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11 UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 OAKLAND DIVISION

14 HEAL THE BAY, INC. and SANTA MONICA
15 BAYKEEPER, INC., et al.,

16 Plaintiffs,

17 vs.

18 LISA P. JACKSON, Administrator of the United
States Environmental Protection Agency, et al.,

19 Defendants.¹
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Case No. 98-cv-4825 SBA

**STIPULATION TO MODIFY
AMENDED CONSENT DECREE**

AND

ORDER THEREON

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27 ¹ Carol Browner was previously named as the lead defendant in this case in her official capacity
28 as Administrator of the United States Environmental Protection Agency. Pursuant to Fed. R.
Civ. P. 25(d), her current successor, Lisa P. Jackson, is automatically substituted.

1 WHEREAS, the Amended Consent Decree in the above-captioned matter entered by the
2 Court on March 24, 1999, Dkt. 25, sets forth deadlines for the establishment or approval of Total
3 Maximum Daily Loads (“TMDLs”) under Section 303(d) of the Clean Water Act, 33 U.S.C. §
4 1313(d), by Defendants United States Environmental Protection Agency, et al. (“EPA”), for
5 waters in the region of the State of California administered by the Los Angeles Regional Water
6 Quality Control Board (hereinafter, the “Los Angeles Region”);

7 WHEREAS, the Amended Consent Decree incorporates a List of Waters and Pollutants
8 Covered by the Amended Consent Decree (“Attachment 2”) and a Schedule for Specified Waters
9 (“Attachment 3”);

10 WHEREAS, Paragraph 4 of the Amended Consent Decree provides that “[w]here the
11 parties mutually consent to any revision of Attachments 2 and/or 3, such revision shall be
12 effected by written agreement submitted to the Court for approval”;

13 WHEREAS, Paragraph 20 of the Amended Consent Decree provides that “[a]ny dates set
14 forth in [the Amended] Consent Decree may be extended by written agreement of the parties and
15 notice to the Court”;

16 WHEREAS, Paragraph 7 of the Amended Consent Decree provides that “[a]fter
17 obtaining Plaintiffs’ written agreement, which consent Plaintiffs may at their sole discretion
18 withhold, EPA may, after Court approval, substitute one or more . . . Additional WQLSs [water
19 quality limited segments] or Pollutants for an agreed upon number of WQLSs or pollutants set
20 forth in Attachment 2” by written agreement of the parties and approval of the Court;

21 WHEREAS, pursuant to Paragraph 7 of the Amended Consent Decree, and in order to
22 address changes in water quality conditions since 1999 and to focus TMDL development on
23 higher priority impairments, the parties have agreed to substitute four new WQLS and pollutant
24 pairings for those 14 WQLS and pollutant pairings listed in Paragraph 4 of this Stipulation;

25 WHEREAS, EPA provided notice of the proposed modifications to the Amended
26 Consent Decree described below to all persons who had requested notice of such modifications,
27 pursuant to Paragraph 4 of the Amended Settlement Agreement in this case;

28 WHEREAS, EPA received comments in support of the proposed modifications, as well
as comments in opposition to some of the modifications;

 WHEREAS, EPA has considered and responded to all such comments, none of which
EPA believes should cause it not to pursue the modifications as proposed herein;

 WHEREAS, the parties agree that the proposed modifications below are in the interest of

1 the public, the parties, and judicial economy;

2 WHEREAS, pursuant to Paragraph 8 of the Amended Consent Decree and with
3 Plaintiffs' concurrence, EPA will not and need not undertake TMDL development for the
4 following WQLS and pollutant pairings, based on EPA's recent findings of non-impairment:
5 Echo Park Lake (copper, lead, ammonia, pH), Dominguez Channel above and below Vermont
6 Avenue (ammonia), Wilmington Drain (copper and lead), and Los Cerritos Channel (ammonia);

7 WHEREAS, the parties have entered into this Stipulation without admission of any issue
8 of fact or law;

9 NOW THEREFORE, the parties, by and through the undersigned counsel, HEREBY
10 AGREE AND STIPULATE as follows, subject to approval of the Court:

