

San Diego Regional Water Quality Control Board



Executive Officer's Report

November 18, 2009

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SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD

EXECUTIVE OFFICER'S REPORT

November 18, 2009

PART A

SAN DIEGO REGION STAFF ACTIVITIES (*Staff Contact*)

1. Personnel Report (*DiAnne Broussard*)

The Organizational Chart of the California Regional Water Quality Control Board, San Diego Region (Regional Board) can be viewed at http://www.waterboards.ca.gov/sandiego/about_us/org_charts/orgchart.pdf

Appointment

David W. Gibson has been selected by San Diego Regional Board members to succeed John Robertus as the Executive Officer for Region 9. John will retire on December 30, 2009. David will be sworn in as Executive Officer by Regional Board Chairman Richard Wright on November 18, 2009. Last April David was promoted to Environmental Program Manager I to head the Water Quality Restoration and Standards Branch. David began his career with the Regional Water Quality Control Board in San Diego as an Environmental Specialist III in July 2000. He was initially assigned to the Storm Water Unit. In July 2004 he was promoted to Senior Environmental Scientist. He supervised the Grants and Projects Assistance Unit and later he supervised the Southern Watershed Unit. Prior to working for the RWQCB he worked for the City of San Diego as a Biologist designing, implementing and evaluating watershed management programs. He has a Bachelor's Degree in Biology from San Diego State University.

Recruitment

Region 9 will begin the recruitment process for an Assistant Executive Officer. Current AEO Michael McCann will stop working after Thanksgiving this year in preparation for his retirement. The State Personnel Board has approved our request to reclassify the Principal Water Resource Control Engineer position to a Career Executive Appointment, Level III. The recruitment announcement should be published by the beginning of December.

Vacant positions for the State and Regional Boards are posted on the State Board web page at http://www.waterboards.ca.gov/about_us/employment/

2. 2009 CASQA Conference (*Christina Arias*)

On November 2-4, 2009, Christina Arias, Wayne Chiu, Laurie Walsh and Peter Peuron of the Southern and Central Watershed Units attended the 5th Annual California Storm Water Quality Association (CASQA) Conference. The

Conference was held at the Hilton San Diego at Mission Bay and featured John Robertus as the Keynote Speaker.

The Conference modules focused on presentation and discussions in the following key areas: 1) Regulations Permits and Policies; 2) Sustainable Development; 3) True Source Control; 4) Storm Water Treatment; 5) Pollutants of Concern; 6) Modifying Public Behavior; 7) Program Assessment; and 8) Scientific Advances. Additionally, for the first time, CASQA offered four pre-conference workshops for participants wishing to learn the very latest in the following areas: Low Impact Development, Municipal Storm Water 101, General Construction Permit, and Hydromodification. Regional Board staff also attended these pre-conference workshops.

This year's winner of the Outstanding Storm Water BMP Implementation Project (structural category) was the City of Santee for their Forester Creek Improvement Project. This \$40 million project (including a \$3 million grant through the State Water Resources Control Board's Proposition 13 Watershed Protection Grant Program) created a widened, naturalized, vegetated channel to expand riparian and wetlands habitat, improve water quality and increase the flood control capacity along a 1.2 mile segment of Forester Creek through Santee. Post-project aquatic bioassessment showed a significant improvement in the biological function of the creek compared to the condition prior to the project. Additionally, improvements to water quality parameters were demonstrated in post-construction water quality sampling.

PART B

SIGNIFICANT REGIONAL WATER QUALITY ISSUES

1. Clean Water Act Section 401 Water Quality Certification Actions Taken in September and October 2009 *(Chiara Clemente) (Attachment B-1)*

Section 401 of the Clean Water Act requires that any person applying for a federal permit which may result in a discharge of pollutants into Waters of the United States must obtain a water quality certification that the specific activity complies with all applicable state water quality standards, limitations, requirements, and restrictions. The most common federal permit that requires a 401 Certification is a CWA Section 404 permit, issued by the Army Corps of Engineers, for the placing of fill (sediment, rip rap, concrete, pipes, etc.) in Waters of the U.S. (i.e. Ocean, bays, lagoons, rivers and streams).

Upon receipt of a complete 401 certification application, the Regional Board may either certify the project or deny certification, with or without prejudice. In cases where there are impacts to Waters of the U.S., the Regional Board may issue a conditional certification. The certification can be either in the form of a conditional certification document approved by the Regional Board Executive Office, or Waste Discharge Requirements (WDRs), adopted by the Regional

Board. And, in the case where a federal permit is not required because impacts have been determined to be only to Waters of the State, the Regional Board may adopt WDRs. Attachment B-1 contains a list of actions taken during the months of September and October 2009. Certification amendments will be included in these reports, starting with June 2008. Public notification of pending 401 Water Quality Certification applications can be found on our web site at:

http://www.waterboards.ca.gov/sandiego/water_issues/programs/401_certification/docs/publicnotice8_4_08.pdf . Certifications issued from January 2008 on, can

also be found on our web site at:

http://www.waterboards.ca.gov/sandiego/water_issues/programs/401_certification/401projects.shtml .

2. Enforcement Actions for October 2009 (*Jeremy Haas*)

The following is a summary of all enforcement actions taken or initiated during the month of October 2009. During this period the California Regional Water Quality Control Board, San Diego Region (Regional Board) initiated 14 enforcement actions: Three Administrative Civil Liability Orders, one draft Cleanup and Abatement Order, two Investigative Orders, three Notices of Violation, and five Staff Enforcement Letters.

In addition to the summary information provided below, access to information on violations, enforcement actions, and Mandatory Minimum Penalties (MMPs) on a real-time basis is available to the public from the State Water Resources Control Board's Internet webpage at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/

ADMINISTRATIVE CIVIL LIABILITY (ACL) ORDERS

GMG Stone, Inc., El Cajon

ACL Order No. R9-2009-0160 was adopted October 14, 2009 in the amount of \$1,600 against GMG Stone, Inc., for failure to submit its annual industrial NPDES monitoring report for Fiscal Year 2007-08. The Order assessed the mandatory minimum penalty of \$1,000 plus \$600 in staff costs required by Water Code section 13399.33.

Progressive Steel Fabricators, Inc., Spring Valley

ACL Order No. R9-2009-0161 was adopted October 14, 2009 in the amount of \$1,600 against Progressive Steel Fabricators, Inc., for failure to submit its annual industrial NPDES monitoring report for Fiscal Year 2007-08. The Order assessed the mandatory minimum penalty of \$1,000 plus \$600 in staff costs required by Water Code section 13399.33.

E&E Transportation, Inc., Ramona

ACL Order No. R9-2009-0162 was adopted October 14, 2009 in the amount of \$1,600 against E&E Transportation, Inc., for failure to submit its annual industrial NPDES monitoring report for Fiscal Year 2007-08. The Order assessed the

mandatory minimum penalty of \$1,000 plus \$600 in staff costs required by Water Code section 13399.33.

CLEANUP AND ABATEMENT ORDERS (CAO)

Multiple Parties, Former EZ Serve Gas Station, San Diego

Tentative CAO No. R9-2009-0126 was issued by the Regional Board on October 20, 2009 to five parties for the cleanup and abatement of effects from unauthorized releases of petroleum hydrocarbons at the former EZ Serve Gas Station located at 9305 Mission Gorge Road, San Diego. The CAO was issued in draft form in order to receive additional comment prior to finalization. As proposed, the CAO would require a site assessment workplan by January 29, 2010, a site assessment report by June 30, 2010, and a corrective action plan by September 30, 2010.

NOTICES OF VIOLATION (NOV)

County of San Diego, San Pasqual Academy, Escondido

NOV No. R9-2009-0169 was issued to the County of San Diego on October 13, 2009 for 20 alleged violations of Discharge Specifications in Order No. 94-04, *Waste Discharge Requirements for Southern California Conference Seven-Day Adventist, San Pasqual Academy, San Diego County*. The alleged violations include exceeding effluent concentrations for total suspended solids, total dissolved solids, chloride, and sulfate between January and June 2009.

County of San Diego, Rancho del Campo, Campo

NOV No. R9-2009-0170 was issued to the County of San Diego on October 13, 2009 for six alleged violations of Discharge Specifications in Order No. 87-108, *Waste Discharge Requirements for the County of San Diego, Rancho del Campo Water Pollution Control Facility, San Diego County*. The alleged violations include exceeding effluent concentrations for total suspended solids, biochemical oxygen demand, and nitrate between April and June 2009.

4S Ranch Master Association, San Diego

NOV No. R9-2009-073 was issued to the 4S Ranch Master Association on October 20, 2009 for alleged violations of the Clean Water Act, California Water Code Section 13260, and Basin Plan prohibitions resulting from unauthorized channel maintenance activities that resulted in discharge and threatened discharge of materials into Artesian Creek.

STAFF ENFORCEMENT LETTERS (SEL)

Rancho Santa Fe Community Services District, Rancho Santa Fe Water Pollution Control Facility, Encinitas

An SEL was issued to the Rancho Santa Fe Community Services District on October 5, 2009 for one alleged violation of the Discharge Specification for nitrate within WDR Order No. 92-04, *Waste Discharge Requirements for Rancho Santa Fe Community Service District, Rancho Santa Fe Water Pollution Control Facility, San Diego County*, between April and June 2009.

City of Escondido, Hale Avenue Resource Recovery Facility

An SEL was issued to the City of Escondido on October 5, 2009 for six alleged violations of the Discharge Specifications for manganese within WDR Order No. 93-70, *Waste Discharge Requirements for the City of Escondido, Hale Avenue Regional Reclamation Facility, San Diego County*, between July and August 2009.

Vallecitos Water District, Meadowlark Water Reclamation Plant, San Marcos

An SEL was issued to the Vallecitos Water District on October 5, 2009 for one alleged violation of the Discharge Specification for pH and for intermittent and short violations of minimum chlorine residual and minimum modal contact time requirements within WDR Order No. R9-2007-0018, *Waste Discharge Requirements for Vallecitos Water District, Meadowlark Water Reclamation Facility, San Diego County*, between June and July 2009.

County of San Diego, Descanso Detention Facility

An SEL was issued to the County of San Diego on October 12, 2009 for five alleged violations of Discharge Specifications within WDR Order No. 93-112, *Waste Discharge Requirements for the San Diego County Sheriff's Department, Descanso Detention Facility, Water Pollution Control Facility, San Diego County*. The alleged violations include exceeding effluent limitations for biochemical oxygen demand and total dissolved solids, as well as failure to provide monitoring results for biochemical oxygen demand, total suspended solids, and coliform during one of the monthly reporting periods between January and June 2009.

Rancho California Water District, Santa Rosa Water Reclamation Facility, Murrieta

An SEL was issued to the Rancho California Water District on October 13, 2009 for two alleged violations of Discharge Specifications for nitrate and total dissolved solids within WDR Order No. 94-92, *Waste Discharge Requirements for Rancho California WD, Santa Rosa WRF, Riverside County*, between April and June 2009.

