Escondido Beach

Flat Rock Point Beach Area

Inspiration Point Beach

Las Tunas Beach

Abalone Cove Beach

Malaga Cove Beach

Las Flores Beach

Long Point Beach

Malibu Beach

Palos Verdes Shoreline Point Beach

59

Sepulveda Canyon

Pico Kenter Drain

60

Topanga Cyn Creek

Sepulveda Canyon

Pico Kenter Drain

Pico Kenter Drain

Pico Kenter Drain

Santa Monica Canyon

61

Westlake Lake

Malibu Lake

62

Ashland Avenue Drain

63

Medea Creek Reach 2 (abv. confl. with Lindero)

DDT, PCBs

DDT, PCBs

DDT, PCBs

DDT, PCBs

DDT, PCBs

DDT, PCBs

DDT, PCBs

DDT, PCBs

DDT, PCBs

DDT, PCBs

DDT, PCBs

DDT, PCBs

DDT, PCBs

DDT, PCBs

DDT, PCBs

DDT

pesticides

NH3

NH3

Pb

Pb

Pb

Cu

toxicity

Pb

chlordanes

chlordanes, PCBs

low DO, org. enrichment

trash

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**List of Water Quality Limited Segments
Requiring TMDL(s)**

**Associated 303(d) Listed Pollutant(s) for
which TMDL(s) shall be completed**

Medea Creek Reach 1 (lake to conf. with Lindero)	trash
Lake Lindero	trash
Lindero Creek Reach 2 (above lake)	trash
Lindero Creek Reach 1	trash
Malibu Creek: lagoon to Malibu Lake	trash
Las Virgenes Creek	trash
Pico Kenter Drain	trash
Ballona Wetland	exotic vegetation
Ballona Wetland	habitat alteration, hydromodification, reduced tidal flushing
Santa Monica Bay Nearshore and Offshore Zone	debris
Lake Lindero	chloride, spec. cond.
Westlake Lake	Pb
Westlake Lake	Cu
Malibu Lake	Cu
Lake Sherwood	Hg
Lake Calabasas	Zn
Lake Calabasas	Cu
Lake Lindero	Se
Triunfo Cyn Creek Reach 1	Pb, Hg
Triunfo Cyn Creek Reach 2	Pb, Hg
Medea Creek Reach 2 (abv. conf. with Lindero)	Se
Medea Creek Reach 1 (lake to conf. with Lindero)	Se
Las Virgenes Creek	Se
Lindero Creek Reach 2 (above lake)	Se
Lindero Creek Reach 1	Se
Ashland Avenue Drain	toxicity

64

65

66

67

68

69

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List of Water Quality Limited Segments
Requiring TMDL(s)

Associated 303(d) Listed Pollutant(s) for
which TMDL(s) shall be completed

70

Ballona Creek
Marina del Rey Harbor - Back Basins

TBT
TBT

71

Malibu Lagoon

benthic comm. effects

Dominguez Channel and
LALB Harbors WMA

72

Los Angeles Harbor (part. Main Ch., Fish Hbr, and breakwater)
Cabrillo Beach (Inner) LA Harbor

beach closure
beach closures

73

Dominguez Channel Estuary (to Vermont)
Dominguez Channel Estuary (to Vermont)
Dominguez Channel Estuary (to Vermont)
Dominguez Channel (above Vermont)
Dominguez Channel (above Vermont)
Los Angeles Harbor: Consolidated Slip
Los Angeles Harbor: Consolidated Slip
Los Angeles Harbor: Consolidated Slip
Los Angeles Harbor: Consolidated Slip
Los Angeles Harbor (part. Main Ch., Fish Hbr, and breakwater)
Los Angeles Harbor (part. Main Ch., Fish Hbr, and breakwater)
Los Angeles Harbor: Southwest Slip
Los Angeles Harbor: Southwest Slip
San Pedro Bay nearshore and offshore zone: Cabrillo Pier area
San Pedro Bay nearshore and offshore zone: Cabrillo Pier area
Cabrillo Beach (Inner) LA Harbor
Long Beach Harbor (part. Main Ch., SE Basin, West Basin, Pier J, and
breakwater)
Long Beach Harbor (part. Main Ch., SE Basin, West Basin, Pier J, and
breakwater)
Long Beach Harbor (part. Main Ch., SE Basin, West Basin, Pier J, and
breakwater)
Machado Lake (Harbor Lake)

