



South Orange County Wastewater Authority

SAN DIEGO REGIONAL
WATER QUALITY
CONTROL BOARD

2009 OCT 30 P 2: 51

Mr. John Robertus
Executive Officer
Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353

Re: REQUEST FOR PERMIT MODIFICATION by South Orange County Wastewater Authority
Waste Discharge Requirement Order R9-2006-0054 NPDES Permit NO. CA0107417 for
the San Juan Creek Ocean Outfall

Dear Mr. Robertus:

We are in receipt of the email from Michael McCann written on your behalf dated October 19, 2009 and we understand that the Regional Board is currently reviewing the appropriateness and consistency of its application of the Table A Effluent Limitations to brine discharges within the Regional Board's jurisdiction. We very much appreciate your time and attention on this matter. Although you have suggested that we should hold off on submitting a formal request for modification of NPDES Permit NO. CA0107417 (the "2006 NPDES Permit") pending your review of this matter, we believe that in performing the review, the Regional Board should be aware of and give due consideration to South Orange County Wastewater Authority ("SOCWA") and South Coast Water District's ("SCWD") position on the issues. Furthermore, time is of the essence for SCWD as it is currently in the process of assessing expansion of the groundwater recovery facility ("GRF") in order to fulfill SCWD's mission to mitigate the water shortage in the State and particularly Southern California. Since discharging the brine effluent to the Latham Plant is not a viable long term solution given the effects on SOCWA's recycled water project, SCWD must obtain a permit modification prior to moving forward on expanding the GRF. As such, it is critical for us to move this permit modification request process forward as expeditiously as possible.

As you know, the 2006 NPDES Permit sets certain discharge levels and monitoring points for brine discharge from SCWD's GRF. These discharge limitations and monitoring points were not in existence under the former permit in force during the time the GRF was being planned and constructed. Both SOCWA and SCWD objected to the permit changes to no avail. Unfortunately, once the GRF began operations, it became clear that it could not meet these standards and Mandatory Minimum Penalties ("MMPs") were assessed. In hearings before the Board on May 13, 2009 and July 1, 2009 regarding the MMPs, several members of the Board recognized that SOCWA could (and should) seek relief via a permit modification.

In that spirit, SOCWA attempted to engage your staff through correspondence and telephone calls. However, we recently received a voicemail from Melissa Valdovinos informing us that based on a finding by the State Board that technically based effluent limits ("TBELs") apply to the GRF, Regional Board staff is not interested in opening up the NPDES permit to change the compliance points for the GRF. We believe this decision is incorrect under the both federal and state law, fails to take into account the facts and is otherwise arbitrary and capricious. It appears that the Regional Board may now be revisiting this decision and we certainly encouraged by the fact that you have initiated a review of these issues.

Mr. John Robertus
October 29, 2009
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Attached is our formal request for modification of the 2006 NPDES Permit. We request that our request for modification be included as an agenda item for the December 2009 Regional Board meeting. Should the Regional Board issue a written opinion in our favor prior to this meeting, the item may be removed from the agenda.

If you have any questions or need any further information, please feel free to contact me.

Sincerely,

SOUTH ORANGE COUNTY WASTEWATER AUTHORITY



Thomas R. Rosales
General Manager

cc: *Members of the Regional Board (Via email and US Mail)*
Michael McCann, RWQCB
Steve Hoch, BHFS
Pat Giannone, BAWG
Pat Chen, Miles Chen Law Group
Betty Burnett, SCWD

REQUEST FOR PERMIT MODIFICATION

**Waste Discharge Requirement Order R9-2006-0054
NPDES Permit NO. CA0107417
for the San Juan Creek Ocean Outfall**

**On behalf of
South Orange County Wastewater Authority
South Coast Water District**

Submitted by:

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ANALYSIS

Executive Summary

South Orange County Wastewater Authority ("SOCWA") presently holds National Pollutant Discharge Elimination System ("NPDES") Permit No. CA0107417 (Order Number R9-2006-0054, August 16, 2006) ("2006 NPDES Permit") for the San Juan Creek Ocean Outfall ("SJCOO"), which serves the JB Latham Wastewater Treatment Plant ("Latham Plant"), a Publically Owned Treatment Work (POTW).¹ South Coast Water District ("SCWD"), a member agency of SOCWA, operates a Groundwater Recovery Facility ("GRF") that is subject to the permit. The GRF takes previously unusable highly brackish groundwater and by applying reverse osmosis ("RO") creates usable potable water.