3. Enforcement Policy Update (Jeremy Haas)

The State Water Resources Control Board (State Board) will continue consideration of adoption of an updated statewide Water Quality Enforcement Policy on November 17, 2009. The State Board held a public hearing on the matter on October 20, 2009. The October 14, 2009 Executive Officer's Report included a summary of the proposed Policy. In response to the State Board's direction, a revised draft has been distributed and will be considered for adoption. The revised draft includes select changes to the guidance for using the proposed formula for determining monetary assessments in administrative civil liability actions. The revised draft and additional information, including responses to

public comments, are available from the State Board web page at http://www.waterboards.ca.gov/water_issues/programs/enforcement

4. Former Santa Ysabel Chevron Gas Station Placed on Emergency, Abandoned and Recalcitrant (EAR) Site List (*Sue Pease*)

On October 19, 2009, the Regional Board entered into a contract with EnviroApplications, Inc. to perform emergency work to maintain or replace the well head treatment units on one commercial and three domestic drinking water wells in the groundwater dependent community of Santa Ysabel. The well head treatment units are needed to remove petroleum constituents that migrated to the wells from the former Santa Ysabel Chevron Gas Station cleanup site. In addition, EnviroApplications will test the groundwater from the wells for the presence of petroleum constituents. The Regional Board requested emergency funding for this work from the EAR Account, which was approved by the State Board in early October. The field work, including the sampling of the wells, began on November 5, 2009.

The Regional Board nominated the former Santa Ysabel Chevron site, located at 30350 Highway 78, Santa Ysabel, to the 2009/2010 EAR Annual Site List in May 2009. This action was taken after Mr. Ernest Moretti, the responsible party, ceased the cleanup operations and groundwater monitoring required by Cleanup and Abatement Order No. 99-26, stating that he was financially unable to continue. The former Santa Ysabel Chevron site is one of the 41 sites on the state-wide EAR Site List and the only site in the San Diego Region.

The State Board is working with the Department of General Services to obtain engineering contract services, available early 2010, to complete the cleanup of the Santa Ysabel Chevron site, monitor the groundwater, and continue maintaining the well head treatment units.

5. Status of Petition for La Costa Town Square 401 Certification (*Chiara Clemente*)

At the October 14, 2009 Board Meeting, two members of the public spoke in support of the Executive Officer's denial of the certification for La Costa Town Square (09C-043) in Carlsbad. The proposed project consists of a community shopping center, two office buildings, 64 single family homes, and 128 condominiums on 83 acres of vacant land. The proposed impacts to Waters of the US consist of 0.08 acre of wetlands and 0.41 acre of ephemeral stream.

The original application for the subject (development) project was received April 12, 2009. After receiving all necessary information to make a determination, on July 8 the Executive Officer denied the certification based on inadequate avoidance and inappropriate mitigation, as proposed.

On August 10, 2009 the applicant (La Costa Town Square, LLC) petitioned the denial to the State Water Resources Control Board, but requested that the petition be held in abeyance, so that they could attempt to resolve the

outstanding issues with the Regional Board staff. The applicants counsel has indicated that they intend to file a new application and schedule a pre-application consultation meeting with the Regional Board and other resource agencies. Project revisions will require a considerable effort as the project was approved by the City's Planning Commission on July 15 and by the City Council on August 15, 2009.

To clarify, there is no action currently before the Board to consider. The applicant has the option of abandoning the proposed project, modifying the proposed project, or pursuing their petition to the State Board on the originally proposed project.

6. Media Coverage of Conditional Waiver No. 4 for Irrigated Agriculture and Nurseries *(Peter Peuron) (Attachment 6)*

On October 4th, the North County Times published an article concerning Conditional Waiver No. 4 for Irrigated Agriculture and Nurseries (bylined, "Farmers brace for water-monitoring requirement", attached). The article pointed out that growers in the San Diego Region can join a monitoring group and pay a few hundred dollars per year (in addition to a one-time enrollment fee that varies from \$200 to \$1,000 depending on the size of the farm) to comply with the waiver's monitoring requirement. The article pointed out that while the cost is low, it comes at a time when farmers (particularly the many small farmers in the region) are struggling with mounting costs and lower profits. On October 7, 2009, an editorial that was published in the North County Times (also attached) referenced this article and reiterated the plight of the small farmer. While it was stated that the waiver was adopted "with the best intentions", it was suggested that, "future research should attempt to understand how to minimize the intended and unintended costs of regulation."

7. San Diego County Solid Waste Trust Fund *(Bob Morris)*

During the discussion of the San Diego County Solid Waste Trust Fund at the October Regional Board meeting, it was unclear what conditions, if any, the Board had placed on the County at the time it approved the County's sale of the active landfills to Allied Waste Industries. As a follow-up to the discussion, an audio tape of the Regional Board October 1997 hearing on the divestiture was reviewed.

Specifically the hearing related to the adoption of amendments to the waste discharge requirements for Sycamore Canyon Landfill, Ramona Landfill, and Otay Annex Landfill, transferring responsibility for compliance to Allied Waste Industries. During its deliberation, the Board expressed a concern regarding potential changes to the County's ordinance, which places limits on the use of the Trust Fund. The discussion centered on the use of the waste discharge requirements issued to Allied Waste Industries to prescribe a requirement for the County to notify the Regional Board prior to any changes to the ordinance. The

Regional Board decided that the waste discharge requirements was not the appropriate mechanism.

At the conclusion of the item, the County informed the Board that it would submit annual status reports on the Trust Fund. The County, subsequently, has submitted these reports on a regular basis. To clarify the purpose of the reports, a letter will be sent to the County, requesting that the reports include a discussion regarding any plans for modifying the ordinance.

8. Clean Water Act Sections 305(b) and 303(d), Integrated Report for the San Diego Region: 2008 Update (Amy Mecklenborg)

The San Diego Regional Board conducted two workshops on October 12, 2009 at the San Diego Regional Board Office for the "Clean Water Act Section 305(b) and 303(d) Integrated Report for the San Diego Region" for 2008 (*Integrated Report*).

The purpose of these public workshops was for Regional Board staff to discuss stakeholders' questions and comments on the Integrated Report.

General Public Workshop: The general public workshop was held in the San Diego Regional Board Room at 2:00 pm. The thirty stakeholders that attended that workshop, including: Stetson Engineers, Riverside County, U.S. Navy, U.S. Marines from Camp Pendleton, City of Chula Vista, City of Oceanside, Weston Solutions, City of Escondido, City of Santee, City of San Diego, County of San Diego, San Diego Coastkeeper, Caltrans, RMC Water, City of Encinitas, AMEC Environmental, The Port of San Diego, City of Poway, MACTEC Engineering and Consulting, RMC Water and Environment, and Rancho Mission Viejo.

The public workshops were convened by the Regional Board staff (Alan Monji, Cynthia Gorham-Test, Amy Mecklenborg, Charles Cheng, Lisa Honma, David Gibson and John Odermatt). The topics discussed included: listing decisions for water body segments- Santa Margarita River, San Dieguito River, San Diego Bay, Sandia Creek, San Mateo Creek, Chollas Creek, Pacific Ocean shoreline segments, Poche Beach, and San Clemente Pier), various pollutants (nutrients, bacteria, PCBs, selenium, sediment and water toxicity), and procedural/policy questions (use of reference streams, data descriptions for Lines of Evidence, procedures for consideration of new/additional information, linking 303d CaWQA database to other public accessible databases).

Announcement of the public workshop was provided to interested parties via the LYRIS email list on September 22, 2009, published in the local newspapers (San Diego Union Tribune, and Riverside Press-Enterprise on September 26, 2009, the Orange County Register on September 25, 2009, and North County Times on September 30, 2009), and posted on the San Diego Regional Board website on September 22, 2009 at:

[http://www.waterboards.ca.gov/sandiego/water_issues/programs/303d_list/ref_reports/Final Notice 303d Public%20comments workshop and%20 PublicHearing rev1.pdf](http://www.waterboards.ca.gov/sandiego/water_issues/programs/303d_list/ref_reports/Final%20Notice%20Public%20comments%20workshop%20and%20PublicHearing_rev1.pdf)

Close of public comment period (October 26, 2009): The Regional Board received over 400 written comments from stakeholders concerning the draft 305(b)/303(d) Integrated Report. The comments include a broad range of concerns about specific water bodies, pollutants and datasets used to develop the draft Integrated Report. The staff is evaluating the comments, modifying the database as appropriate and developing responses to those comments at this time.

Meeting with Orange County: Prior to the Public Workshop on October 12th, the Regional Board staff also met with three Orange County representatives, and one State Water Resources Control Board (SWRCB) representative. The topics discussed were: 1) correcting existing 303d shoreline segments to about 50 yards on either side of station locations, 2) sets of data used to evaluate listings of water bodies, 3) using total versus dissolved selenium concentrations when referencing the CTR as the concentration limit, 4) Aliso Creek, 5) some shoreline areas not assessed for 2008, 6) diazinon listings, and 7) readily accessible documents.

For more information on the Integrated Report, please visit http://www.waterboards.ca.gov/sandiego/water_issues/programs/303d_list/index.shtml

9. Naval Base Coronado NPDES Permit Petition and Stay Request (Brian Kelley) (Attachment B-9)

On July 9, 2009, the US Department of the Navy (Navy) filed a petition for review of Order No. R9-2009-0081 [NPDES No. CA0109085], which was adopted by the San Diego Regional Water Quality Control Board on June 10, 2009 to establish regulations for waste discharges from the Naval Base Coronado. In the petition, the Navy also requested a stay of certain portions of the Order, including the industrial storm water effluent limitations for acute toxicity, the accelerated acute toxicity storm water monitoring, and the requirements to conduct toxicity reduction evaluations (TREs) and toxicity identification evaluations (TIEs) upon violation of the storm water acute toxicity effluent limitation. On October 13, 2009, the State Water Board held a public hearing in Sacramento to consider the Navy's request for a stay of the storm water acute toxicity effluent limitation, associated toxicity monitoring requirements and TRE/TIE implementation requirements. Representatives of the Navy provided testimony in support of their stay request at the hearing. David Barker and Brian Kelley of the San Diego Water Board provided testimony in opposition to all parts of the Navy's stay request. Laura Hunter representing the Environmental Health Coalition was also present and provided a policy statement in opposition to the Navy's stay request.

On October 19, 2009, the State Water Board issued Order WQ 2009-0013 (copy attached), which details the Board's decision on the Navy's stay request. In summary, the State Water Board concluded that the Navy did not meet its burden to stay the storm water acute toxicity effluent limitation, but did meet its burden to stay the storm water acute toxicity accelerated monitoring and TRE/TIE requirements of the Order. As a result of the State Water Board's decision, the Navy is still required to 1) comply with the acute toxicity effluent limitation and 2) conduct acute toxicity monitoring of all storm water outfalls at the Naval Base Coronado facilities during at least two storm water discharge events annually. The results of this monitoring are still subject to compliance determination with the storm water acute toxicity effluent limitation contained in the Order and will likely show the Navy's to be in violation of the limitation at various times. However, while the stay remains in effect, the Navy would not be required to perform any accelerated acute toxicity monitoring or conduct TRE/TIE studies if any of the two acute toxicity samples fails to meet the effluent limitation.

