CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

SAN FRANCISCO BAY REGION

RESOLUTION R2-2002-0061

Amending the Water Quality Control Plan For the San Francisco Bay Region

to Adopt Site-Specific Objectives for Copper and Nickel

in the Lower South San Francisco Bay and an Implementation Plan

WHEREAS, the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Board), finds that:

1. An updated Water Quality Control Plan for the San Francisco Bay Region (Basin Plan) was adopted by the Regional Board on June 21, 1995, approved by the State Water Resources Control Board (State Board) on July 20, 1995, and approved by the Office of Administrative Law (OAL) on November 13, 1995.

2. The proposed Basin Plan Amendment, which was developed in accordance with California Water Code (CWC) § 13240, consists of the following: adoption of site-specific water quality objectives (SSOs) for copper and nickel in the Lower South San Francisco Bay south of the Dumbarton Bridge (Lower South SF Bay); adoption of an implementation plan for the SSOs referred to as a Water Quality Attainment Strategy (WQAS), including the selection of metal translators to be used to compute water quality-based effluent limits in permits; and minor changes and updates to Chapter 4 of the Basin Plan to reflect more accurately current conditions and Regional Board policy concerning Lower South SF Bay (collectively, the Basin Plan Amendment). The proposed Basin Plan Amendment, including specifications on its physical placement in the Basin Plan, is set forth in Exhibit A hereto. Only the SSOs for copper and nickel in the Lower South SF Bay and the selection of metal translators are regulatory.

3. On May 18, 2000, the United States Environmental Protection Agency (USEPA) promulgated the California Toxics Rule (CTR) prescribing numeric water quality criteria for priority toxic pollutants, including copper and nickel, that apply to the Lower South SF Bay.

4. On March 2, 2000, the State Board adopted the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP) to be effective as of May 22, 2000. Among other things, the SIP establishes implementation provisions for priority pollutant criteria promulgated by USEPA, including the CTR.

5. The SIP authorizes the Regional Board to adopt SSOs in lieu of the CTR criteria whenever the Regional Board determines, in the exercise of its professional judgment, that it is appropriate to do so. Under the SIP, SSOs are appropriate if

(a) a priority pollutant criterion or objective is not achieved in the receiving water, or a National Pollutant Discharge Elimination System (NPDES) permit holder demonstrates that they do not, or may not in the future, meet an existing or potential effluent limitation based on the priority pollutant criterion or objective and (b) there is a demonstration that the discharger cannot be assured of achieving the criterion or objective and/or effluent limitation through reasonable treatment, source control and pollution prevention measures.

6. The proposed Basin Plan Amendment proposes SSOs in the Lower South SF Bay of 6.9 µg/l for a 4-day average and 10.8 for a one-hour average for dissolved copper and 11.9 µg/l for a 4-day average and 62.4 µg/l for a one-hour average for dissolved nickel. These SSOs are necessary and appropriate for this waterbody because: (a) despite the performance of reasonable treatment, source control and pollution prevention measures, the current objectives are not being consistently met; (b) the chemical features of Lower South SF Bay reduce the toxicity and bioavailability of copper and nickel through a variety of mechanisms; (c) an impairment assessment conducted for Lower South SF Bay demonstrated that the current water quality objectives for copper and nickel for Lower South SF Bay could be relaxed while still fully protecting beneficial uses; and (d) ambient concentrations and loading of copper and nickel to Lower South SF Bay have been significantly reduced over the last two decades and further reductions in loading will be difficult and costly and will not provide corresponding water quality improvements.

7. The proposed SSOs for copper and nickel in the Lower South San Francisco Bay were derived through USEPA-approved methods and are fully protective of the most sensitive aquatic life beneficial uses in Lower South SF Bay.

8. The proposed SSOs are currently being achieved and must be maintained. Therefore, the site-specific objectives are supported by the WQAS, which contains strong pollution prevention and source control actions designed to prevent water quality degradation and ensure ongoing attainment of site-specific objectives. The WQAS also includes a selection of metal translators to be used to calculate water-quality based effluent limits in permits. This regulatory action is necessary to avoid inefficient selection of metal translators on a permit-by-permit basis. The WQAS satisfies the requirement for a program of implementation for achieving water quality objectives under CWC § 13242.

9. The proposed SSOs for copper and nickel in the Lower South SF Bay and the corresponding WQAS comply with state and federal antidegradation requirements as set forth in the Staff Report dated May 15, 2002 (Staff Report).

