



California Regional Water Quality Control Board

San Diego Region



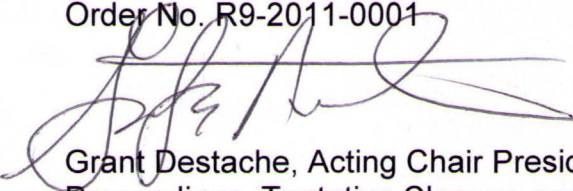
Linda S. Adams
Secretary for
Environmental Protection

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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TO: Designated Parties, Tentative Cleanup and Abatement
Order No. R9-2011-0001


FROM: Grant Destache, Acting Chair Presiding Officer for Prehearing
Proceedings, Tentative Cleanup and Abatement Order No. R9-2011-0001
SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD

DATE: November 15, 2010

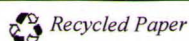
SUBJECT: ORDER APPOINTING TIMOTHY GALLAGHER AS DISCOVERY
REFEREE IN THE MATTER OF TENTATIVE CLEANUP AND
ABATEMENT ORDER NO. R9-2011-0001

By Order dated October 27, 2010, the Presiding Officer granted in part the San Diego Unified Port District's (Port District) Motion to Reopen and Extend Discovery Schedule in the matter of Tentative Cleanup and Abatement Order No. R9-2011-0001 (TCAO) and its associated Draft Technical Report (DTR). In accordance with the schedule set forth in the October 27 Order, the all discovery for the TCAO/DTR must be completed on or before March 11, 2011.

On November 12, 2010, most Designated Parties jointly submitted a report on the selection of a discovery referee for the above-referenced matter. The report identified the Port District's concerns about the potential for improper ex parte communications by some Designated Parties with Timothy Gallagher in part due to Mr. Gallagher's multiple roles in this proceeding and related proceedings. Mr. Gallagher has served as mediator and discovery referee among Designated Parties to this proceeding and also, according to the report, serves as mediator and discovery referee in related federal litigation on allocation issues. (November 12, 2010, Joint Report by the Designated Parties, p. 1.) Most other Designated Parties expressed support for Mr. Gallagher's continued role as discovery referee in this proceeding. (Id., p. 2.) No party objected to Mr. Gallagher's appointment as discovery referee.

The report concluded that despite its concerns, the Port District can support appointment of Mr. Gallagher as Discovery Referee provided that Mr. Gallagher's appointment is "conditioned upon an order that there be no ex parte communications with Mr. Gallagher concerning any discovery matters, and (b) a right of appeal to the Presiding Officer." (Id., p. 3.) While this Order does not express an opinion on whether any ex parte communications with Mr. Gallagher have occurred in the past, the

California Environmental Protection Agency



Designated Parties are reminded to avoid any ex parte communications with Mr. Gallagher on discovery matters.

Therefore, it is hereby ordered as follows:

1. Timothy Gallagher is appointed to serve as Discovery Referee in the matter of Tentative Cleanup and Abatement Order No. R9-2011-0001;
2. Decisions of the Discovery Referee may be appealed to the Presiding Officer;
and
3. The Designated Parties must avoid any improper ex parte communications with Mr. Gallagher or with the San Diego Water Board's Presiding Officer on discovery matters that are or may become in dispute.