With regards to industrial storm water discharges from Naval Base Coronado, the Order contains benchmark concentration values for copper and zinc. If these values are exceeded, then the Navy is required to review and modify their storm water pollution prevention plan (SWPPP) to reduce concentrations of copper and zinc, sample the next two storm water runoff events, and document the modification made. The Navy is also required to prepare an evaluation and minimization plan to address sources of copper and zinc in storm water from Naval Base Coronado within 9 months of the adoption date of the Order, or March 10, 2009. The Navy did not request a stay of these provisions of the Order and they remain in effect.

Note that the stay remains in effect while the State Water Board completes its review of the petition on its merits and issues a decision in the matter in the spring of 2010.

10. Dynegy, South Bay Power Plant (*David Barker*)

The San Diego Regional Water Quality Control Board (Regional Water Board) received Dynegy's letters dated October 16, 2009 and October 19, 2009 regarding the schedule for anticipated shutdown and closure of the South Bay Power Plant. The Regional Water Board understands that these letters were submitted to update Dynegy's previously submitted April 10, 2009 Report of Waste Discharge in application for the reissuance of the current National Pollutant Discharge Elimination System (NPDES) Order No. R9-2004-0154 for South Bay Power Plant.

Dynegy requested to continue operation of electrical generating Units 1 and 2 under the current NPDES permit at a reduced maximum flow-rate of 225 million gallons per day (MGD) until December 31, 2010 based on the following considerations:

1. California Independent System Operator (CAISO) has terminated the the Reliability-Must-Run ("RMR") contract for South Bay Power Plant electrical generating Units 3 and 4 such that operation of these units, and use of the associated discharge outfalls, will not be required after December 31, 2009; and
2. CAISO extended the RMR contract for Units 1 and 2 for the 2010 contract year until December 31, 2010. The conditions that would allow for termination of RMR service for Units 1 and 2, including the addition of new generation and reactive power in the San Diego area, are expected to be achieved in 2010. Consequently, operation of these units, and the use of the associated discharge outfalls, at this time are not expected to be required after December 31, 2010.

Based on the foregoing, the Regional Water Board Executive Officer took action by letter dated November 9, 2009 to make modifications to the current NPDES permit, Order No. R9-2004-0154, prior to its expiration on November 10, 2009, to incorporate a schedule for both interim flow reduction and eventual plant shutdown as enforceable conditions. Under this approach Dynegy's current NPDES permit (Order No. R9-2004-0154), including the modifications, will remain fully effective and enforceable under an administrative extension until December 31, 2010 absent further action by the Regional Water Board. The following key modifications were added to the permit effective November 9, 2009:

- After December 31, 2009, Order No. R9-2004-0154 shall apply only to the discharges from electrical generating Units 1 and 2 at a maximum reduced flow rate of 225 million gallons per day (MGD). (This represents a 63% reduction in the current maximum discharge flow volume of 601 MGD.)
- The discharges from Units 1 and 2 shall terminate on the date CAISO determines that Reliability Must Run (RMR) services from Units 1 and 2 are no longer needed or December 31, 2010, whichever occurs first, absent further action by the Regional Board.

The permit modifications and other details concerning the interim flow reduction and eventual plant shutdown are contained in the attached November 9, 2009 letter to Dynegy. Dynegy consented to all of the permit modifications. Minor modifications such as those described above may be made without a draft permit or public review pursuant to federal NPDES regulations. The Regional Water Board is providing a 30-day comment period for public review of these minor modifications due to the heightened public interest in this matter. A public hearing will be conducted at the Regional Water Board's regularly scheduled meeting on December 16, 2009 for the Board to consider ratification of the minor modifications of Order No. R9-2004-0154.

PART C
STATEWIDE ISSUES OF IMPORTANCE TO THE SAN DIEGO REGION

1. USEPA Releases List of Priority Drinking Water Contaminants for Regulatory Consideration (*Helen Yu*)

The USEPA released its third list of drinking water contaminants that are known or anticipated to occur in public water systems that may require regulation. This information was released on the USEPA website on September 23, 2009. The USEPA will continue to evaluate and collect data on the contaminants and by 2013, for at least five contaminants, the USEPA will determine whether or not to propose drinking water regulations. For those contaminants that lack sufficient information for a regulatory determination, the agency will encourage research to provide the information needed.

In accordance with the requirements of the Safe Drinking Water Act, every five years, the USEPA must publish a list of contaminants called the contaminant candidate list (CCL). After publishing, the agency must also decide whether to regulate at least five contaminants from the list (called Regulatory Determinations). The USEPA uses the CCL to prioritize research and data collection efforts to inform the agency's decision on whether it should regulate a specific contaminant.

The USEPA considered the best available data and information on health effects and occurrence and evaluated approximately 7,500 chemicals and microbes. The agency selected 116 candidates for the final list (CCL 3) based on their potential to pose health risks through drinking water exposure. The 116 candidates include 104 chemical contaminants or groups and 12 microbes, among which are contaminants, pesticides, disinfection byproducts, pharmaceuticals, chemicals used in commerce, waterborne pathogens, and algal toxins.

For the full list of chemicals on the Drinking Water Contaminant Candidate List (CCL 3), see <http://www.epa.gov/safewater/ccl/ccl3.html#chemical>

2. California Aquatic Bioassessment Meeting (*Lynn Berlad*)

The 16th Annual Meeting of the California Aquatic Bioassessment Workgroup convened in Davis, California on October 28-29, 2009. Attendees included representatives from: U.S. Dept. of Fish and Game (DFG); U.S. Geologic Survey (USGS); Southern California Coastal Water Research Project (SCCWRP); U.C. Berkeley; Cal-EPA Office of Environmental Health Hazard Assessment (OEHHA); U.S. Environmental Protection Agency Region 9 (USEPA); State and Regional Water Boards; The Nature Conservancy; and Heal the Bay, among others. Lynn Berlad and Lilian Busse attended the conference on behalf of the San Diego Water Board.

The conference opened with an Introduction to Bioassessment session hosted by Jim Harrington of DFG. He presented a primer on macroinvertebrate identification with slides of different "bug" taxa; physical/habitat parameters; and using Surface Water Ambient Monitoring Program (SWAMP) protocols in the field.

The next few presentations discussed the implementation of biological objectives in California using the Index of Biologic Integrity, or IBI. Heal the Bay presented results from its citizen monitoring program in Southern California (Malibu Creek watershed). Its volunteer IBI data was used to support listing of impaired waterbodies for the 303(d) program in Region 4 (Los Angeles Water Board).

Research results on various topics included: effects of climate change on stream biota from C. Hawkins of Utah State University; changes in fish and benthic invertebrates in northeastern U.S. streams, taken from the USGS National Water Quality Assessment Program (river basin data); modeling biological stream conditions in southern California from a DFG-USGS workgroup (Ode, Rehn et. al.); and status of algae bioassessment research presented by B. Fetscher of SCCWRP.

Examples of lessons learned in California included a study of San Francisco Bay Area freshwater wetlands (pond study), UC Berkeley; a report on sedimentation and land use in the Sierra Nevada from the UC Sierra Nevada Aquatic Research Institute (SNARL); and an update on joint efforts between The Nature Conservancy and the North Coast Water Board, to address sediment and salmonid population impacts in the Garcia River watershed (Mendocino). DFG also presented a status report on the San Joaquin River Restoration Project.

The following links provide more information on aquatic bioassessment:

www.waterboards.ca.gov/water_issues/programs/swamp/reports.shtml

www.dfg.ca.gov/abl

www.safit.org

3. Statewide Reference Condition Program for Wadeable Streams (*Lilian Busse*)
The Surface Water Ambient Monitoring Program (SWAMP) is building an extensive network of reference sites throughout the state with a standardized reference site selection process. Biological assemblages expected under minimal human influence are fundamental to support a defensible regulatory bioassessment program. However, analysis of biological assemblages must account for large natural variation in the diverse ecological and hydrological settings, which affects the biology in California streams. Therefore, the State Board's SWAMP developed a strategy for selecting and managing a network of reference sites; this strategy is documented in the peer-reviewed SWAMP Reference Condition Management Plan (RCMP, available the statewide SWAMP website: http://waterboards.ca.gov/water_issues/programs/swamp/).

SWAMP supports the statewide Reference Condition Program with \$750,000 per year. The implementation of the plan will require: 1) intensive and extensive analysis of existing datasets to identify candidate reference sites; 2) development of region- specific screening criteria; 3) development of a process for identifying new candidate reference watersheds; and 4) sampling of new sites to fill in data gaps. The implementation will be phased over three to four years (2008 through 2011), with early years focused on development and refinement of the site selection/screening process and resource allocation in later years dedicated to sampling of sites.

A Reference Condition Program is required for the development of technically defensible bio-objectives. Bio-objectives are narrative or numeric standards that indicate if the integrity of biological communities is impaired at a specific site. The key to bio-objectives is the establishment of benchmarks (reference conditions) that objectively define the biological expectations of a given site. In addition, data on Reference sites and bio-objectives help staff to identify minimally impacted sites that need to be protected from any further degradation.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

**SIGNIFICANT NPDES
PERMITS, WDRs, AND
ACTIONS OF THE
REGIONAL BOARD**

November 18, 2009

APPENDED TO EXECUTIVE OFFICER REPORT

DATE OF REPORT
November 18, 2009

TENTATIVE SCHEDULE
SIGNIFICANT NPDES PERMITS, WDRS, AND ACTIONS OF THE SAN DIEGO RWQCB

Scheduled Board Meeting Date	Action Agenda Item	Action Type	Initial Document Application Complete	Discharge & Receiving Water Quality Limits and Monitoring Plan Known	Draft Complete	Public Review & Comment	Consent Item	Comments
December 16, 2009 Regional Board Meeting San Diego Regional Water Board Office								
12/16/2009	NPDES General Permit Hydrostatic Testing and Potable Water Discharge (Michelle Mata)	NPDES Permit Reissuance	100%	90%	90%	0%	No	NPDES Workplan FY 2006-07
12/16/2009	Orange Grove Energy Project	New WRR	100%	100%	90%	0%	yes	New WRR for use recycled water in power plant
12/16/2009	County of San Diego - San Pasqual Academy	Update WDR	75%	30%	10%	0%	yes	New owner & new treatment plant
12/16/2009	CALTRANS - Buckmann Springs Rest Stop	New WDR	100%	100%	100%	80%	yes	Change in discharge
12/16/2009	Oak Knoll Campground	Revised WDR	100%	100%	50%	0%	yes	Name change

DATE OF REPORT
November 18, 2009

TENTATIVE SCHEDULE
SIGNIFICANT NPDES PERMITS, WDRS, AND ACTIONS OF THE SAN DIEGO RWQCB

Scheduled Board Meeting Date	Action Agenda Item	Action Type	Initial Document Application Complete	Discharge & Receiving Water Quality Limits and Monitoring Plan Known	Draft Complete	Public Review & Comment	Consent Item	Comments
12/16/2009	SOCWA Request for Permit Modification for Brine Discharge (<i>Brian Kelley & David Barker</i>)	Status Report	100%	100%	0%	NA	No	
12/16/2009	Dynegy South Bay LLC, South Bay Power Plant Discharge to San Diego Bay (<i>Brian Kelley & David Barker</i>)	Board Ratification of Minor NPDES Permit Modifications	100%	NA	NA	0%	No	Permit will be administratively extended.
12/16/2009	Hubbs Research Facility Carlsbad - Agua Hedionda Lagoon (<i>Joanne Cofrancesco</i>)	NPDES Permit Recission	100%	NA	100%	0%	Yes	
12/16/2009	Adoption Hearing - 2008 Fed. Clean Water Act Sec. 303(d) List of Water Quality Segments (<i>Alan Monji</i>)	Adoption: CWA 303(d) WQ List	0%	0%	0%	0%	No	
12/16/2009	Administrative Civil Liability against Minshew Brothers Steel Construction, Inc. (<i>Rebecca Stewart</i>)	ACL Order	100%	NA	50%	50%	No	ACL Complaint issued for \$67,200 in mandatory and discretionary liability proposed for failure to submit two annual industrial storm water reports
February 10, 2010 Regional Board Meeting San Diego Regional Water Board Office								
2/10/2010	Adoption Hearing - Tecolote Creek Bacti TMDL (<i>Amy Mecklenborg / Benjamin Tobler / Wayne Chiu</i>)	Hearing: TMDL Basin Plan Amendment	100%	100%	100%	0%	No	Combined with Bacti I, both set for June 15th public release for review and comments.