10. The Board has considered those CWC § 13241 factors to be considered when establishing water quality objectives such as SSOs, as set forth in the Staff Report.

11. The Board has considered the impacts of the proposed Basin Plan Amendment on those affected by the proposed Basin Plan Amendment, namely publicly owned treatment works (POTWs) and urban stormwater runoff programs, including economic impacts. There are minimal economic impacts that would result from

the proposed Basin Plan Amendment. As stated above, the SSOs for copper and nickel are currently being met in receiving waters; thus, no additional treatment measures are necessary to achieve compliance with the proposed objectives. Moreover, implementation of most of the WQAS actions is already required of POTWs and urban runoff programs such that no additional expenditures are required as a result of the proposed Basin Plan Amendment.

12. Regulatory elements of the proposed Basin Plan Amendment were reviewed and endorsed by external peer reviewers Drs. David Jenkins and Alex Horne from the University of California at Berkeley.

13. On May 22, 2002, the Regional Board held a public hearing to consider this Basin Plan Amendment. Notice of the public hearing was given to all interested persons and was published in accordance with CWC § 13244 and 40 CFR § 25.5. Additionally, on April 17, 2002, the Regional Board held a duly noticed informational workshop on the proposed Basin Plan Amendment.

14. Regional Board staff prepared and distributed a draft Staff Report, dated April 5, 2002, regarding adoption of the proposed Basin Plan Amendment in accordance with applicable state and federal environmental regulations (California Code of Regulations, §3775, Title 23 and 40 CFR Parts 25 and 131).

15. The process of basin planning has been certified by the Secretary for Resources as exempt from the requirement of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) to prepare an Environmental Impact Report or Negative Declaration. The Basin Plan Amendment package includes a staff report, an Environmental Checklist, an assessment of the potential environmental impacts of the Basin Plan amendments, and a discussion of alternatives. The Basin Plan Amendment, Environmental Checklist, Staff Report, and supporting documentation are functionally equivalent to an Environmental Impact Report or Negative Declaration. The Board has duly considered the Environmental Checklist, staff report and supporting documentation with respect to environmental impacts and finds that proposed Basin Plan Amendment will not have a significant impact on the environment. The Board further finds, based on consideration of the record as a whole, that there is no potential for adverse effect, either individually or cumulatively, on wildlife as a result of the proposed Basin Plan Amendment.

16. The Basin Plan Amendment must be submitted for review and approval by the State Board, the Office of Administrative Law (OAL), and USEPA. Once approved by the State Board, the amendment is submitted to OAL and USEPA. The Basin Plan Amendment will become effective upon approval by OAL and USEPA. Additionally, for the SSOs to apply over the CTR criteria for copper and nickel, USEPA must also amend the CTR to remove the applicability of the copper and nickel criteria in the Lower South SF Bay, which amendment can and should be done concurrently with USEPA approval of the Basin Plan amendment. A Notice of Decision will be filed.

NOW, THEREFORE BE IT RESOLVED THAT:

1. The Regional Board adopts the SSOs and WQAS for copper and nickel in Lower South SF Bay to the Basin Plan as set forth in the Exhibit A hereto. The Regional Board also adopts those minor changes and updates to Chapter 4 of the Basin Plan as set forth in Exhibit A hereto.
2. The Executive Officer is directed to forward copies of the Basin Plan Amendment to the State Board in accordance with the requirement of CWC Section 13245.
3. The Regional Board requests that the State Board approve the Basin Plan Amendment in accordance with the requirements of CWC Sections 13245 and 13246 and forward it to the OAL and USEPA for approval.
4. If, during the approval process, the State Board or OAL determines that minor, non-substantive corrections to the language of the amendment are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Regional Board of any such changes.
5. Since the Basin Plan Amendment will involve no potential for adverse effect, either individually or cumulatively, on wildlife, the Executive Officer is directed to sign a Certificate of Fee Exemption for a "De Minimis" Impact Finding.

THEREFORE BE IT FURTHER RESOLVED THAT:

The Regional Board commends the Santa Clara Basin Watershed Management Initiative and its participants for their collaborative efforts and commitment of time and resources that contributed to the success of this project. Provision for stakeholder involvement, generation of high quality and reliable studies and data, and scientific peer review of findings are hallmarks of this project that serve as a model for successful resolution of complex technical and policy issues.

I, Loretta K. Barsamian, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on May 22, 2002.

Loretta K. Barsamian

LORETTA K. BARSAMIAN
Executive Officer