benthic comm. effects
ChemA, chlordane, DDT, PCBs
aldrin, dieldrin
ChemA, chlordane, DDT, PCBs
aldrin, dieldrin
benthic comm. effects
DDT, PCBs
sediment toxicity
chlordane
DDT, PCBs
sediment toxicity
DDT, PCBs
sediment toxicity
DDT, PCBs
benthic comm. effects
DDT, PCBs
sediment toxicity
ChemA, chlordane, DDT, PCBs, dieldrin

74

Dominguez Channel (above Vermont)

PAHs

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List of Water Quality Limited Segments
Requiring TMDL(s)

Associated 303(d) Listed Pollutant(s) for
which TMDL(s) shall be completed

75	Dominguez Channel Estuary (to Vermont) Los Angeles Harbor: Consolidated Slip Los Angeles Harbor (part. Main Ch., Fish Hbr. and breakwater) Long Beach Harbor (part. Main Ch., SE Basin, West Basin, Pier J, and breakwater) San Pedro Bay nearshore and offshore zone: Cabrillo Pier area Torrance Carson Channel Wilmington Drain Dominguez Channel (above Vermont) Dominguez Channel (above Vermont) Dominguez Channel (above Vermont) Dominguez Channel Estuary (to Vermont) Dominguez Channel Estuary (to Vermont) Dominguez Channel Estuary (to Vermont) Los Angeles Harbor: Consolidated Slip Los Angeles Harbor: Consolidated Slip Los Angeles Harbor (part. Main Ch., Fish Hbr and breakwater)	PAHs PAHs PAHs PAHs PAHs Cu, Pb Cu, Pb Cu, Pb Cr Zn Cu, Pb Cr Zn Pb Cr, Zn Cu, Zn
76	Machado Lake (Harbor Lake) Machado Lake (Harbor Lake) Machado Lake (Harbor Lake)	algae, eutroph. NH3 odors
77	Wilmington Drain Dominguez Channel (above Vermont) Dominguez Channel Estuary (to Vermont)	NH3 NH3 NH3
78	San Pedro Bay nearshore and offshore zone: Cabrillo Pier area	Zn, Cu, Cr
79	Los Angeles Harbor: Consolidated Slip Los Angeles Harbor (part. Main Ch., Fish Hbr. and breakwater)	TBT TBT
80	Dominguez Channel (above Vermont) Dominguez Channel Estuary (to Vermont)	coliform coliform

TMDL ANALYTICAL UNIT# **Watershed** **List of Water Quality Limited Segments Requiring TMDL(s)** **Associated 303(d) Listed Pollutant(s) for which TMDL(s) shall be completed**

81	Torrance Carson Channel Wilmington Drain		coliform coliform
	Machado Lake (Harbor Lake)		trash
82	Los Cerritos Channel and Alamitos Bay WMA	Colorado Lagoon Colorado Lagoon Colorado Lagoon	DDT, PCBs, chlordane dieltrin sediment toxicity
83		Colorado Lagoon Colorado Lagoon	PAHs Pb, Zn
84		Los Cerritos Channel Los Cerritos Channel	Zn Cu, Pb
85		Los Cerritos Channel	NH3
86		Los Cerritos Channel	coliform
87	Ventura River Watershed	Ventura River Estuary	DDT
88		Ventura River Reach 2 (Main St. to Weldon Canyon) Ventura River Reach 1 (estuary to Main St.) Ventura River Estuary	algae algae algae, eutroph.
89		Ventura River Reach 4 (Coyote Creek to Camino Cielo Rd.) Ventura River Reach 3 (Weldon Canyon to conf. w/ Coyote Cr.)	pumping, water diversions pumping, water diversions
90		Ventura River Reach 2 (Main St. to Weldon Canyon) Ventura River Reach 2 (Main St. to Weldon Canyon)	Cu, Zn Ag

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List of Water Quality Limited Segments
Requiring TMDL(s)

Associated 303(d) Listed Pollutant(s) for
which TMDL(s) shall be completed

Ventura River Reach 1 (estuary to Main St.)
Ventura River Reach 1 (estuary to Main St.)