11 1. Attachment 2 of the Amended Consent Decree is modified to include the
12 following pairings of WQLSs and pollutants:

- 13 a. Long Beach City Beach bacteria;
- 14 b. Dominguez Channel (above Vermont) diazinon and toxicity; Dominguez
15 Channel Estuary sediment toxicity, benzo[a]anthracene, benzo[a]pyrene,
16 chrysene, phenathrene, pyrene; Consolidated Slip benzo[a]anthracene,
17 benzo[a]pyrene, chrysene, pyrene, phenanthrene, 2-methyl-naphthalene,
18 Cd, Cu, Hg, dieldrin, toxaphene; Los Angeles/Long Beach Inner Harbor
19 benzo[a]anthracene, chrysene, Pb; Los Angeles Harbor Fish Harbor
20 benzo[a]anthracene, benzo[a]pyrene, chrysene, dibenz[a,h]anthracene,
21 phenathrene, pyrene, Pb, Hg, chlordane; Los Angeles River Estuary DDT,
22 PCBs, chlordane, sediment toxicity; Cabrillo Marina benzo[a]pyrene;
- 23 c. Malibu Creek benthic-macroinvertebrate bioassessments; and
- 24 d. Malibu Creek sedimentation/siltation.

25 2. EPA shall establish TMDLs, or approve TMDLs submitted by the State of
26 California, for the pairings of WQLSs and pollutants listed in Paragraph 1(a-b) of this
27 Stipulation by March 24, 2012, and in Paragraph 1(c-d) of this Stipulation by March 24, 2013.

28 3. In the event that the Malibu Creek benthic-macroinvertebrate bioassessments
listing included on the 303(d) List adopted by the Los Angeles Regional Water Quality Control
Board on July 16, 2009 is not approved by the State Water Resources Control Board
("SWRCB") and EPA, then:

- a. Avalon Beach indicator bacteria shall be substituted for Malibu Creek

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benthic-macroinvertebrate bioassessments in Paragraph 1(c) of this Stipulation;

- b. EPA shall establish TMDLs, or approve TMDLs submitted by the State of California, for the pairings of WQLSs and pollutants listed in Paragraph 1(a-c) of this Stipulation by March 24, 2012, and in Paragraph 1(d) of this Stipulation by March 24, 2013; and
- c. Paragraph 4(n) of this Stipulation shall be moved to become Paragraph 6(h) of this Stipulation.

4. The following pairings of WQLSs and pollutants are removed from Attachment 2 of the Amended Consent Decree:

- a. Los Angeles River Reach 6 (u/s of Sepulveda Basin) volatile organics (TMDL Analytical Unit (“AU”) 22);
- b. Ventura Harbor: Ventura Keys coliform (AU 24);
- c. Elizabeth Lake eutroph., DO, pH; Lake Hughes eutroph., fish kills, algae, odors; Munz Lake eutroph. (AU 35);
- d. Crystal Lake org. enrichment/low DO (AU 44b);
- e. Marina del Rey Harbor—Back Basins DDT, dieldrin (AU 54);
- f. Sepulveda Canyon NH3 (AU 59);
- g. Topanga Canyon Creek Pb; Santa Monica Canyon Pb (AU 60);
- h. Lake Lindero chloride (AU 67);
- i. Triunfo Cyn Creek Reach 1 Pb, Hg; Triunfo Cyn Creek Reach 2 Pb, Hg (AU 68c);
- j. Medea Creek Reach 2 (abv. confl. with Lindero) Se; Medea Creek Reach 1 (lake to confl. with Lindero) Se; Las Virgenes Creek Se; Lindero Creek Reach 2 (above lake) Se; Lindero Creek Reach 1 Se (AU 68d);
- k. Dominguez Channel coliform (AU 80);
- l. Los Cerritos Channel coliform (AU 86);
- m. San Gabriel River Reach 2 (Firestone to Whittier Narrows Dam) coliform; San Gabriel River Reach 1 (Estuary to Firestone) coliform; Coyote Creek coliform; San Jose Creek Reach 1 (SG confluence to Temple St.) coliform; San Jose Creek Reach 2 (Temple to I-10 at White Ave.) coliform (AU 45); and

1 n. Los Angeles River Reach 2 (Figueroa St. to u/s Carson St.) oil; Los
2 Angeles River Reach 5 (within Sepulveda Basin) oil (AU 21).