The GRF was designed under the preceding permit NPDES Permit No. CA 0104717 (Order Number R9-2000-0013, April 12, 2000) ("2000 NPDES Permit") which permitted the GRF brine to be discharged to the Chiquita Land Outfall to the South East Reclamation Regional Authority ("SERRA") Ocean Outfall which is now referenced only as the SJCOO. Under the 2000 NPDES Permit, the discharge monitoring of the GRF brine occurred after the intersection and commingling of effluent from several outfall lines, the Chiquita Land Outfall, the SJCOO and the San Clemente Outfall line. The blending of the GRF brine is appropriate with the secondary effluent of the Chiquita Land Outfall line because the constituents of the brine are natural salts that have no connection to domestic sewage treatment or industrial wastes typical in the wastewater treatment environment.

Pursuant to the 2000 NPDES Permit there was no requirement to monitor the GRF discharge upstream of the intersection into the SJCOO pipeline. In August 2006, the San Diego Regional Water Quality Control Board ("Regional Board") issued the 2006 NPDES Permit, effective October 2006. The 2006 NPDES Permit changed the point of monitoring to the GRF itself. Because the GRF was designed based on the 2000 NPDES Permit, the GRF could not meet the requirement set for the discharge at the facility (as opposed to at the SJCOO) despite SCWD's attempts to modify operations and sampling at the GRF. As a result, SCWD spent over \$200,000 to move the discharge into the sewer system, which diverted the brine into the Latham Plant rather than the SJCOO.² This solution actually produces substantial negative consequences, including limiting SCWD's production of potable drinking water from brackish groundwater and introducing the brine into the sewer system, which in turn will reduce SOCWA's ability to supply recycled water from the Latham Plant.

SOCWA and SCWD assert that the change in monitoring point imposed in the 2006 NPDES Permit was based on the mistaken application of technical standards and mistaken interpretations of law. Furthermore, new information not available at the time of permit issuance justifies new permit conditions. The basis for this assertion includes the following:

- ▶ The 2006 NPDES permit erroneously applies the Ocean Plan standards to the GRF;
- ▶ Changes in the 2006 NPDES permit resulted from a misinterpretation of EPA's position with respect to POTWs;
- ▶ There is no discharge to waters of the United States at the GRF;

¹ The Latham Plant is located at 34156 Del Obispo, Dana Point, CA 92629

² On or about February 27, 2009, the Regional Board issued the ACL Complaint No. R9-2009-0028 ("ACL") which imposed mandatory minimum penalties ("MMPs") on SOCWA and SCWD for violations of the 2006 NPDES Permit effluent limits for the GRF in the amount of \$204,000. The ACL included all the purported violations at the GRF from August 2007 through implementation of the remedy in November 2008. SOCWA and SCWD have petitioned the State Water Resources Control Board (the "State Board") for review of the Regional Board's order.

- ▶ There was no information at the time of the 2006 NPDES permit issuance regarding the operational aspects of the GRF and the impacts on the Latham Plant; and
- ▶ There was no need to establish discharge criteria to establish a monitoring program for the GRF.

As such, under 40 C.F.R. §122.62, SOCWA and SCWD seek to have the 2006 NPDES Permit modified so that the monitoring requirements of the 2000 NPDES Permit are reinstated as applied to the GRF facility, *i.e.*, the point of compliance for the GRF would be at the SJCOO rather than at the GRF. More specifically, the technology based effluent limitation ("TBEL") should be met at the Ocean Outfall Monitoring Location M-001.³

³ While SOCWA and SCWD seek to modify the monitoring requirements as applied to the GRF, there is a basis for inclusion of other similar facilities.