Scheduled Board Meeting Date	Action Agenda Item	Action Type	Initial Document Application Complete	Discharge & Receiving Water Quality Limits and Monitoring Plan Known	Draft Complete	Public Review & Comment	Consent Item	Comments
2/10/2010	USMC Las Pulgas Landfill (<i>Amy Grove</i>)	Update WDR	100%	100%	90%	10%	Yes	Construction of new phase.
2/10/2010	Readoption Hearing - Revised Bacteria Impaired Waters TMDL Project I For Beaches And Creeks (<i>Wayne Chiu / Benjamin Tobler / Amy Mecklenborg</i>)	Hearing: TMDL Basin Plan Amendment	100%	100%	100%	0%	No	Revise TMDL for Bacti Indicators using Exceedance Days Approach. TMDL withdrawn by Regional Board in December 2008. Combined with Tecolote Bacti project; scheduled for public release June 15th.
2/10/2010	Sweetwater Authority Groundwater Demineralization (<i>Michelle Mata</i>)	NPDES Permit Reissuance	90%	80%	50%	0%	No	
2/10/2010	UCSD Scrips (<i>Brian Kelley</i>)	NPDES Permit Reissuance	0%	0%	0%	0%	No	Stormwater ASBS Issue
March 10, 2010 Regional Board Meeting San Diego Regional Water Board Office								
3/10/2010	Carlsbad Energy Center, LLS Power, Agua Hedionda Lagoon Seawater Intake and Brine Discharge To Pacific Ocean (<i>Michelle Mata</i>)	NPDES Permit New	90%	80%	50%	0%	No	Proposed use of existing Encina Power Station Intake structure

DATE OF REPORT
November 18, 2009

TENTATIVE SCHEDULE
SIGNIFICANT NPDES PERMITS, WDRS, AND ACTIONS OF THE SAN DIEGO RWQCB

Scheduled Board Meeting Date	Action Agenda Item	Action Type	Initial Document Application Complete	Discharge & Receiving Water Quality Limits and Monitoring Plan Known	Draft Complete	Public Review & Comment	Consent Item	Comments
3/10/2010	Proposed Gregory Canyon Landfill - North San Diego County (Carol Tamaki / Bob Morris)	Hearing: New WDRs	100%	100%	100%	95%	No	Postponed indefinitely pending outcome of CEQA issue.
3/10/2010	Mountain Water Ice (Brian Kelley)	NPDES Permit Reissuance	0%	0%	0%	0%	No	Discharge may be terminated
April 14, 2010 Regional Board Meeting San Diego Regional Water Board Office								
4/14/2010	Initial Hearing -Riverside County MS4 Permit (James Smith)	NPDES Permit Reissuance	0%	0%	0%	0%	No	
4/14/2010	Initial Hearing -2008 Basin Plan Triennial Reivew (Deborah Woodward)	Hearing: Basin Plan Triennial Review	NA	0%	0%	0%	No	
4/14/2010	US Navy--Naval Base San Diego (including Graving Dock) - San Diego Bay (Vicente Rodriguez)	NPDES Permit Reissuance	90%	90%	80%	0%	No	NPDES Workplan FY 2007-08

DATE OF REPORT
November 18, 2009

TENTATIVE SCHEDULE
SIGNIFICANT NPDES PERMITS, WDRS, AND ACTIONS OF THE SAN DIEGO RWQCB

Scheduled Board Meeting Date	Action Agenda Item	Action Type	Initial Document Application Complete	Discharge & Receiving Water Quality Limits and Monitoring Plan Known	Draft Complete	Public Review & Comment	Consent Item	Comments
4/14/2010	Sea World - Mission Bay (<i>Brian Kelley</i>)	NPDES Permit Reissuance	0%	0%	0%	0%	No	
May 12, 2010 Regional Board Meeting San Diego Regional Water Board Office								
5/12/2010	Adoption Hearing -Riverside County MS4 Permit (<i>James Smith</i>)	NPDES Permit Reissuance	0%	0%	0%	0%	No	
5/12/2010	NPDES General De Minimis Discharges Permit - San Diego Region (<i>Michelle Mata</i>)	NPDES Permit Adoption	NA	0%	0%	0%	No	
5/12/2010	US Navy- Naval Base Pt. Loma - San Diego Bay (<i>Vicente Rodriguez</i>)	NPDES Permit Reissuance	100%	90%	80%	0%	No	NPDES Workplan FY 2007-08
June 8, 2010 Regional Board Meeting San Diego Regional Water Board Office								

DATE OF REPORT
November 18, 2009

TENTATIVE SCHEDULE
SIGNIFICANT NPDES PERMITS, WDRS, AND ACTIONS OF THE SAN DIEGO RWQCB

Scheduled Board Meeting Date	Action Agenda Item	Action Type	Initial Document Application Complete	Discharge & Receiving Water Quality Limits and Monitoring Plan Known	Draft Complete	Public Review & Comment	Consent Item	Comments
6/8/2010	Adoption -2008 Basin Plan Triennial Reivew (<i>Deborah Woodward</i>)	Adoption - Basin Plan Triennial Review	0%	0%	0%	0%	No	
6/8/2010	San Eijjo JPA Ocean Outfall (<i>Brian Kelley</i>)	NPDES Permit Reissuance	0%	0%	0%	0%	No	
6/8/2010	City of Escondido Ocean Outfall (<i>Brian Kelley</i>)	NPDES Permit Reissuance	0%	0%	0%	0%	No	

**CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION ACTIONS
FOR THE PERIOD OF SEPTEMBER 1, 2009 THROUGH OCTOBER 31, 2009**

DATE	APPLICANT	PROJECT TITLE	PROJECT DESCRIPTION	WATERBODY	IMPACT (Acres) ¹	MITIGATION (Acres) ¹	CERTIFICATION ACTION ²
9/3/09	City of San Diego	East Tecolote Canyon Pipe Encasement Protection	The proposed project involves the placement of gabion walls, gabion mattresses, and rip rap at various exposed pipe encasements in East Tecolote Canyon.	Tecolote Creek (Tecolote HA 906.50)	(P): Wetland – 0.03 acre, Riparian – 0.02 acre Streambed – 0.03 acre	Impacts to riparian habitat will be mitigated for a 3:1 ratio. Impact to wetland habitat and streambed will be mitigated for a 2:1 ratio.	08C-076 Technically-Conditioned Certification & Enrollment in SWRCB GWDR Order No. 2003-017 DWQ
9/10/09	San Diego Unified Port District	Fender Pile Replacement Navy Pier 11A	The project is to install 20 fender piles to protect the pier from damage that can be caused by large cruise ships on Navy Pier 11A in San Diego. It involves placing groups of 5 piles in 4 different locations along the pier face. The pile groupings will be spaced 125 feet apart and the individual piles will be installed a minimum of 12 inches apart.	San Diego Bay (Lindbergh HSA 908.21)	(P): less than significant	No mitigation is required for this project because permanent impacts are less than significant.	09C-044 Low Impact Certification & Enrollment in SWRCB GWDR Order No. 2003-017 DWQ
9/14/09	22 nd District Agricultural Association	Stevens Creek Channel Maintenance	Activities will include maintenance of 1,150 linear feet of stream, which will be triggered by visual observation of the channel, and conducted on an as needed basis throughout the 5-year duration of the certification.	Stevens Creek (Rancho Santa Fe 905.11)	Recurring Temporary: Wetland – 0.002 acre (10 linear feet) Streambed – 0.32 acre (1140 linear feet)	Recurring temporary impacts will be mitigated at a 0.34:1 ratio by the eradication of non-native vegetation and revegetation of 0.43 acre of the northern bank of reach 3 of the creek.	08C-022 Technically-Conditioned Programmatic Certification & Enrollment in SWRCB GWDR Order No. 2003-017 DWQ

**CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION ACTIONS
FOR THE PERIOD OF SEPTEMBER 1, 2009 THROUGH OCTOBER 31, 2009**

DATE	APPLICANT	PROJECT TITLE	PROJECT DESCRIPTION	WATERBODY	IMPACT (Acres) ¹	MITIGATION (Acres) ¹	CERTIFICATION ACTION ²
9/14/09	KB Home Coastal, Inc.	Seraphina Road Residential Development	Amendment to the Certification to reflect proposed changes to the project's mitigation plan.	Unnamed ephemeral tributaries to Santa Gertrudis Creek (Gertrudis HSA 902.42)	No change in impacts.	Mitigation has been achieved through the completed creation of 0.17 acre of waters of the U.S. off-site at the Breighton Woods mitigation site. This off-site mitigation area also included approximately 0.52 acre of riparian buffer.	03C-027 Amendment to a Technically-Conditioned Certification
9/14/09	KB Home Coastal, Inc.	Briggs Road Project, Tentative Tract 30433	Amendment to the Certification to reflect proposed changes to the project's mitigation plan.	Warm Springs Creek (French HSA 902.33)	No change in impacts.	Mitigation for 0.15 acre of waters of the U.S. will be achieved at a 3:1 ratio by the completed creation of 0.45 acre of water of the U.S. at the Breighton Woods mitigation site.	05C-093 Amendment to a Technically-Conditioned Certification
9/14/09	Marine Corps Base Camp Pendleton	Lake O'Neill Dredging Project	Maintenance dredging of up to 400,000 cubic yards from 67 acres of non-wetland portions of Lake O'Neill.	Lake O'Neill (Upper Ysidora HSA 902.13)	400,000 cubic yards	This project is considered self-mitigating	09C-051 Enrollment in SDRWQCB GWDR Order No. 96-32
9/15/09	City of San Diego	East Tecolote Canyon Pipe Encasement Protection	Amendment to replace a map of the establishment mitigation area with a modified map.	Tecolote Creek (Tecolote HA 906.50)	No change in impacts.	No change in mitigation requirements.	08C-076 Amendment to a Technically-Conditioned Certification

**CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION ACTIONS
FOR THE PERIOD OF SEPTEMBER 1, 2009 THROUGH OCTOBER 31, 2009**