Cu, Zn
Ag

91

Ventura River Estuary

trash

92

Ventura River Reach 2 (Main St. to Weidon Canyon)

Se

Note:

Generated from information contained in the State of California's 1998 303(d) List, as approved by EPA, October 1998.

Attachment 3: SCHEDULE FOR SPECIFIED WATERS

TMDL Analytical Unit Number	REQUIRED COMPLETION DATE OF TMDLs FOR ALL WQLS AND POLLUTANTS WITHIN GIVEN TMDL ANALYTICAL UNIT						
	1 year after E.D.	2 yrs. after E.D.	3 yrs. after E.D.	4 yrs. after E.D.	5 yrs. after E.D.	6 yrs. After E.D.	7 yrs. after E.D.
50			X				
47			X				
54						X	
56						X	
46				X			
48			X				
52					X		
53							X
11				X			
13					X		
12		X					
14							X
57					X		
55					X		
49							X
51		X					
38	X						
37				X			
39							X
2						X	

5						X	
3		X					
1			X				
7						X	
6							X
See Note 3			X				
32				X			
72					X		
23				X			

Notes:

1. "TMDL Analytical Unit" has the meaning provided in Paragraph 2(c) of the Consent Decree. The WQLSs and pollutants within each TMDL Analytical Unit are set forth in Attachment 2, and are incorporated by reference herein.
2. "E.D." has that meaning provided in Paragraph 2(d) of the Consent Decree.
3. In order to comply with the minimum pace requirements of Paragraph 3(b) of the Consent Decree, a TMDL for each pairing of a WQLS and pollutant contained in an additional Analytical Unit which is not described in this Attachment must be established within 3 years after the Effective Date. EPA shall, at its discretion, select such Analytical Unit no later than six months prior to the deadline of three years after the Effective Date and shall notify Plaintiffs of such selection.

AMENDED SETTLEMENT AGREEMENT

1
2 WHEREAS, Heal the Bay, Inc., Santa Monica BayKeeper, Inc.,
3 and Terry Tamminen ("Plaintiffs") filed a complaint in this
4 action ("Complaint") against Defendants Carol Browner in her
5 official capacity as the Administrator of the United States
6 Environmental Protection Agency ("EPA"); Felicia Marcus, in her
7 official capacity as Regional Administrator of the United States
8 Environmental Protection Agency, Region IX; and the United States
9 Environmental Protection Agency (collectively, "EPA"), pursuant
10 to, inter alia, Section 303(d) of the Clean Water Act ("Act" or
11 "CWA"), 33 U.S.C. 1313(d);

12 WHEREAS, the subject of this action concerns EPA's alleged
13 duty to either approve or disapprove TMDLs submitted to EPA by
14 the State of California ("State") for waters in that region of
15 the State administered by the Los Angeles Regional Water Quality
16 Control Board (hereinafter referred to as the "Los Angeles
17 Region"), and certain related claims, as set forth in the
18 Complaint filed herewith. The geographic boundaries of the Los
19 Angeles Region are set forth as Attachment 1 to the accompanying
20 Amended Consent Decree ("Consent Decree");

21 WHEREAS, 40 CFR 122.44(d)(1)(vii)(A) provides that, when
22 developing water quality-based effluent limits, the permitting
23 authority shall ensure that "The level of water quality to be
24 achieved by limits on point sources . . . is derived from and
25 complies with all applicable water quality standards";

26 WHEREAS, 40 CFR 122.1(b)(2) provides, in part, that
27 "[d]ischarges of storm water as set forth in § 122.26" are "point
28 sources requiring NPDES permits for discharges";