I. **Background**

A. **Parties**

1. **SOCWA**

SOCWA is a Joint Powers Authority created on July 1, 2001 as a successor authority under the consolidation of three prior joint powers authorities, consisting of ten member agencies:

El Toro Water District
Emerald Bay Service District
Irvine Ranch Water District
Laguna Beach, City of
Moulton Niguel Water District

San Clemente, City of
South Coast Water District
San Juan Capistrano, City of
Santa Margarita Water District
Trabuco Canyon Water District

SOCWA's member agencies serve the following cities and areas:

Aliso Viejo
Ladera
Laguna Beach
Lake Forest
Coto de Caza
Laguna Woods
Las Flores
San Juan Capistrano
Laguna Niguel

Rancho Santa Margarita
San Clemente
Mission Viejo
Trabuco Canyon
Emerald Bay
Talega
Dana Point
Laguna Hills

SOCWA is the legal successor to the Aliso Water Management Agency, South East Regional Reclamation Authority and South Orange County Reclamation Authority. SOCWA's boundaries encompass approximately 220 square miles and include: Aliso Creek, Salt Creek, Laguna Canyon Creek and the San Juan Creek Watersheds. SOCWA's member agencies serve over 500,000 residents.

SOCWA's mission is to collect, test, beneficially reuse, and dispose of wastewater in an effective and economical manner. It acts in a manner that respects the environment, maintains the public's health and meets or exceeds all local, state and federal regulations for the mutual benefit of SOCWA's ten member agencies and the general public in South Orange County. SOCWA provides, at a minimum, full secondary treatment at all of its regional wastewater facilities, and also has active water recycling, industrial waste (pretreatment), biosolids management and ocean shoreline monitoring programs to meet the needs of its member agencies and the requirements of the applicable NPDES permits.

SOCWA holds the 2006 NPDES Permit for the SJCOO on behalf of five of its member agencies including SCWD, Santa Margarita Water District, Moulton Niguel Water District, City of San Clemente, and City of San Juan Capistrano

2. **SCWD**

SCWD is a retail water agency organized and existing as a County Water District under California Water Code Section 30000 *et seq.* SCWD serves approximately 12,500 water accounts with an estimated winter population of 40,000 in the South Laguna and Dana Point areas. Tourism adds an additional 2 million visitors to the SCWD service area on an annual basis. SCWD imports approximately 7,500 acre-feet (6.7 million gallons per day ("gpd")) of potable water annually. SCWD maintains approximately 32 million gallons of water storage in 14 area reservoirs (an approximately 4.8-day water supply). The SCWD service area has been identified by the Bureau of Reclamation as an area of "Potential Water Supply Crisis" by 2025. SCWD's wholesale water providers, the Municipal Water District of Orange

County ("MWDOC") and the Metropolitan Water District of Southern California ("MWD"), have encouraged the development of alternative local water supply sources within the area served by SCWD.⁴

B. The SJCOO

SOCWA owns and operates the SJCOO, which receives treated effluent from the following municipal wastewater treatment plants: the Latham Plant, the Santa Margarita Water District Chiquita Water Reclamation Plant, the Moulton Niguel Water District 3A Reclamation Plant and the City of San Clemente Reclamation Plant. In addition, a number of dry-weather nuisance discharges from a number of sources and brine discharges from the City of San Juan Capistrano and the SCWD are also routed to the SJCOO. The SJCOO extends 2 miles off Doheny Beach in Dana Point and has a permitted flow of 36.385 million gallons per day. The SJCOO is constructed of an extended bell and spigot reinforced concrete pipe, 57 inches in diameter, with a minimum wall thickness of 8 inches.