DATE	APPLICANT	PROJECT TITLE	PROJECT DESCRIPTION	WATERBODY	IMPACT (Acres) ¹	MITIGATION (Acres) ²	CERTIFICATION ACTION ²
9/17/09	City of Carlsbad	Encinas Creek Bridge Replacement Project	Removal of the existing culvert-style concrete bridge and install a precast concrete bridge structure. The proposed new structure will have a width of 43 feet 2 inches from edge of deck to edge of deck, thereby reducing the overall width of the bridge by 26 feet 2 inches. The project is to install a mooring dolphin to enhance mooring capacity at the end of Pier 3 on the BAE Systems ship repair facility in San Diego Bay, San Diego. Construction of the dolphin includes installation of 8 hexagonal bearing piles, 16 H-piles, timber whalers, rubber fender spacers, and a 16' x 20' concrete deck.	Encinas Creek (Encinas HA 904.4)	(T): Wetland – 0.004 acre, Streambed – 0.064 acre	Revegetation of temporary impacts to 0.004 acre of Coastal and Valley Freshwater Marsh shall occur in-place at a 1:1 replacement ratio.	09C-048 Technically-Conditioned Certification & Enrollment in SWRCB GWDR Order No. 2003-017 DWQ
9/21/09	BAE Systems San Diego Ship Repair, Inc.	BAE Systems Pier 3 Dolphin		San Diego Bay (Chollas HAS 908.22)	(P): less than significant	No mitigation is required for this project because permanent impacts are less than significant.	08C-098 Low Impact Certification & Enrollment in SWRCB GWDR Order No. 2003-017 DWQ
9/21/09	San Diego Gas & Electric	5393 – SDG&E Access Road Repairs TM 3010	Amendment to the certification to include changes to project impacts and mitigation requirements.	Pacific Ocean (Rancho Santa Fe HSA – 905.11)	(P): 0.0163 acre (60 linear feet) of streambed	Compensatory mitigation has been accomplished by the purchase of 0.1 acre of restored riparian habitat credit from the North County Habitat Bank on May 27, 2008. 0.082 acre of credit is being applied for mitigation for this project's impacts and the remainder for future projects as needed	06C-026 Amendment to a Technically-Conditioned Certification

**CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION ACTIONS
FOR THE PERIOD OF SEPTEMBER 1, 2009 THROUGH OCTOBER 31, 2009**

DATE	APPLICANT	PROJECT TITLE	PROJECT DESCRIPTION	WATERBODY	IMPACT (Acres) ¹	MITIGATION (Acres) ¹	CERTIFICATION ACTION ²
10/1/09	San Diego Yacht Club	San Diego Yacht Club Repair	The project includes encasing the existing steel sheet piling with concrete and also encasing 8 existing steel H-piles (full height) supporting the Clubhouse deck.	San Diego Bay (Point Loma HA 908.10)	(P): 0.006 acre (294 linear feet) to Ocean	Construction of 176 square feet of fish habitat structures for the sheet pile wall repair and up to an additional 24 square feet of fish habitat structures for the H-pile repairs.	09C-045 Technically-Conditioned Certification & Enrollment in SWRCB GWDR Order No. 2003-017 DWQ
10/5/09	Caltrans, District 11	State Route 905 (SR-905) Extension Project	Amendment to the Certification to allow permanent impacts to an additional 0.011 acre of vernal pool habitat and 0.19 acre of its contributing watershed due to the construction of a temporary haul road.	Spring Canyon, unnamed tributaries to Tijuana River (Water Tanks HSA 911.12)	(P): an additional 0.011 acre of vernal pool habitat and 0.19 acre of its contributing watershed.	Mitigation for impacts to vernal pool habitat will be achieved at a 3:1 ratio at the Dennerly Canyon restoration site. Mitigation for impacts to vernal pool watershed will be achieved at a 10:1 ratio at the Dennerly Canyon mitigation site.	04C-132 Amendment to a Technically-Conditioned Certification
10/6/09	KB Home Coastal, Inc.	Seraphina Road Residential Development	Amendment to the Certification to require responsible party updates.	Unnamed ephemeral tributaries to Santa Gertrudis Creek (Gertrudis HSA 902.42)	No change in impacts.	No change in mitigation requirements.	03C-027 Amendment to a Technically-Conditioned Certification
10/13/09	County of San Diego	Black Canyon Road Bridge Replacement	Amendment to the Certification to extend the mitigation installation deadline and to incorporate a new Conceptual Mitigation Plan.	Santa Ysabel Creek (Santa Ysabel HA 905.5)	No change in impacts.	No change in mitigation requirements.	06C-089 Amendment to a Technically-Conditioned Certification

**CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION ACTIONS
FOR THE PERIOD OF SEPTEMBER 1, 2009 THROUGH OCTOBER 31, 2009**

DATE	APPLICANT	PROJECT TITLE	PROJECT DESCRIPTION	WATERBODY	IMPACT (Acres) ¹	MITIGATION (Acres) ¹	CERTIFICATION ACTION ²
10/15/09	County of Orange	Water Quality Treatment Protection (JO1P28)	The project will replace an existing rip rap dissipation pad for the water treatment facility and utilize an excavator to retrieve rip rap that has washed out downstream during storm events. Additional rock will be placed at the pad location to prevent future wash-outs from storm events.	Aliso Creek (Aliso HSA 901.13)	(P): 0.037 acre (40 linear feet) to streambed	Removal of washed out rip rap and 4 stands of <i>Arundo donax</i> within the project footprint.	09C-026 Technically-Conditioned Certification & Enrollment in SWRCB GWDR Order No. 2003-017 DWQ
10/15/09	City of San Diego	Wightman Street Neighborhood Park	The proposed project is to construct a 1 acre neighborhood park at 5024 Wightman Street, San Diego.	Auburn Creek (Chollas HAS 908.22)	Not applicable.	Not applicable.	08C-035 Withdrawn
10/19/09	D.G.J.M. Seif Storage, LLC	D.G.J.M. Seif Storage Project	The proposed project is the construction of a two story enclosed storage building and a caretaker's dwelling and a basement.	Unnamed ephemeral drainage, Tributary to Alpine Creek (El Capitan HSA 907.33)	Not applicable.	Not applicable.	07C-071 Withdrawn
10/19/09	County of Orange	Aliso Creek Outlet Maintenance Program	Amendment to the Certification in response to continued violations of the Certification.	Aliso Creek (Aliso HSA 901.13)	No change in impacts.	No change in mitigation requirements.	05C-009 Amendment to a Technically-Conditioned Certification

**CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION ACTIONS
FOR THE PERIOD OF SEPTEMBER 1, 2009 THROUGH OCTOBER 31, 2009**

DATE	APPLICANT	PROJECT TITLE	PROJECT DESCRIPTION	WATERBODY	IMPACT (Acres) ¹	MITIGATION (Acres) ¹	CERTIFICATION ACTION ²
10/19/09	City of San Diego	Tijuana River Valley Emergency Channel	The project proposes one time, emergency actions that include dredging 5,400 linear feet of the Tijuana River pilot Channel and 1,600 linear feet of Smuggler's Gulch, performing maintenance on a gabion rock mattress, access routes, and an erodible berm that runs along the north bank of the Pilot Channel, and also performing manual vegetation removal along the Northern Channel.	Tijuana River (San Ysidro HSA 911.11)	(T): 3.37 acres (6,000 linear feet) of wetlands, 1.47 acres (1,500 linear feet) of streambed	Mitigation must be achieved at a 1:1 ratio with the eradication of exotic invasive species within the project footprint.	09C-077 Technically-Conditioned Certification & Enrollment in SWRCB GWDR Order No. 2003-017 DWQ
10/21/09	City of San Diego	Watson Creek Culvert Replacement	The project is the replacement of an existing Arizona crossing on the upper reaches of Watson Creek with a concrete box culvert.	McGonigle Canyon	(T): 0.006 acre of wetlands	Mitigation must be achieved by the establishment of 0.002 acre of waters of the U.S. and restoration of 0.001 acre of waters of the U.S.	09C-025 Certified by Default
10/21/09	City of Encinitas	Keystone Properties Lone Jack Road	The project is drainage improvements consisting of an underground bypass drainage system parallel to the existing channel to diverge from the channel at the far northwest end of the site and reconnect with the existing drainage channel at the far southeast end of the site.	Escondido Creek (San Elijo HSA 904.61)	(P): 0.06 acre of wetlands, (T): 0.075 acre of wetlands, 0.04 acre of streambed	Mitigation must be achieved at a 1:1 ratio by the establishment of 0.06 acre of wetlands and the restoration of 0.075 acre of wetlands and 0.04 acre of streambed.	09C-036 Certified by Default

**CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION ACTIONS
FOR THE PERIOD OF SEPTEMBER 1, 2009 THROUGH OCTOBER 31, 2009**

DATE	APPLICANT	PROJECT TITLE	PROJECT DESCRIPTION	WATERBODY	IMPACT (Acres) ¹	MITIGATION (Acres) ¹	CERTIFICATION ACTION ²
10/28/09	County of San Diego	Summit Drive Drainage Improvements	Replacement and improvement of the drainage facilities at the intersection of Summit Drive and Summit Place to accommodate 100-year storm flows.	Bear Creek (Bear HSA 905.24)	(P): 0.012 acre of streambed	Mitigation must be achieved at a 2:1 ratio, by the establishment of 0.024 acre via the widening of Bear Creek.	09C-022 Technically-Conditioned Certification & Enrollment in SWRCB GWDR Order No. 2003-017 DWQ

1. Wetland refers to vegetated waters of the U.S. and streambed refers to unvegetated waters of the U.S. (P) = permanent impacts. (T) = temporary impacts.
2. Low impact certification is issued to projects that have minimal potential to adversely impact water quality. Conditional certification is issued to projects that have the potential to adversely impact water quality, but by complying with technical conditions, will have minimal impacts. Denials are issued when the project will adversely impact water quality and suitable mitigation measures are not proposed or possible. Time expired refers to projects that may proceed due to the lack of an action by the Regional Board within specified regulatory timelines. Withdrawn refers to projects that the applicant or Regional Board have withdrawn due to procedural problems that have not been corrected within one year.

Number of Projects Received Between September 1, 2009 and September 30, 2009: 10
 Number of Amendment Requests Received Between September 1, 2009 and September 31, 2009: 1
 Number of Projects Received Between October 1, 2009 and October 31, 2009: 10
 Number of Amendment Requests Received Between October 1, 2009 and October 31, 2009: 0
 Number of Projects Received Between January 1, 2009 and October 31, 2009: 86
 Number of Certifications Issued Between January 1, 2009 and October 31, 2009: 44
 Number of Projects Withdrawn Between January 1, 2009 and October 31, 2009: 14
 Number of Projects Certified by Default Between January 1, 2009 and October 31, 2009: 10
 Number of Projects Denied Between January 1, 2009 and October 31, 2009: 3

Home / News / Local News / Fallbrook

REGION: Farmers brace for water-monitoring requirement

Growers join group to cut costs

- Story
- Discussion

MORGAN COOK - mcook@nctimes.com | Posted: Sunday, October 4, 2009 4:05 pm |
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Escondido farmer Mike Hillebrecht looks over his avocado grove last December. He and other area farmers soon will be required to pay for efforts to monitor pesticides and other pollutants in lakes and streams. (File photo by Bill Wechter - Staff Photographer)

Farmers with more than \$1,000 in gross crop sales eventually will be required to finance all or part of the costs to monitor agricultural pollutants in nearby surface water, according to a recent letter from regional water monitors.

