ATTACHMENT A
(Attachments to this document have been omitted)

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

RESOLUTION NO. R2007-014

September 6, 2007

Amendment to the *Water Quality Control Plan for the Los Angeles Region* to Incorporate a Total Maximum Daily Load for Metals in Los Angeles River

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

1. On June 2, 2005, the Regional Board established, by Resolution No. R05-006, an amendment to the Water Quality Control Plan for the Los Angeles Region (Basin Plan) incorporating a Metals TMDL for the Los Angeles River. The TMDL was subsequently approved by the State Water Resources Control Board in Resolution No. 2005-0077 on October 20, 2005 and by the Office of Administrative Law on December 9, 2005. The USEPA approved the Los Angeles River Metals TMDL on December 22, 2005. The effective date of the TMDL is January 11, 2006, when the Certificate of Fee Exemption was filed with the California Department of Fish and Game.

2. On February 16, 2006, the Cities of Bellflower, Carson, Cerritos, Downey, Paramount, Santa Fe Springs, Signal Hill, and Whittier (Cities) filed a petition for a writ of mandate challenging many aspects of the Los Angeles River Metals TMDLs and the Ballona Creek Metals TMDLs.

3. On May 24, 2007, the Los Angeles County Superior Court adopted the third of three rulings with respect to the writ petition. Collectively, all challenges to the TMDLs were rejected, except for one CEQA claim. Specifically, the Court ruled that the State and Regional Boards (Water Boards) should have adopted and circulated an alternatives analysis that analyzed alternatives to the project, pursuant to Public Resources Code section 21080.5 and section 3777 of Title 23 of the California Code of Regulations. Together, those authorities, which are applicable to the Water Boards' certified regulatory program, require that a project not be approved if there are feasible alternatives to the project that would substantially lessen a significant adverse effect that the activity may have on the environment. (Pub. Res. C. Section 21080.5(d)(2)(A).)

4. The Water Boards alleged that no feasible alternatives to the project exist that would result in less significant impacts to the environment, but the Court ruled that the Water Boards have the burden of formulating and analyzing alternatives, and that since the Cities had identified in their briefs two "potentially feasible alternatives", the environmental documentation was deficient because the Water Boards did not conduct an adequate alternatives analysis. Accordingly, the Court issued its writ of mandate, directing the Water Boards to adopt an alternatives analysis that analyzed feasible alternatives to the TMDLs and reconsider the TMDLs accordingly. The writ was limited to that issue, and the TMDLs were affirmed in all other respects. Accordingly, an alternatives analysis has been prepared to comply with the writ of mandate, and to explain the Regional Board's conclusion that no feasible alternatives exist that would result in less significant impacts and also achieve the project's purposes.

5. On June 22, 2007, an alternatives analysis was prepared and circulated for public comment, in order to comply with the writ of mandate. The alternatives analysis examines the alternatives suggested by the Cities in the litigation, as well as analogous alternatives suggested to the Regional Board during other TMDL proceedings by these and other stakeholders. The analysis concludes that none of the alternatives are feasible alternatives that would both result in less significant impacts and achieve the project's purposes. The Regional Board has reviewed that analysis, and in consideration of the entire administrative record, the Regional Board approves and adopts the analysis. The Regional Board finds that no feasible alternatives exist that would achieve the project's purpose and also result in substantially less significant impacts to the environment than the TMDL as previously adopted.

6. Considering the alternatives analysis, the Regional Board finds that the TMDL as originally proposed and adopted is appropriate. The Regional Board further finds that nothing in the alternatives analysis, nor any of the evidence generated, presents a basis for the Regional Board to conclude that it would have acted differently when it adopted the TMDLs had the alternatives analysis been prepared and circulated at that time.

7. A revised Basin Plan amendment was circulated on June 22, 2007. The revised amendment replaces the previous implementation deadlines that were tied to "the effective date of the TMDL", with the specific dates that were set when the TMDL previously became effective.