The SJCOO is governed by the requirements of the Water Quality Control Plan for Ocean Waters of California (the "Ocean Plan") for protection of the beneficial uses of the State ocean waters. The Ocean Plan has been amended numerous times. The State Water Resources Control Board ("State Board") adopted the latest amendment on April 21, 2005 which was approved by United States Environmental Protection Agency ("EPA") on February 14, 2006. The Ocean Plan is applicable, in its entirety, to point source discharges to the ocean.

C. The GRF

The GRF, as designed by SWCD, treats low quality brackish groundwater removed from the San Juan Creek Groundwater Basin to produce drinking water distributed to SCWD customers. This resource would otherwise remain unusable. The GRF water treatment process primarily consists of reverse osmosis ("RO") and iron/manganese removal. With the support of the MWD, SCWD spent \$5.8 million to construct the GRF and designed it **to produce approximately 10% of SCWD's potable water** in Phase I. The construction of the facility and associated groundwater rights are such that the GRF is planned for expansion in Phase II **to supply up to 20% of local potable water** needs using a local resource. The current requirement for disposal of brine to the sewer system imperils the planned Phase II expansion (which entails installing additional wells) because it is unclear whether the Latham Plant can handle the additional brine discharge from the additional wells. As discussed in more detail below, the salinity of the influent to the plant may compromise SOCWA's recycled water program at the Latham Plant.

As conceived, designed and originally built, the GRF's brine discharge was conveyed by an 18" PVC pipeline to the Chiquita Land Outfall which then commingled directly with other discharge sources at the SJCOO. Significantly, the brine discharge never entered any stream, lake, pond, ditch or other such body of water prior to the point of blending with the SJCOO.

1. GRF Permit History

a) The 2000 NPDES Permit

The 2000 NPDES Permit described the disposal of the waste stream from the planned GRF as the following: "...0.32 M [million] gallons/day will be discharged through the Chiquita Land Outfall to the [South East Reclamation Regional Authority] SERRA SJCOO." In addition to the GRF, the following additional facilities were included in the 2000 NPDES Permit for discharge to the SJCOO:

Latham Plant
City of San Clemente WRF

⁴ The MWD has also expressed support for SCWD's request for an amendment to the 2006 NPDES Permit to allow compliance to be determined at the SJCOO, rather than at the GRF. See Letter from Jeffrey Kightlinger, MWD, to Michael P. McCann dated October 27, 2008 (attached as Attachment 1)

SMWD Chiquita Water Reclamation Plant
Moulton Niguel Water District 3A Reclamation Plant
Santa Marguerita Water District Oso Creek WRP

According to the "Monitoring and Sampling Plan" included in the 2000 NPDES Permit, the combined effluent from the above facilities was sampled at a point "...downstream of any in-plant return flows, and disinfection units, where representative samples of the effluent discharged through the ocean outfall can be obtained."

b) The 2006 NPDES Permit

The GRF was designed in the 2001-2002 timeframe to be compliant with the 2000 NPDES Permit. According to the 2000 NPDES Permit, the requirements for effluent discharge from the SJCOO are based on the 1997 California Ocean Plan.⁵ The 2000 NPDES Permit allowed disposal of facility effluent to the ocean via the SJCOO and required sampling at the SJCOO. It took two years to construct the GRF beginning in approximately June 2005. In 2006, protracted negotiations with the RWQCB occurred with respect to the 2000 NPDES Permit renewal, and in August 2006, the RWQCB issued the 2006 NPDES Permit, which required SOCWA and its member agencies to sample effluent at their respective facilities prior to discharging into the SJCOO.

The 2006 NPDES Permit establishes effluent limitations for the GRF based on Table A of the Ocean Plan. See 2006 NPDES Permit, at 13. These effluent limitations are the same for the SJCOO. According to the Ocean Plan, Table A effluent limitations are a "default" standard as they "apply only to publicly owned treatment works and industrial discharges for which Effluent Limitations Guidelines have not been established pursuant to Sections 301, 302, 304, or 306 of the Federal Clean Water Act." Ocean Plan at 1.⁶ However, the Ocean Plan fails to define either a "publicly owned treatment works" or "industrial discharges." See Ocean Plan, Appendix I (Definition of Terms).