As early as Jan. 1, 2011, agricultural and nursery growers must declare their intention to participate in the Agricultural Waiver Program, or Conditional Waiver No. 4, a water monitoring requirement adopted by The California Regional Water Quality Control Board, San Diego region, in 2007.

Under the program, growers must pay to sample and test water quality in nearby lakes and streams, either independently or as part of a group. The testing will determine how well farmers

are doing at keeping pesticides and other pollutants out of water systems.

Farmers who do not comply with the requirement will be fined or otherwise sanctioned.

About 100 impaired water bodies are in the San Diego region, which includes parts of Orange and Riverside counties, said water quality board environmental scientist Pete Peuron. Of those, "a significant number" are impaired with what are potentially agricultural pollutants, he said.

"Nitrates, phosphate, bacteria ---- we don't know what for sure," Peuron said. "That's why the emphasis is on monitoring."

Independently monitoring water could cost a grower about \$15,000 a year, according to a water board letter to interested parties dated May 13. Farmers can cut that cost significantly by joining a group. The San Diego Irrigated Lands Group, organized and operated by the San Diego Farm Bureau, is the only group the water board was aware of on Tuesday, Peuron said.

Enrollment in the bureau's group is a one-time cost of \$200 per acre, but it's capped at \$1,000, said San Diego Farm Bureau Executive Director Eric Larson. To enroll in the group, farmers must also become a member of the bureau, which costs an additional \$190 each year.

The cost of joining the group isn't impossibly high by itself, but it comes when many small citrus and avocado farmers are already staggering under rising water costs and sinking commodity prices. "The conversations I've had with people is that it's not just this, it's this on top of everything else," Larson said.

"It's not going to break us, but it's another little thing you have to pay and another little thing you have to deal with," said Escondido avocado and citrus farmer Mike Hillebrecht.

Hillebrecht, who farms about 90 acres with his father, said he is a member of the farm bureau and has joined its monitoring group.

He said joining the group makes economic sense, but being part of the bureau has other advantages. For example, he learned about the program almost a year before he got the water quality control board's first letter about the waiver in May.

"It takes you time and a little bit of your money each year, but you get a lot of good information back to help you make decisions," Hillebrecht said.

Peuron said the water board had considered exempting small farmers from the program, but they make up too much of San Diego County's farming population. The county has more small farmers than any other county in the country.

"What comes back to get us is that we have so many small farms," he said. "You'd take out a huge amount of acreage and ultimately defeat the purpose of the waiver."

Peuron said several small farmers have called him to say they just can't afford to participate. Some have told him they're going to have to quit farming altogether.

"I think one of the elements to consider ---- and this is what I tell growers when they call me, if they say something to the effect of 'I'm thinking of shutting down my operation; this really isn't worth it to me,'---- I point out the fact that this isn't until 2012 and there's nothing wrong with holding out until the last minute," Peuron said. "Things might be different then."

Call staff writer Morgan Cook at 760-740-3516.

Posted in Fallbrook on *Sunday, October 4, 2009 4:05 pm* Updated: 5:04 pm. | Tags: Top, Fallbrook, Inland, Nct, News,

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EDITORIAL: Regulation costs hobble 'hobby' farms

OUR VIEW: Expense of rules hits small businesses hardest

- Story
- Discussion

the North County Times Opinion staff -- opinion@nctimes.com | Posted: Wednesday, October 7, 2009 12:00 am | (3) Comments

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With the best of intentions, the California Regional Water Quality Control Board, San Diego region, is ready to deliver another blow to the "hobby" farm sector of local agriculture with its groundwater monitoring program, which goes into effect in 2011.

The regional program, adopted in 2007, includes parts of Riverside and Orange counties. It requires growers with more than \$1,000 in gross crop sales to participate or face fines and sanctions. Participation, by the way, means either pay to be part of a group, such as the Farm Bureau offers, or go it alone for big bucks.

It's not that we don't agree that groundwater is worth keeping as clean as possible (and free from runoff chemicals such as fertilizer and pesticides); we do. Rather, we are struck by this as another of a thousand regulatory cuts imposed by our government and wonder whether anyone thought about the consequences of one cut or a thousand.

Indeed, a recently released study by two Cal State Sacramento business professors estimates that the cost of regulation in the state is nearly \$500 billion a year.

The authors also conclude that regulations cost us 3.8 million in lost jobs. And most of the burden, they conclude, falls on small businesses.

"The results also suggest that future research should attempt to understand how to minimize the intended and unintended costs of regulation," professors Sanjay Varshney and Dennis Tootelian write.

In the instance of the groundwater monitoring project, it is not only the fees that will make it no longer attractive to operate a small grove; so will the record-keeping.

In the end, we suspect, there will be another set of folks who abandon their small, economically marginal operations and close up business.

And that will take away a little bit of the variety of our community ---- the unintended consequences of the regulation.

Posted in Editorial on *Wednesday, October 7, 2009 12:00 am* | Tags: Editorials, Nct, Opinion

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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WQ 2009-0013

In the Matter of the Petition of

DEPARTMENT OF THE NAVY

For Review of Waste Discharge Requirements (WDR) Order R9-2009-0081
[NPDES No. CA0109085] for the United States Department of the Navy, Naval Base Coronado
Issued by the
California Regional Water Quality Control Board,
San Diego Region

**SWRCB/OCC FILE A-2032
ORDER ON STAY REQUEST**

BY BOARD MEMBERS BAGGETT AND HOPPIN:

This matter is before State Water Resources Control Board (State Water Board) members Arthur G. Baggett, Jr. and Charles R. Hoppin, pursuant to the authority delegated in State Water Board Resolution No. 2002-0103. After careful review of the testimony and evidence presented at the stay hearing on October 13, 2009, the petitioner's request for a stay of Waste Discharge Requirements Order No. R9-2009-0081 [NPDES No. CA0109085] will be denied in part and granted in part for the reasons set forth herein.

I. PROCEDURAL HISTORY

On June 10, 2009, the San Diego Regional Water Quality Control Board (San Diego Water Board) issued Waste Discharge Requirements Order No. R9-2009-0081 (permit) to the U.S. Department of the Navy (Navy). The permit regulates the Navy's wastewater discharges from multiple discharge points at Naval Base Coronado to the Pacific Ocean, San Diego Bay, and the Tijuana River. The Navy filed a timely petition for review of the permit on July 9, 2009. In the petition, the Navy also requested a stay of the permit's effluent limitations for acute toxicity, steam condensate, and tetrachlorodibenzodioxin (TCDD) equivalents. On August 4, 2009, the State Water Resources Control Board (State Water Board) requested clarification of the substantial harm that is likely to occur to the Navy while the petition is reviewed on the merits. The Navy responded on August 18, 2009, and also rescinded its request for a stay of the TCDD equivalents.

On September 14, 2009, the State Water Board issued a "Notice of Public Hearing on Stay Request" to the designated parties—the Navy and the San Diego Water Board—as well as other interested persons. The notice indicated that a stay hearing would occur on October 13, 2009, and it would be limited to the Navy's request for a stay of the acute toxicity effluent limitation and associated monitoring requirements. The State Water Board did not receive requests from any other persons to be designated as parties. Accordingly, on October 13, 2009, the State Water Board held a public hearing to consider the Navy's request for a stay of the acute toxicity effluent limitation and associated monitoring requirements. State Water Board members Arthur G. Baggett, Jr. and Charles R. Hoppin presided as hearing officers. At the hearing, the Navy and the San Diego Water Board presented testimony and evidence as to why a stay should or should not be granted. Laura Hunter also appeared as an interested person on behalf of the Environmental Health Coalition to oppose the granting of a stay.

II. BACKGROUND

~~U.S. Naval Base Coronado is located in San Diego, California, and comprises~~
the following installations: Naval Air Station, North Island; Naval Amphibious Base, Coronado; Naval Outlying Landing Field, Imperial Beach; Naval Radio Receiving Facility; Naval Auxiliary Landing Field, San Clemente Island; Survival, Evasion, Resistance, and Escape Training School; La Posta Mountain Warfare Training Center; and Camp Morena. Of these eight installations, only four are regulated by the permit: the air station, amphibious base, radio receiving facility, and outlying landing field. The permit regulates 228 outfalls from these four installations, which discharge wastewater into the Pacific Ocean, San Diego Bay, and the Tijuana River. The point source discharges include steam condensate, diesel engine cooling water, utility vault and manhole dewatering, pier cleaning, reverse osmosis water purification unit product water, boat rinsing, swimmer rinsing, marine mammal enclosure cleaning, and industrial storm water.

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The permit sets forth a number of technology and water quality-based effluent limitations.¹ The effluent limitation for acute toxicity prohibits the Navy from discharging the first ¼ inch (first flush) of industrial storm water runoff from high risk areas,² except if testing demonstrates that the pollutants in the discharge achieve a rating of "pass" for any one test result. The "pass" or "fail" test is based on concurrent testing of an effluent sample, comprised of 100% effluent, and a laboratory control sample, which contains 0% effluent. If the organism survival rate in the effluent sample is not significantly different from the survival rate in the control sample, then the result is a "pass" and the discharge would be in compliance with the acute toxicity effluent limitation. In order to comply with this effluent limitation, the Navy must test its outfalls that discharge industrial storm water. If a "fail" is reported, the Navy must conduct an accelerated toxicity testing process. This process requires the Navy to conduct the same toxicity tests during the next four storm events. If an outfall fails to meet the acute toxicity effluent limitation, then a Toxicity Reduction Evaluation (TRE) will be required. In addition, Toxicity Identification Evaluations (TIE) are required at one third of the outfalls that fail to meet the acute toxicity effluent limitation.

During the 2008/2009 wet season, the Navy reported that industrial storm water samples collected from 39 of 99 outfalls at Naval Base Coronado would fail to meet the new permit's acute toxicity effluent limitation. Based on these results, the Navy expects that during the 2009/2010 wet season, at least 50% of the samples collected from the outfalls will also receive a "fail" rating. Assuming this 50% failure rate and that accelerated monitoring will be required for the next four storm events, along with the required TREs and TIEs, the Navy estimates that it will cost \$630,978 to implement this monitoring program.

Accordingly, the Navy requested a stay of, among other permit requirements, the acute toxicity effluent limitation. The State Water Board recognizes the extraordinary nature of a stay remedy and places a heavy burden on the petitioner seeking a stay. (Order WQ 86-01 (*City of Colton*)). A stay may be granted only if the Navy alleges facts and produces proof of *all* of the following: (1) substantial harm to the Navy or to the public interest if a stay is not granted; (2) a lack of substantial harm to other interested persons and to the public interest if a stay is granted; and (3) substantial questions of law or fact regarding the disputed action. (Cal Code Regs., tit. 23, § 2053.) It is incumbent upon the Navy to meet all three prongs of the test before

¹ Because the stay hearing was limited to discussion of the acute toxicity effluent limitation and associated monitoring requirements, this Order will also limit its discussion accordingly.