1 WHEREAS, 40 CFR 122.44(d)(1)(vii)(B) provides that, when
2 developing water quality-based effluent limits, the permitting
3 authority shall ensure that "Effluent limits developed to protect
4 a narrative water quality criterion, a numeric water quality
5 criterion, or both, are consistent with the assumptions and
6 requirements of any available wasteload allocation for the
7 discharge prepared by the State and approved by EPA pursuant to
8 40 CFR 130.7";

9 WHEREAS, CWA Section 303(d)(2) provides that states shall
10 incorporate TMDLs into their current plan under subsection (e) of
11 CWA Section 303;

12 WHEREAS, CWA Section 303(e)(2) provides that "The
13 Administrator shall from time to time review each State's
14 approved continuing planning process for the purposes of insuring
15 that such planning process is at all time consistent with this
16 chapter";

17 WHEREAS, 40 CFR 130.6(c)(6) requires that the water quality
18 management plans maintained by a state contain "identification of
19 implementation measures necessary to carry out the plan";

20 WHEREAS, in order to resolve the claims raised in the
21 Complaint, the parties have executed the Consent Decree and have
22 also agreed to enter into this Amended Settlement Agreement
23 ("Settlement Agreement"), which sets forth additional EPA
24 commitments concerning certain matters related to Section 303(d)
25 and (e) of the Act that are not addressed in the Consent Decree;

26 WHEREAS, the parties have agreed to a settlement of this
27 lawsuit which they consider to be a just, fair, adequate and
28 equitable resolution of the claims raised in the action; and

1 Saturday, Sunday or federal holiday, the period shall run until
2 the close of business of the next working day.

3 d. "Effective Date" means the date that the Consent
4 Decree is entered by the Court.

5 e. "EPA" means the United States Environmental
6 Protection Agency; Carol M. Browner, Administrator; and
7 Felicia Marcus, Regional Administrator, EPA Region IX.

8 f. "Execute" or "Execution" means that both parties
9 have fully signed original counterparts to this Settlement
10 Agreement and have caused such documents to be delivered to each
11 other.

12 g. "Plaintiffs" means Santa Monica BayKeeper, Inc.,
13 Terry Tamminen and Heal the Bay, Inc.

14 h. "Section 303(d) List" means the list required by
15 Section 303(d)(2) of the CWA, 33 U.S.C. 1313(d)(2), and 40 CFR
16 130.7(b), as codified as of the Effective Date of this Settlement
17 Agreement or as subsequently amended.

18 i. "Settlement Agreement" means this Amended
19 Settlement Agreement.

20 j. "State" means the State of California.

21 k. "Regional Board" or "LARWQCB" means the Los Angeles
22 Regional Water Quality Control Board.

23 l. "Total Maximum Daily Load" or "TMDL" has the
24 meaning provided at Section 303(d)(1)(C) of the CWA, 33 U.S.C.
25 1313(d)(1)(C), and 40 CFR 130.2(i), as codified as of the
26 Effective Date of this Settlement Agreement or as subsequently
27 amended.

28

1 m. "U.S." or "United States" means the United States
2 of America, including its officers, agencies, departments and
3 instrumentalities.

4 n. "Water Quality Limited Segment" or "WQLS" has the
5 meaning provided at 40 CFR 130.2(j), as codified as of the
6 Effective Date of the Consent Decree or as subsequently amended.

7 **SECTION 303(d) LIST GUIDANCE**

8 3. EPA currently intends to propose and promulgate
9 revisions to 40 CFR 130.7 and issue revised, corresponding
10 guidance prior to the next State Section 303(d) listing
11 submission. If EPA subsequently determines that states will be
12 required to submit their next Section 303(d) lists pursuant to
13 the regulations existing as of the Effective Date of this
14 Settlement Agreement, EPA Region IX will issue guidance regarding
15 the identification of WQLSs, including the review of existing and
16 readily available water quality-related data and information,
17 within sixty (60) days of EPA's determination. EPA will make
18 best efforts to make this determination as soon as possible.