⁵ See April 20, 2009 letter from Environmental & GIS Services, LLC to the Regional Board on behalf of SCWD ("eGIS Letter" attached as Attachment 2).

⁶ The Ocean Plan can be found at http://www.swrcb.ca.gov/water_issues/programs/ocean/docs/oplans/oceanplan2005.pdf

II. A Permit Modification is Appropriate

A permit modification may be triggered in several ways. For example, a staff person at one of the Regional Boards conducting an inspection of a facility that finds a need for the modification (*i.e.*, the improper classification of an industry, new treatment process, new waste stream), or information submitted by the discharger may suggest the need for a change. See 40 C.F.R. §122.62. Other circumstances dictate and in fact require modification of a permit. These conditions include:

- To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.
- New information not available at the time of permit issuance (other than revised regulations, guidance, or test methods) justifies new permit conditions. See 40 C.F.R. §122.62(a).

As set forth herein, SOCWA and SCWD contend that the above circumstances require that the 2006 NPDES Permit be modified.

A. Mistaken Interpretations of Law

1. The 2006 NPDES Permit Erroneously Applies the Ocean Plan Standards to the GRF

The 2006 NPDES Permit erroneously treats the GRF as a POTW and/or industrial discharger. As discussed above, the 2006 NPDES Permit establishes effluent limitations for the GRF based on Table A of the Ocean Plan which are the default standards that "apply only to **publicly owned treatment works** and **industrial discharges** for which Effluent Limitations Guidelines have not been established pursuant to Sections 301, 302, 304, or 306 of the Federal Clean Water Act." Ocean Plan, at 1 (emphasis added). The GRF, however, is neither a POTW nor an industrial discharger.

A POTW is a publicly-owned "treatment works" which the CWA defines as:

(2)(A) any devices and systems used in the **storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature** to implement section 201 of this act, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process (including land use for the storage of treated wastewater in land treatment systems prior to land application) or is used for ultimate disposal of residues resulting from such treatment.

(B) In addition to the definition contained in subparagraph (A) of this paragraph, "treatment works" means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of **municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems**. Any application for construction grants which includes wholly or in part such methods or systems shall, in accordance with guidelines published by the Administrator pursuant to subparagraph (C) of this paragraph, contain adequate data and analysis demonstrating such proposal to be, over the life of such works, the most cost efficient alternative to comply with sections 301 or 302 of this act, or the requirements of section 201 of this act.

33 U.S.C. §1292 (emphasis added).

Unlike a POTW, the GRF does not treat municipal sewage, storm water runoff or any waste water, whatsoever. Nor is it a method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems. It simply extracts local groundwater, normally unusable due to its brackish nature, and filters and treats the water for potable use.

The GRF likewise does not qualify as an industrial discharger. The California Porter-Cologne Water Quality Control Act does not provide a definition for an "industrial discharger," however, the regulation implementing NPDES fees provides that:

NPDES permitted industrial discharger(s) means those industries identified in the Standard Industrial Classification Manual, Bureau of the Budget, 1967, as amended and supplemented, under the category "Division D -Manufacturing" and such other classes of significant waste producers as, by regulation, the U.S. EPA Administrator deems appropriate. (33 USC Sec. 1362).

13 C.C.R. § 2200, fn 8. This regulation refers to the CWA which uses the term "industrial users":

(18) The term "industrial user" means those industries identified in the Standard Industrial Classification Manual, Bureau of the Budget, 1967, as amended and supplemented, under the category of "Division D - Manufacturing" and such other classes of significant waste producers as, by regulation, the Administrator deems appropriate.

33 U.S.C. §1362.⁷

The CWA also refers to "industrial discharges" in the context of municipal and industrial stormwater discharge and requires that the "[p]ermits for discharges associated with industrial activity shall meet all applicable provisions of this section and section 1311 of this title." 33 U.S.C. § 1342(p)(3)(A). The CWA regulations defines an "industrial discharger," as "any source of nondomestic pollutants regulated under section 307(b) of the [CWA] which discharges into a POTW." 40 C.F.R. § 125.58.