² High risk areas are defined as "areas where wastes or pollutants of significant quantities . . . are subject to precipitation, run-on, and/or runoff." (Order No. R9-2008-0081, Attachment A, Page 3.)

a stay may be granted. (Order WQ 2002-0007 (*County of Los Angeles*)).) In addition, the issue of whether a stay is appropriate is *not* whether the Navy might prevail on any of the merits of its claims, or whether the Navy will suffer harm over the term of the permit. Rather, the issue must be judged in the temporal sense—the Navy must prove that it will suffer substantial harm if a stay is not granted for the period of time pending resolution of the petition on the merits, which is currently May 17, 2010. (*Id.*) This Order will therefore discuss this three-prong test as it relates to the permit's acute toxicity effluent limitation and associated monitoring requirements; this Order will not decide issues that will later be addressed in reviewing the petition on the merits.

III. CONTENTIONS AND FINDINGS

A. Contention: The Navy contends that it will suffer substantial harm if a stay is not granted.

Finding: Brian Gordon, Water Program Manager of Naval Facilities Engineering Command Southwest, testified that the Navy will suffer substantial harm for two principal reasons. ~~First, because the Navy assumes that 50% of its outfalls will violate the acute toxicity effluent limitation, the Navy will immediately be subject to administrative enforcement by the San Diego Water Board and citizen lawsuits filed under the Clean Water Act.~~ As proof this harm is not speculative, Mr. Gordon testified that the San Diego Water Board already initiated an enforcement action against Naval Base San Diego for alleged violations of its NPDES permit. The San Diego Water Board testified that not only is the threat of enforcement against Naval Base Coronado speculative, but also pursuant to State Water Board Order WQ 2006-0007 (*Boeing*), it is not a basis to justify a stay. Indeed, *Boeing* explained, "the possibility, or even probability, of enforcement actions does not justify a stay because it is very unlikely that these actions would be concluded during the time a stay would remain in place." (WQ Order 2006-0007, p.10.) Moreover, "[i]t is Congress' decision that citizens can enforce NPDES permits and it is not appropriate for the state to prevent the exercise of that right. The California Legislature has also deemed that enforcement of NPDES permits by Regional Water Boards is a high priority, even making penalties mandatory in some instances." (*Id.*) The *Boeing* Order is controlling in this matter, and therefore the Navy's argument concerning the threat of civil and administrative enforcement is unavailing for purposes of a stay. As a result, the Navy cannot satisfy the first prong of substantial harm regarding a stay of the acute toxicity effluent limitation. We still must consider, however, the Navy's request for a stay of the associated monitoring requirements.

Mr. Gordon also testified that the Navy will suffer substantial harm if the accelerated monitoring and TRE/TIE requirements are not stayed because it will have to reallocate its budget in a manner that was not anticipated. In order to implement these requirements, the Navy will have to divert an estimated \$630,978 that was intended to fund its best management practices (BMP) program, which includes everything from eliminating non-storm water discharges to implementing a copper and zinc minimization plan. Mr. Gordon explained that the Navy receives a fixed amount of funding from Congress each year to implement its various permits and programs. Because the Navy did not budget for these additional monitoring requirements, and because it is very unlikely that the Navy will receive any additional funding during this fiscal year, the money originally allocated for the BMP program will instead be used to meet the accelerated monitoring and TRE/TIE requirements in the permit.³

Both the San Diego Water Board and Laura Hunter of the Environmental Health Coalition claimed that the Navy was well aware that its reissued permit for Naval Base Coronado would include additional toxicity monitoring requirements, and that Navy should be responsible for its failure to plan ahead. Although the Navy should have had the foresight to allocate its budget towards implementation of these requirements, we believe that the Navy will experience harm sufficient to warrant a stay. The permit was issued after the Navy's 2009-2010 budget was finalized, and the Navy's planned allocations for permit compliance and BMPs should not be compromised by expanded accelerated monitoring requirements established after the federal government set a budget for this facility.

In general, the State Water Board will not issue a stay where the only justification is the cost of compliance with a waste discharge requirement. (See, e.g., Order WQ 2002-0007 (*County of Los Angeles*)). Here, however, cost of compliance is not the only harm; actual programs that benefit the environment will suffer, and thus a stay of the accelerated monitoring and TRE/TIE requirements is appropriate. Further, the amount to be expended on enhanced and accelerated TRE/TIE requirements is substantial during the short period of time the State Water Board will be reviewing the petition and will likely reduce pollutant reduction efforts by nearly \$630,978. In light of the unique circumstances of the monitoring amount at issue in such a short period of time and its substantial impact on pollutant reduction programs at Naval Base Coronado, we find that the Navy has satisfied the first prong of the stay regulations.

³ It is our understanding that the Navy is limited in its ability redirect funding from, for example, its budget for national defense, in order to support the BMP environmental programs.

B. Contention: The Navy contends that interested persons and the public will not suffer substantial harm if a stay is granted.

Finding: The Navy testified that the Naval Base Coronado's discharges of industrial storm water do not cause toxicity in the receiving waters and therefore will not cause substantial harm to interested persons or the public. Charles Katz, author of a four-year, \$1 million, peer-reviewed toxicity study entitled "Storm Water Toxicity Evaluation Conducted at Naval Station San Diego, Naval Submarine Base San Diego, Naval Amphibious Base Coronado, and Naval Air Station North Island" (Toxicity Study) testified at the hearing. He cited his Toxicity Study, which concluded that over 99% of the 202 receiving water samples collected did not show any toxicity in San Diego Bay, and that any toxicity measured at the end-of-pipe is not predictive of toxic effects in the receiving waters. David Barker from the San Diego Water Board testified that toxicity is a significant concern. He stated that there is reasonable potential for acute toxicity to cause an excursion of the narrative water quality standard, and thus an effluent limitation is necessary to control whole effluent toxicity in the Navy's discharges. He also maintained that an acute toxicity effluent limitation will ensure the protection of beneficial uses in the receiving waters.

If the Navy's request to stay the accelerated monitoring and TRE/TIE requirements is granted, the potential harm to interested persons and the public is negligible. First, the acute toxicity effluent limitation will remain in place. Second, Brian Gordon testified that, even if a stay is granted, the Navy is still required to conduct baseline sampling during two storm events this rainy season, which requires an analysis of a wide range of pollutants, including acute toxicity. The San Diego Water Board asserts that collecting two storm event samples per outfall during the year will provide sufficient probability of detecting toxicity. Mr. Gordon also testified that the Navy will still be conducting receiving water monitoring, and it must develop and implement a copper and zinc minimization plan and monitor for copper and zinc, the primary pollutants known to cause toxicity in the discharges of industrial storm water. This sampling and monitoring program will help protect the beneficial uses of the receiving waters. And finally, because a stay only remains in effect while the State Water Board reviews the merits of the Navy's petition, the public will not suffer during this short time period.

C. Contention: The Navy contends that there are substantial questions of law or fact.

Finding: Although the Navy did not proffer concrete evidence to support this specific claim, it is clear from the testimony presented that there are substantial legal and factual questions concerning whether acute toxicity is a problem in San Diego Bay; the Navy

cites its Toxicity Study, which concluded that there is no acute toxicity problem in the receiving water, and the San Diego Water Board counters that reasonable potential exists for acute toxicity. In addition, substantial legal questions remain regarding whether the San Diego Water properly imposed the WET test methods and monitoring requirements for acute toxicity. These issues require substantive review on their merits and cannot be resolved in this Order. Accordingly, the third and final prong of this test is satisfied.

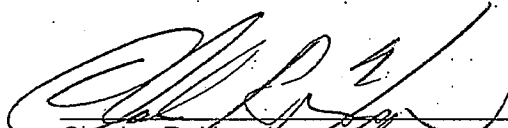
IV. SUMMARY AND CONCLUSION

With respect to the effluent limitation for acute toxicity, the Navy has not met its burden because the threat of civil and administrative enforcement does not justify a stay under the State Water Board's precedent. However, with respect to the accelerated monitoring requirements and TRE/TIE requirements, the Navy has met its burden of proving each of the three prongs necessary for granting a stay. The request for a stay is therefore denied in part and granted in part.

V. ORDER

IT IS HEREBY ORDERED that the request for a stay of Waste Discharge Requirements Order No. R9-2009-0081 Sections III.I, IV.A.5, and VII.H is DENIED, and the request for a stay of Section VI.C.2 and Attachment E Section V.A.5 is GRANTED.

Dated: 10/19/09



Charles R. Hoppin
Chairman

Dated: 10/19/09



Arthur G. Baggett, Jr.
Board Member



California Regional Water Quality Control Board

Attachment B-10

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Linda S. Adams
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Environmental Protection

November 9, 2009

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Daniel P. Thompson
Vice President
Dynegy South Bay, LLC
990 Bay Boulevard
Chula Vista, CA 91911

In reply refer to:
257829: DBarker
WDID: 9 000000091

Dear Mr. Thompson:

Subject: NPDES PERMIT MINOR MODIFICATIONS - WASTE DISCHARGE REQUIREMENTS FOR ORDER NO. R9-2004-0154, NPDES NO. CA0001368, DYNEGY SOUTH BAY, LLC, SOUTH BAY POWER PLANT DISCHARGE TO SAN DIEGO BAY

The San Diego Regional Water Quality Control Board (Regional Water Board) received Dynegy's letters dated October 16, 2009 and October 19, 2009 regarding the schedule for anticipated shutdown and closure of the South Bay Power Plant. The Regional Water Board understands that these letters were submitted to update Dynegy's previously submitted April 10, 2009 Report of Waste Discharge in application for the reissuance of the current National Pollutant Discharge Elimination System (NPDES) Order No. R9-2004-0154 for South Bay Power Plant.

Dynegy is requesting to continue operation of electrical generating Units 1 and 2 under the current NPDES permit at a reduced maximum flow-rate of 225 million gallons per day (MGD) until December 31, 2010 based on the following considerations:

1. California Independent System Operator (CAISO) has terminated the the Reliability-Must-Run ("RMR") contract for South Bay Power Plant electrical generating Units 3 and 4 such that operation of these units, and use of the associated discharge outfalls, will not be required after December 31, 2009; and
2. CAISO extended the RMR contract for Units 1 and 2 for the 2010 contract year until December 31, 2010. The conditions that would allow for termination of RMR service for Units 1 and 2, including the addition of new generation and reactive power in the San Diego area, are expected to be achieved in 2010. Consequently, operation of these units, and the use of the associated discharge outfalls, at this time are not expected to be required after December 31, 2010.

California Environmental Protection Agency



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As a separate matter the Regional Water Board also understands that Dynegy is working closely on evaluating the potential environmental impacts associated with the shutdown, demolition and remediation of the South Bay Power Plant with the Unified Port of San Diego (Port), which is the lead agency for purposes of compliance with the California Environmental Quality Act (CEQA). Other responsible agencies that may be commenting during this CEQA process include California Department of Fish and Game, National Marine Fisheries Service, the Army Corps of Engineers, U.S. Fish and Wildlife Service and the Regional Water Board. The CEQA process will be initiated with submittal of the Tenant Project Application and Environmental Document on or about December 1, 2009, and it is anticipated that a draft Environmental Impact Report will be prepared for the Project for review by the Port and all responsible commenting agencies. The Regional Water Board anticipates that consideration of any potential environmental effects associated with shutdown of the South Bay Power Plant discharge will be addressed in the CEQA process.

