



California Regional Water Quality Control Board

San Diego Region



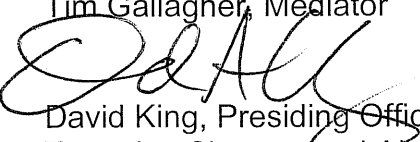
Linda S. Adams
Secretary for
Environmental Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Arnold Schwarzenegger
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9174 Sky Park Court, Suite 100, San Diego, California 92123-4353
(858) 467-2952 • Fax (858) 571-6972
<http://www.waterboards.ca.gov/sandiego>

TO: Tim Gallagher, Mediator

FROM: 
David King, Presiding Officer for Prehearing Proceedings
Tentative Cleanup and Abatement Order No. R9-2005-0126
SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD

DATE: September 17, 2009

SUBJECT: TENTATIVE CLEANUP AND ABATEMENT ORDER NO. R9-2005-0126

By Order dated July 23, 2009, I, as Presiding Officer for the Prehearing Proceedings, extended the mediation period and continued to stay the schedule of proceedings until I receive a report on the status of mediation. While there have been no public reports on the status of the mediation and resolution of the issues, I have received private reports from the mediator and have been confident that the mediation is progressing adequately.

At the San Diego Water Board's August 12, 2009, meeting, and again on September 9, 2009, representatives of the environmental groups who are designated parties to the above proceeding expressed dissatisfaction with the progress of the mediation and frustration that they have felt excluded from the mediation proceedings. At the September 9, 2009, meeting, these same representatives announced that they are withdrawing from the mediation. While I am disappointed that the environmental groups have felt excluded and are now withdrawing from the mediation, I do not agree that their withdrawal results in unilateral termination of the mediation. While Government Code section **11420.10(a)(1)** allows a matter to be referred to mediation upon consent of the parties, it does not provide for unilateral termination of the mediation by a participant after the mediation has commenced. The July 23, 2009, Order therefore remains in effect until further notice.

The mediation has been ongoing, however, since June 4, 2008, several months longer than originally anticipated. By September 30, 2009, the parties to the mediation must submit a proposal, including proposed schedule, outlining the timing of the release of a draft revised Cleanup and Abatement Order and associated technical report for public comment and a proposed schedule for hearing(s) before the San Diego Water Board. I expect that you will work with the designated parties to develop such a proposal.

cc: Distribution List (Designated Parties and Interested Persons)

California Environmental Protection Agency