The GRF does not fit within any of these definitions. The GRF does not fall within any of the industries identified by the CWA or generate discharge as a result of any "industrial activity." Furthermore, as discussed above, prior to the implementation of the sewer diversion, the GRF discharged its brine effluent to the outfall, and thus, it did not qualify as a "source of nondomestic pollutants . . . which discharges into a POTW." See 40 C.F.R. § 125.58. The GRF does not **add** or **generate** any waste; rather, it simply extracts brackish and otherwise unusable groundwater and filters and treats the water for potable use. The GRF's brine effluent is merely a concentrated form of the natural constituents in the groundwater that is removed to obtain potable water from an existing resource. In sum, there is simply no indication that a GRF, a relatively uncommon type of facility, was intended to fall within the definition of an "industrial discharger" pursuant to the Ocean Plan.

⁷ The Standard Industrial Classification Manual ("SIC Manual"), Division D manufacturing categories do not include municipal entities. Instead the category is based on whether an establishment engages in the mechanical or chemical transformation of materials or substances into new products. See SIC Manual www.census.gov/eos/www/naics/

2. The Changes in the 2006 NPDES Permit Resulted from a Misinterpretation of EPA's Position with Respect to POTWs

Further, the basis for the change to a different monitoring point by the Regional Board was based on a misinterpretation of the EPA's position on the issue. The change in monitoring location was a Regional Board staff decision made after the start of construction and was asserted by Regional Board staff to be supported by EPA. However, it is clear that EPA's concern was with POTWs:

We understand that the discharger prefers the point of compliance be determined at the outfall, however we support the Regional Board's determination that compliance should be determined at the individual treatment plants. Secondary treatment is a technology-based standard and should be met after the treatment process. According to the Clean Water Act (CWA), all [POTWs] must meet effluent limitations for secondary treatment

Letter from Douglas E. Eberhardt to David Hanson dated December 8, 2004 (attached as Attachment 3).

EPA did not make any observations with respect to the GRF, which, as discussed above, is clearly not a POTW. The 2006 NPDES Permit specifically addressed EPA's concerns with POTWs: "Effluent monitoring has been required for each of the wastewater treatment plants prior to discharge into the Ocean Outfall collection system to determine compliance with the applicable technology-based effluent limitations, including the percent removal requirements for POTWs." 2006 NPDES Permit, at F-44. Such technology-based effluent limitations are referenced as "...technology-based standards for POTW performance are promulgated at 40 C.F.R. Part 133 and expressed as 30-day averages and 7-day averages for BOD5, CBODs and TSS..." *Id.*, at F-41. No similar explanation is given for the monitoring requirements at the GRF.

Regional Board staff appears to have misinterpreted EPA's support for POTW compliance to extend to *all* facilities subject to the 2006 NPDES Permit, including the GRF. This erroneous and arbitrary application of EPA policy to the GRF is not supported by law and should not be sustained. As such, SOCWA and SCWD submit that the 2006 NPDES Permit should be modified to correct this misinterpretation of EPA's position with respect to POTWs.

3. There is No Discharge to Waters of the United States at the GRF

As noted above, prior to redirecting the brine effluent to the Latham Plant, the GRF discharged brine effluent via a 18" PVC line into the Chiquita Canyon land outfall which is a 42" ductile iron pipeline at the point of connection to the GRF. In turn, the Chiquita Canyon pipeline joins with the SJCOO upstream of the actual outfall point. As such, the GRF discharge never entered any water body until it reached the very end of the SJCOO.