19 **NOTICES, DOCUMENTATION, AND REPORTS**

20 4. In order to assist Plaintiffs in assessing compliance
21 with the Consent Decree and Settlement Agreement, commencing with
22 the Effective Date and concluding thirteen years thereafter, EPA
23 shall provide Plaintiffs with copies of approved TMDLs for the
24 Los Angeles Region, and EPA decision documents, within thirty
25 (30) days of approval. Alternatively, EPA may place these
26 documents on a web site or internet location accessible to
27 Plaintiffs within thirty days of approval. In addition, whenever
28 modification is proposed pursuant to paragraph 4 of the Consent

1 Decree, substitution of WQLSs or pollutants is proposed pursuant
2 to paragraph 7 of the Consent Decree, or EPA proposes to make a
3 determination that a TMDL is not required pursuant to paragraph 9
4 of the Consent Decree, EPA shall provide notice of its pending
5 action to any person who has requested such notice in writing
6 and, thereafter, shall receive any comment on the pending action
7 for twenty-one (21) days. If EPA is unable to provide notice
8 twenty-one (21) days prior to extension of any deadline in
9 Attachment 3 to the Consent Decree, such deadline may be extended
10 for a period of up to sixty (60) days by written agreement of EPA
11 and Plaintiffs and notice to the Court and any persons requesting
12 notice. This provision does not limit Plaintiffs' rights under
13 the Freedom of Information Act or other public information
14 provisions of law.

15 MONITORING REPORT

16 5. EPA agrees that the report regarding monitoring,
17 assessment and listing, required by paragraph 17 of the Consent
18 Decree shall, at a minimum, address the following topics and
19 contain the following review and analysis:

20 (a) For existing Regional Board surface water
21 monitoring programs, including the NPDES permit monitoring
22 program, contaminated sediment monitoring program (Section 404
23 and other programs), Waste Discharge Requirements monitoring
24 program, municipal & industrial storm water monitoring, and non-
25 point source monitoring, EPA shall:

26 (i) Review, assess and discuss the extent to
27 which existing programs gather and assess information necessary
28 to determine water quality and beneficial use impairment and the

1 causes of impairment; and

2 (ii) Review, identify and discuss the types
3 of programs needed to fill gaps, if any, in determining
4 beneficial use status and causes of impairment.

5 (b) For each program identified in paragraph 5(a)
6 above, EPA shall:

7 (i) Determine and discuss the extent to which
8 available data is being used for determining beneficial use
9 protection and the causes of impairment, and identify any gaps in
10 such data;

11 (ii) Determine and discuss the accessibility of
12 existing data to Regional Board and EPA staff, and identify
13 options for ensuring sufficient access;

14 (iii) Assess the Regional Board's use of
15 existing data to establish priorities in the Section 303(d)
16 listing process, including an assessment and explanation of the
17 Regional Board's use of simple analysis and models to interpret
18 and extrapolate data;

19 (iv) Determine and discuss whether existing
20 monitoring practices within each program appropriately consider
21 seasonal variation in a manner that assists the 303(d) process;

22 (v) Determine and discuss the comparability of
23 data from the various monitoring programs and, if applicable,
24 means for improving such comparability; and

25 (vi) Determine and discuss past Regional Board
26 integration of data from other agencies and options for future
27 integration to assist in identifying beneficial use status and
28 causes of impairment.

CONTINUING PLANNING PROCESS

1
2 6. EPA agrees that, when making comments to the State
3 regarding its Continuing planning process ("CPP") pursuant to the
4 Consent Decree, it will propose that the following provisions be
5 included in the CPP:

6 a. a definition of TMDLs consistent with CWA Section
7 303(d) and its implementing regulations, 40 CFR 130.2 as codified
8 as of the Effective Date of this Settlement Agreement or as
9 subsequently amended;

10 b. identification of the Sections of the Act and
11 implementing regulations which establish the State's Section
12 303(d) program requirements;

13 c. a description of the State's process for
14 identifying and including waters on Section 303(d) lists, and for
15 establishing TMDLs for waters on the Section 303(d) Lists,
16 including water quality monitoring, water quality modeling, data
17 analysis, calculation methods, and lists of pollutants to be
18 regulated;