Based on the foregoing, the proper course for the Regional Water Board at this time is to make modifications to the current NPDES permit, Order No. R9-2004-0154, to incorporate the schedule for both interim flow reduction and eventual plant shutdown as enforceable conditions of the permit. Under this approach Dynegy's current NPDES permit (Order No. R9-2004-0154), including the attached minor modifications, will remain fully effective and enforceable under an administrative extension until December 31, 2010 absent further action by the Regional Water Board.¹

The attached permit modifications reflect a previous change in operational control of the South Bay Power Plant on April 2, 2007, the interim flow reduction resulting from the shutdown of Units 3 and 4, and the eventual shutdown of Units 1 and 2 based on the schedule described in Dynegy's October 16, 2009 letter. The Regional Water Board understands that Dynegy has consented to all of these modifications.

The attached modifications are considered "minor modifications" under the applicable federal regulations for NPDES permits contained in Title 40, Section 122.63. Included in the list of allowable minor modifications are:

¹ Applicable state regulations in 23 California Code of Regulations (CCR) Section 2235.4 provide that the terms and conditions of an expired NPDES permit are administratively continued pending issuance of a new permit if all requirements of the federal NPDES regulations on continuation of expired permits are complied with. The applicable federal regulations governing the continuation of expired NPDES permits are contained in 40 CFR 122.6. The key essential requirement is that Dynegy needs to have filed a timely NPDES application which is "complete" in advance of the permit expiration date in order to satisfy the requirements for continuance of the permit past November 10, 2009. Dynegy has satisfied the requirements by submitting a complete Report of Waste Discharge dated April 10, 2009, as updated by Dynegy's October 16, 2009 and October 19, 2009 letters to the Regional Water Board, in application for the reissuance of the NPDES Permit for South Bay Power Plant. The Regional Water Board notified Dynegy on July 20, 2009 that Order No. R9-2004-0154 will be administratively extended upon its expiration on November 10, 2009.

1. Allowing for a change in ownership or operational control of a facility where it is determined that no other change in the permit is necessary²; and
2. Deleting a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.³

Minor modifications such as those described above may be made without a draft permit or public review.⁴ Accordingly, the attached minor modifications to Order No. R9 2004-0154 for South Bay Power Plant are immediately effective. A redline version of the entire Order No. R9 2004-0154 showing the minor modifications is also attached. The redline version showing the changes to the permit on the affected pages and a final clean copy will be available on-line and available for viewing at the Regional Water Board office.

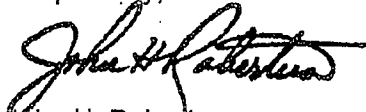
The Regional Water Board is providing a 30-day comment period for public review of these minor modifications due to the heightened public interest in this matter. A public hearing will be conducted at the Regional Water Board's regularly scheduled meeting on December 16, 2009 for the Board to consider ratification of the minor modifications of Order No. R9-2004-0154. The Board meeting begins at 9:00 am and will be held at the following location:

San Diego Regional Water Quality Control Board
Regional Water Board Meeting Room
9174 Sky Park Court
San Diego, California 92123

The public comment period will remain open until 5:00 p.m. on Tuesday, December 8, 2009. Written comments received after 5:00 p.m. on Tuesday, December 8, 2009 will not be provided to the Regional Water Board members prior to the hearing.

In the subject line of any response, please include the requested "In reply refer to:" information located in the heading of this letter. For questions pertaining to the subject matter, please contact David Barker at (858) 467-2989 or by e-mail at dbarker@waterboards.ca.gov.

Respectfully,



John H. Robertus
Executive Officer

² See 40 CFR 122.63 (d)

³ See 40 CFR 122.63 (e)(2)

⁴ See 40 CFR 122.62

Mr. Daniel P. Thompson
Dynegy South Bay, LLC

-4-

November 9, 2009

cc: (email only)

Laura Hunter
Environmental Health Coalition
401 Mile of Cars Way Suite 310
National City, CA 91950
laura@environmentalhealth.org

David Smith, Chief
Permits Office [via email only]
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105
smith.davidw@epa.gov

Dominic Gregorio
Environmental Scientist
Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
dgregorio@waterboards.ca.gov

Joanna Jensen
Environmental Scientist
Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
jjensen@waterboards.ca.gov

Mitchell Thompson
760 Arroyo Court
Chula Vista, CA 91910
mitchthompsonmitch@yahoo.com

Robin Smutny-Jones
Director, Regulatory Affairs
California Independent System Operator
Corporation
151 Blue Ravine Road
Folsom, CA 95630
rsmutny-jones@caiso.com

John Kemmerer
Associate Water Division Director
U.S. EPA Southern California Field Office
600 Wilshire Blvd., Suite 1460
Los Angeles, CA 90017
kemmerer.john@epa.gov

Darrin Polhemus
Chief, Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
dpolhemus@waterboards.ca.gov

Barb Irwin
Director Environmental
West Region Operations
Dynegy, Inc.
4140 Dublin Blvd, Suite 100
Dublin, CA 94568
Barb.J.Irwin@dynegy.com

Philip Isorena
Senior Water Resource Control Engineer
Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
pisorena@waterboards.ca.gov

David Merk
Director, Environmental Services
Port of San Diego
3165 Pacific Highway
San Diego, CA 92101
dmerk@portofsandiego.org

Jim Detmers
Vice President, Operations
California Independent System Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
jdetmers@caiso.com

cc: (US Mail Only)

Cheryl Cox
Mayor, City of Chula Vista
Chula Vista Mayor and Council Office
276 Fourth Avenue
Chula Vista, CA 91910

Rudy Ramirez
Deputy Mayor, City of Chula Vista
Chula Vista Mayor and Council Office
276 Fourth Avenue
Chula Vista, CA 91910

Marty Block
State Assemblymember, 78th District
Lemon Grove Plaza
7144 Broadway, 2nd Floor
Lemon Grove, CA 91945

Denise Moreno Ducheny
Senator, 40th District
California State Senate
637 3rd Avenue, Suite A-1
Chula Vista, Ca 91910

Mary Salas
Assemblymember, 79th District
Assembly California Legislature
678 Third Avenue, Suite 105
Chula Vista, CA 91910

Ben Hueso
San Diego City Councilmember, District 8
City Administration Building
202 C Street, 10th Floor
San Diego, CA 92101

Greg Cox
San Diego County Supervisor, District 1
County Administration Center
1600 Pacific Highway, Room 335
San Diego, CA 92101
greg.cox@sdcounty.ca.gov

Ms. Pamela Bensoussan
Councilmember
Chula Vista Mayor and Council Office
276 Fourth Avenue
Chula Vista, CA 91910

Mr. Steve Castaneda
Councilmember
Chula Vista Mayor and Council Office
276 Fourth Avenue
Chula Vista, CA 91910

California Coastal Commission
San Diego Coast District Office
7575 Metropolitan Drive, Suite 103
San Diego, Ca 92108-4402

Mr. Bob Filner
51st District, California
Congress of the United States
House of Representatives
333 F Street, Suite A
Chula Vista, CA 91910

Order No.	R9-2004-0154
File No.	13-0091
GeoTracker No.	
NPDES No.	CA0001368
CIWQS Place ID	257829
WDID	9 000000091
Reg. Measure No.	133117
Party ID	
Person ID	

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

MINOR MODIFICATIONS
TO
ORDER NO. R9-2004-0154
NPDES PERMIT NO. CA0001368

WASTE DISCHARGE REQUIREMENTS
FOR
DUKE ENERGY SOUTH BAY LLC
SOUTH BAY POWER PLANT

SAN DIEGO COUNTY

Except as modified or superseded by the permit modifications set forth below, all of the findings, prohibitions, provisions and other requirements of Order No. R9-2004-0154 remain in full force and effect. The following minor modifications of Order No. R9-2004-0154 are hereby incorporated and immediately effective:

Findings added to Order No. R9-2004-0154

32. Dynegy South Bay, LLC (Dynegy) assumed responsibility for compliance with Order No. R9-2004-0154 on April 2, 2007.
33. By letter dated October 9, 2009 the California Independent Systems Operator Corporation (CAISO) informed the Regional Board that the "Reliability Must Run" agreement for Units 3 and 4 will terminate at midnight on December 31, 2009. CAISO also reported that the RMR agreement for Units 1 and 2 was extended through the 2010 contract year. CAISO will require RMR services for Units 1 and 2 until such time as replacement capacity within the San Diego Gas and Electric service area is available. CAISO reports that it will continue to work with all stakeholders in finding a way to allow the South Bay Power Plant to close while maintaining the electrical system reliability needed in the San Diego local area.
34. By letters dated October 16, 2009 and October 19, 2009, Dynegy provided information regarding the schedule for shutdown and closure of the South Bay Power Plant. These letters were submitted to update Dynegy's previously submitted April 10, 2009 Report of Waste Discharge in application for the reissuance of the current National Pollutant Discharge Elimination System (NPDES) Order No. R9-2004-0154 for South Bay Power Plant. Dynegy reported that electrical generating Units 3 and 4 at South Bay Power Plant will not be operated after December 31, 2009. Based on available information and on a CAISO request to provide a provision in the 2010 RMR contract that would allow the CAISO to terminate the contract for Units 1 and 2 prior to December 31, 2010, Dynegy believes that a NPDES discharge permit that would expire on December 31, 2010 would be sufficient to meet the CAISO's stated reliability requirements.

Dynegy requested to continue operation of Units 1 and 2 under the current NPDES permit at a reduced maximum flow-rate of 225 million gallons per day (MGD) until December 31, 2010 absent further action by the Regional Board.

Prohibition added to Order No. R9-2004-0154

14. After December 31, 2009, the combined discharge to San Diego Bay from the South Bay Power Plant in excess of 225 MGD is prohibited.

Provisions added to Order No. R9-2004-0154

23. All references to Duke Energy South Bay, LLC in Order No. R9-2004-0154 shall henceforth refer to Dynegy South Bay, LLC as the entity subject to regulation under Order No. R9-2004-0154. Dynegy South Bay, LLC is liable for any violation on and after the transfer date of April 2, 2007.
24. The discharges from electrical generating Units 3 and 4 at the South Bay Power Plant shall be terminated on or before December 31, 2009 absent further action by the Regional Board. The termination of these discharges shall not result in the discharge of pollutants from other outfalls except in accordance with this Order. References to flows from Units 3 and 4 point source outfalls in Order No. R9-2004-0154 are deleted upon termination of these discharges.
25. After December 31, 2009, Order No. R9-2004-0154 shall apply only to the discharges from electrical generating Units 1 and 2 at a maximum reduced flow rate of 225 MGD.
26. The discharges from Units 1 and 2 shall terminate on the date CAISO determines that Reliability Must Run (RMR) services from Units 1 and 2 are no longer needed or December 31, 2010, whichever occurs first, absent further action by the Regional Board.
27. The Regional Board will conduct a public hearing to consider rescinding Order No. R9-2004-0154 upon termination of all discharges from the South Bay Power Plant.

I, John H. Robertus, Executive Officer, do hereby certify the forgoing is a full, true, and correct copy of minor modifications to Order No. R9-2004-0154 executed on November 9, 2009.



JOHN H. ROBERTUS
Executive Officer