8. Readopting the TMDL while maintaining the existing compliance schedule is warranted, and the Court's order does not justify additional time to comply with the TMDL for any and all of the following reasons:

   a. The TMDL was not stayed during the Court proceedings, and jurisdictions responsible for complying with the TMDL reasonably should have been planning to meet the existing timeline. The petitioners and other responsible jurisdictions are not required to demonstrate attainment of waste load allocations until January 11, 2012, and no showing has been made by any responsible jurisdiction that this timeframe is inappropriate as a result of the litigation or the alternatives analysis;

   b. The alternatives analysis does not change the Regional Board's conclusion that feasible alternatives do not exist to the TMDL that would achieve the project's purposes and result in less significant impacts to the environment, and therefore the original TMDL is not being altered as a result;

   c. The TMDL regulates 42 jurisdictions in the Los Angeles River Watershed, most of whom have proceeded to implement the TMDL in reliance on the existing schedule;

   d. The Cities who filed the petition challenging the Los Angeles River and Ballona Creek Metals TMDLs represent a small fraction of the cities in the Los Angeles River Watershed. Specifically, the cities of Carson, Downey, Paramount, and Signal Hill are in the Los Angeles River Watershed. None of the Cities are in the Ballona Creek Watershed. The cities of Bellflower, Cerritos, Santa Fe Springs, and Whittier are not located in either Watershed and are thus not subject to the requirements of either TMDL that was subject to the writ petition. The parties to the litigation that are not located within the Los Angeles River Watershed are not subject to the TMDL, and thus require no time to comply. Therefore, only 4 of the 42 jurisdictions subject to this TMDL are parties to the litigation, and it would be unfair to put them on unequal footing with each other. Moreover, inconsistent compliance schedules among the jurisdictions could inhibit their cooperation in generating any coordinated responses that they might otherwise find appropriate;

   e. Assuming the TMDL is temporarily vacated, the lapse in time between the issuance of the writ and the Regional Board's readoption is less than 90 days, which is insignificant in comparison to the 22-year compliance schedule;

   f. Maintaining the original time schedule is consistent with the project purpose, and with the Regional Board's mission including expeditious restoration of California's water quality. It is also in the public interest in that restoring the Los Angeles River Watershed will improve the environment and thus the quality of life of the residents in the Watershed.

9. The documents generated for this proceeding, along with the CEQA checklist dated March 25, 2005; the Los Angeles River Metals TMDL staff report dated June 2, 2005; response to comments on the June 12, 2004 and March 28, 2005 draft TMDLs; and any subsequent responses to comments, fulfill the requirements of 23 Cal Code Regulations §3777.

10. On September 6, 2007, prior to the Board's action on this resolution, public hearings were conducted on the TMDL for Metals in the Los Angeles River. Notice of the hearing for the Los Angeles River Metals TMDL was published in accordance with the requirements of Water Code section 13244. This notice was published in the Daily Commerce on June 22, 2007 and the Los Angeles Times on June 23, 2007.

THEREFORE, be it resolved that:

1. Pursuant to Sections 13240 and 13242 of the California Water Code, the Regional Board, after considering the entire record, including oral testimony at the hearing, hereby readopts the amendments to Chapter 7 of the Water Quality Control Plan for the Los Angeles Region as set forth in Attachment A hereto, and reaffirms the decision it took in adopting Resolution No. R05-006, to incorporate the elements of the Los Angeles River Metals TMDL. Findings paragraphs 1 through 26, and Resolved paragraphs 1 through 6 that were set forth in Resolution No. R05-006, are hereby incorporated by reference as though set forth in full. A copy of that resolution appears at Attachment B.

2. The Regional Board hereby certifies the final Addendum to CEQA Documentation as a part of the final CEQA substitute environmental documentation.

3. The Executive Officer is directed to forward copies of the Basin Plan amendment to the State Board in accordance with the requirements of section 13245 of the California Water Code.

4. The Regional Board requests that the State Board approve the Basin Plan amendment in accordance with the requirements of sections 13245 and 13246 of the California Water Code and forward it to OAL and the USEPA.

5. If during its approval process Regional Board staff, the State Board or OAL determines that minor, non-substantive corrections to the language of the amendment, this resolution, or other relevant documentation are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Board of any such changes.

6. The Executive Officer is authorized to sign a Certificate of Fee Exemption, or pay the applicable fee as may be required by the Fish and Game Code.

7. The TMDL established by this resolution shall supersede any other Metals TMDL for the Los Angeles River that may be in effect at the time this TMDL becomes effective.

I, Deborah Smith, Interim Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Los Angeles Region, on September 6, 2007.

Deborah J. Smith
Interim Executive Officer

This Page Intentionally
Left Blank