19 d. a description of how the State's TMDL process will
20 incorporate both a watershed approach to TMDLs (to the extent the
21 State intends to use this approach) and the TMDL development
22 schedule set out in the Consent Decree;

23 e. a description of the State's process for involving
24 the public, affected dischargers, designated area wide agencies,
25 and local governments in the TMDL process, and those aspects of
26 the water quality management plan related to the Section 303(d)
27 program;

28 f. a description of the State's process for public

1 review of calculations to establish TMDLs, and the process for
2 incorporating the approved loads into the State's water quality
3 management plans and national pollutant discharge elimination
4 system permits; and

5 g. a description of how the State will incorporate the
6 TMDL programs and processes identified in the CPP in the State's
7 other federal/state agreements as necessary including, but not
8 limited to, Performance Partnership Agreements.

9 By proposing such provisions for inclusion in the CPP, EPA
10 is not determining that any or all of these provisions are
11 required for the CPP to meet the minimum requirements of
12 Section 303(e), 33 U.S.C. § 1313(e), and is not obligating itself
13 to perform or ensure the performance of such provisions. The
14 parties recognize that Plaintiffs may contend (1) that provisions
15 including, but not limited to, those set forth above are required
16 by the CWA and/or implementing regulations, and (2) that EPA must
17 itself perform or ensure the performance of provisions including
18 these.

19 BASIN PLAN REVIEW

20 7. By December 31, 2004, EPA will review the "Water Quality
21 Control Plan Los Angeles Region, Basin Plan for the Coastal
22 Watersheds of Los Angeles and Ventura Counties" (adopted by the
23 LARWQCB June 13, 1994), as updated, to determine whether it
24 includes TMDL-related implementation measures that are consistent
25 with the Clean Water Act, and will inform the LARWQCB and
26 Plaintiffs, and any other person upon request, of the results of
27 EPA's review, including deficiencies and recommendations, if any,
28 that EPA identifies during its review.

1 TMDL IMPLEMENTATION PLAN REVIEW

2 8. Each year from January 1, 2000, to December 31, 2010,
3 EPA will review two TMDL implementation plans developed by the
4 LARWQCB for the purpose of determining whether each
5 implementation plan is consistent with the Clean Water Act, and
6 will inform the LARWQCB and Plaintiffs, and any other person upon
7 request, of the results of EPA's review, including deficiencies
8 and recommendations, if any, that EPA identifies during its
9 review. If the number of TMDL implementation plans developed by
10 LARWQCB is insufficient for EPA to complete the review in any
11 year(s), EPA will evaluate whether the LARWQCB's process for
12 developing such plans is consistent with the Clean Water Act.

13 LOS ANGELES AREA REMAP PROJECT

14 9. To the extent practicable, EPA will revise its Regional
15 Environmental Monitoring and Assessment Program ("REMAP") project
16 related to Los Angeles area watersheds in light of information
17 obtained through the development of the report regarding
18 monitoring, assessment and listing, required by paragraph 17 of
19 the Consent Decree.

20 FORCE MAJEURE

21 10. The possibility exists that circumstances outside the
22 reasonable control of EPA could delay compliance with the
23 timetables contained in this Settlement Agreement. Such
24 circumstances may include, but are not limited to, catastrophic
25 environmental events requiring immediate and/or time-consuming
26 response by EPA. In addition, the parties recognize that the
27 performance of the Settlement Agreement is subject to fiscal and
28 procurement laws and regulations of the United States, which

1 include, but are not limited to, the Anti-Deficiency Act, 31
2 U.S.C. §§ 1341, et seq. ("ADA"). Circumstances where the
3 expenditure of funds may violate the ADA and/or fiscal and
4 procurement laws and regulations of the United States include,
5 but are not limited to, sufficient funds not being appropriated
6 as requested or appropriated funds not being available for
7 expenditure. Should a delay occur due to force majeure
8 circumstances, any resulting failure to meet the timetables set
9 forth herein shall not constitute a failure to comply with the
10 Settlement Agreement. EPA will provide notice to the Plaintiffs
11 after EPA becomes aware of the need for such delay, and will
12 provide Plaintiffs with an explanation of EPA's basis for
13 invoking this term. Plaintiffs may challenge the invocation of
14 this term of the Settlement Agreement under the dispute
15 resolution terms of this Settlement Agreement, and EPA shall bear
16 the burden of justifying its invocation of this term.