3 5. EPA need not establish TMDLs for the pairings of WQLSs and pollutants listed
4 in Paragraph 4(a-n) of this Stipulation in order to fulfill the obligations of the Amended Consent
5 Decree. The removal from the Amended Consent Decree of the WQLSs and pollutants listed in
6 Paragraph 4(a-n) does not relieve EPA from any responsibilities it may have under section
7 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d), to develop or approve TMDLs for those
8 WQLSs and pollutants.

9 6. The deadline for EPA to establish TMDLs, or approve TMDLs submitted by the
10 State of California, for the following pairings of WQLSs and pollutants currently listed in
11 Attachment 2 of the Amended Consent Decree is extended to March 24, 2013:

- 12 a. Rio de Santa Clara/Oxnard Drain #3 PCBs, ChemA, chlordane, DDT,
13 toxaphene, sediment toxicity (AU 8);
- 14 b. Peck Rd Lake Pb; Lincoln Park Lake Pb; Echo Park Lake Cu, Pb (AU
15 20);
- 16 c. Malibu Lagoon benthic community effects (AU 71);
- 17 d. Westlake Lake Pb (AU 68a);
- 18 e. Dominguez Channel (above Vermont) NH3; Dominguez Channel Estuary
19 (to Vermont) NH3 (AU 77b);
- 20 f. Ventura River Reach 1 (estuary to Main St.) algae; Ventura River Reach 2
21 (Main St. to Weldon Canyon) algae; Ventura River Estuary algae (AU
22 88); and
- 23 g. Ventura River Reach 4 (Coyote Creek to Camino Cielo Rd.) pumping,
24 water diversions; Ventura River Reach 3 (Weldon Canyon to confl. w/
25 Coyote Cr.) pumping, water diversions (AU 89).

26 7. Nothing herein, including Plaintiffs' agreement to these modifications, shall be
27 cited as justification or support for the appropriateness of any other proposed modification under
28 the Amended Consent Decree.

8. Within 60 days of the Court's entry of this Stipulation, the United States of
America ("United States"), on behalf of EPA, agrees to pay to Plaintiffs \$17,051.00 in settlement
of Plaintiffs' claims for attorneys' fees, costs, and other expenses incurred in the negotiation of
this Stipulation, subject to the following:

1 a. Payment will be made by electronic funds transfer in accordance with
2 instructions provided to Defense counsel by Plaintiffs' counsel. Plaintiffs will provide
3 such instructions within 10 calendar days of the Court's entry of this Stipulation.

4 b. Any obligation of the United States to expend funds under this Stipulation
5 are subject to the availability of appropriations in accordance with the Anti-Deficiency
6 Act, 31 U.S.C. § 1341. This Stipulation shall not be construed to require the United
7 States to obligate or pay funds in contravention of said Anti-Deficiency Act, 31 U.S.C. §
8 1341.

9 c. Plaintiffs agree to accept payment of \$17,051.00 in full satisfaction of any
10 and all claims for attorneys' fees and costs of litigation associated with this Stipulation,
11 through and including the date of the Court's entry of the Stipulation. Plaintiffs also
12 agree that receipt of this payment from the United States shall operate as a release of
13 Plaintiffs' claims for such attorneys' fees and costs.

14 d. Except as provided in paragraph 8(c) above, the parties do not waive any
15 claim or defense.

16 FOR DEFENDANTS:

IGNACIA S. MORENO
Assistant Attorney General

17 DATED: 8/16/2010

/s/ Rochelle L. Russell
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22 FOR PLAINTIFFS:

STEVE FLEISCHLI
Attorney for Heal the Bay and Santa Monica
Baykeeper

24 DATED: 8/16/2010

/s/ Steve Fleischli (w/ permission)
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1 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

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3 Dated: 9/1/10

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SAUNDRA BROWN ARMSTRONG
United States District Judge

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