17 **DISPUTE RESOLUTION AND REMEDY FOR NON-COMPLIANCE**

18 11. If the parties disagree concerning the interpretation
19 or performance of the Settlement Agreement, the dissatisfied
20 party shall provide the other party with written notice of the
21 dispute and a request for negotiations. The parties shall meet
22 and confer in order to attempt to resolve the dispute within
23 thirty (30) days of the written notice, or such time thereafter
24 as is mutually agreed. If the parties are unable to resolve the
25 dispute within sixty (60) days of such meeting, then either party
26 may apply to the Court in *Heal the Bay, Inc., Santa Monica*
27 *BayKeeper, Inc. and Terry Tamminen v. Browner, et al.*, (N.D. Cal.)
28 for appropriate relief. EPA does not waive or limit any defense

1 relating to such litigation. The parties agree that contempt is
2 not a remedy for any alleged violations of this Settlement
3 Agreement.

4 AGENCY DISCRETION

5 12. Except as expressly provided herein, nothing in this
6 Settlement Agreement limits or modifies the discretion accorded
7 EPA by the Clean Water Act or by general principles of
8 administrative law, including EPA's discretion to revise or
9 promulgate regulations. Nothing in this Settlement Agreement
10 limits or modifies EPA's discretion after EPA performs any action
11 pursuant to this Settlement Agreement to revise from time to time
12 any such action.

13 MUTUAL DRAFTING

14 13. Rules of construction to the effect that ambiguity is
15 construed against the drafting party shall be inapplicable in any
16 dispute concerning the terms, meaning, or interpretation of this
17 Settlement Agreement.

18 REPRESENTATIVE AUTHORITY

19 14. Each undersigned representative of a party to the
20 Settlement Agreement certifies that he or she is fully authorized
21 by the party to enter into and execute the terms and conditions
22 of the Settlement Agreement, and to legally bind such party to
23 the Settlement Agreement.

24 ENTIRE AGREEMENT

25 15. This Settlement Agreement and the Consent Decree are
26 the entire agreement between Plaintiffs and EPA in this case.
27 All prior conversations, meetings, discussions, drafts and
28

1 writings of any kind are specifically superseded by this
2 Settlement Agreement and Consent Decree.

3 USE OF SETTLEMENT AGREEMENT

4 16. This Settlement Agreement is not an admission or
5 evidence of any wrongdoing, misconduct or liability on the part
6 of EPA, its officers, or any person affiliated with it.

7 COUNTERPARTS

8 17. This Consent Decree may be executed in any number of
9 counterpart originals, each of which shall be deemed to
10 constitute an original agreement, and all of which shall
11 constitute one agreement. The execution of one counterpart by a
12 party's undersigned representative shall have the same force and
13 effect as if that undersigned representative had signed all other
14 counterparts.

15 COMPLIANCE WITH OTHER LAW

16 18. No provision of this Settlement Agreement shall be
17 interpreted as, or constitutes, a commitment or requirement that
18 EPA obligate or pay funds in contravention of the Anti-Deficiency
19 Act, 31 U.S.C. § 1341, or take actions in contravention of the
20 Administrative Procedure Act, Clean Water Act, or any law or
21 regulation, either substantive or procedural. Nothing in the
22 Settlement Agreement relieves EPA of the obligation to act in a
23 manner consistent with other applicable Federal, State or local
24 law, including the notice and comment and other provisions of the
25 Administrative Procedure Act, 5 U.S.C. §§ 551-599, 701-706.

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SEVERABILITY

19. If any provision of the Settlement Agreement is deemed invalid or unenforceable, the balance of the Settlement Agreement shall remain in full force and effect.

THIRD-PARTY BENEFICIARIES

20. Nothing in this Settlement Agreement shall be construed to make any other person or entity not executing this Settlement Agreement a third-party beneficiary to this Settlement Agreement.

EFFECTIVE DATE

21. This Settlement Agreement shall become effective upon entry of the Consent Decree by the Court.

TERMINATION

22. This Settlement Agreement shall terminate upon completion of the obligations in paragraphs 3-9, inclusive, of this Settlement Agreement.

On behalf of the party or parties designated below, the undersigned agree to the foregoing Settlement Agreement.

FOR SANTA MONICA BAYKEEPER, INC., AND TERRY TAMMINEN:

Date: 2/19/99

Alex Helperin

DAVID S. BECKMAN
ALEX N. HELPERIN
Natural Resources Defense Council
6301 San Vicente Blvd., Suite 250
Los Angeles, CA 90048

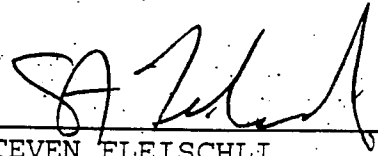
Counsel for Santa Monica BayKeeper,
Inc. and Terry Tamminen

1 FOR HEAL THE BAY, INC.:

2

3

Date: 2/19/99



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STEVEN FLEISCHLI
Heal the Bay, Inc.
2701 Ocean Park Blvd., Suite 150
Santa Monica, CA 90405

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Counsel for Heal the Bay, Inc.

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FOR CAROL BROWNER, FELICIA MARCUS, and THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

LOIS J. SCHIFFER
Assistant Attorney General
Environmental and Natural
Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Date: 2/19/99



S. RANDALL HUMM
Environmental Defense Section
Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986

Counsel for Carol Browner, Felicia
Marcus, and the United States
Environmental Protection Agency

FOR CAROL BROWNER, FELICIA MARCUS, and THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY:

LOIS J. SCHIFFER
Assistant Attorney General
Environmental and Natural
Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Date: 2/19/99



S. RANDALL HUMM
Environmental Defense Section
Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986

Counsel for Carol Browner, Felicia
Marcus, and the United States
Environmental Protection Agency

1 PROOF OF SERVICE

2
3 STATE OF CALIFORNIA)
4 COUNTY OF LOS ANGELES) SS.

5
6 I am employed in the County of Los Angeles, State of California. I am over the age of 18
7 and not a party to the within action. My business address is: 6310 San Vicente Boulevard, Suite
250, Los Angeles, California 90048.

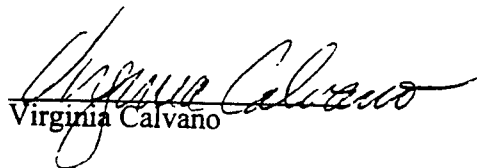
8 On February 19, 1999, I served the following document, described as **NOTICE OF**
9 **JOINT MOTION AND JOINT MOTION TO ENTER AMENDED CONSENT DECREE**,
10 on the interested parties in said action by placing a true copy thereof in the United States mail
11 enclosed in a sealed envelope with postage prepaid addressed as follows:

12 See attached service list.

13
14
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17 I am "readily familiar" with the firm's practice of collection and processing
18 correspondence for mailing. It is deposited with U.S. postal service on that same day in the
19 ordinary course of business. I am aware that on motion of party served, service is presumed
invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit
for mailing in affidavit.

20 I declare that I am employed in the office of a member of the bar of this Court at whose
21 direction the service was made.

22 Executed on February 19, 1999 at Los Angeles, California.

23
24 
25 Virginia Calvano
26
27
28

1 S. Randall Humm
United States Department of Justice
2 Environment & Natural Resources Division
Environment Defense Section
3 P.O. Box 23986
Washington, D.C. 20026-3986
4

5 Gary Hess
Office of Regional Counsel
6 United States Environmental Protection Agency
75 Hawthorne Street
7 San Francisco, CA 94105
8

9 Courtesy Copy to:

10 Colin Lennard
11 Fulbright & Jaworski, L.L.P.
865 S. Figueroa Street, 29th Floor
12 Los Angeles, CA 90017-2576
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