Under the Clean Water Act ("CWA"), the term "effluent limitation" is defined quite broadly, as "any restriction . . . on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters of the United States, the waters of the contiguous zone, or the ocean." 40 C.F.R. § 122.2. Further, the federal regulations define "discharge" as "[a]ny addition of any 'pollutant' or combination of pollutants to 'waters of the United States' from any 'point source'..." 40 C.F.R. §122.2. The CWA defines the term waters of the United States as "navigable waters" meaning "the waters of the United States, including the territorial seas." 33 U.S.C. § 1362(7).

The Supreme Court's decision in the consolidated cases of *Rapanos v. United States and Carabell v. United States* 547 U.S. 715 (2006) (herein referred to simply as "*Rapanos*") further addressed the jurisdiction over waters of the United States under the Clean Water Act 33 U.S.C. §1251 *et. seq.* Four justices, in a plurality opinion authored by Justice Scalia, rejected the argument that the term "waters of the United States" is limited to only those waters that are navigable in the traditional sense and their

abutting wetlands. *Rapanos*, 547 U.S. at 717. The plurality concluded that the agencies' regulatory authority should extend only to "relatively permanent, standing or continuously flowing bodies of water" connected to traditional navigable waters, and to "wetlands with a continuous surface connection to" such relatively permanent waters. *Id.* It is clear that empowered agencies can and do assert jurisdiction over "non-navigable tributaries" of traditional navigable waters that are relatively permanent where the tributaries typically flow year-round or have continuous flow at least seasonally (e.g., typically three months). A "tributary" includes natural, man-altered, or man-made water bodies that carry flow directly or indirectly into a traditional navigable water. *Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in Rapanos v. United States & Carabell v. United States*, USEPA, December 02, 2008, page 6, fn 24.

Even under these broad definitions, the **pipeline carrying the brine discharge** is not a "navigable water," "non-navigable tributary," or "water body" by any stretch of the imagination. Further the "discharge" to waters of the United States occurs at the SJCOO, **not** at the 2006 NPDES Permit mandated monitoring point, *i.e.*, the GRF. Therefore, the 2006 NPDES Permit should not have imposed effluent limitations at the GRF.

B. New Information Not Available at the Time of Permit Issuance

1. There was No Information at the Time of the 2006 NPDES Permit Issuance Regarding the Operational Aspects of the GRF

At the time of the 2006 NPDES Permit issuance, construction of the GRF was not complete and it was unclear how the GRF would perform in light of the poor groundwater quality. It was also unclear whether the GRF could meet the effluent limits imposed by the permit.

Between June 2007 and February 2008, ECO Resources, Inc. operated the GRF. During this period, the facility was operating only sporadically as adjustments were made to the operations to address start up issues including the sampling of effluent. For example, in December 2007, the total runtime of the facility was approximately 4.97 days and in January 2008, the GRF had a total runtime of approximately 4.75 days. The facility began 24/7 operations approximately March 5, 2008, and even after that date, the GRF had periods of shut down due to equipment issues.

SCWD was aware of exceedances of the 2006 NPDES Permit for total suspended solids ("TSS"), settleable solids ("SS"), and turbidity during the start up period, but it did not know if it was an operational issue or a sampling issue. For example, in September 2007, SOCWA reported to the Regional Board that the test results for August 2007 "were substantially higher than the feed water from the source well." Letter from Thomas R. Rosales to John H. Robertus dated September 27, 2007 (attached as Attachment 4). In October 2007, SOCWA reported to the Regional Board that SCWD had redesigned the sampling location at the GRF to obtain more representative samples of the discharge and that the facility had been "off-line since the change to the sampling location." Letter from Thomas R. Rosales to John H. Robertus dated October 29, 2007 (attached as Attachment 5).

In the December 2007 time period, it became clear that the quality of the brackish water from the basin was going to routinely result in a brine discharge with remarkably higher TSS than previously expected. This new information led SCWD to develop the solution that SCWD eventually implemented, *i.e.*, the installation of a holding tank and diversion of the brine flow via pipe to the sewer system for disposal through the Latham Plant at a cost of over \$200,000.

2. New Information Concerning the Impact of the GRF's Brine Discharge on the Latham Plant has Emerged

SOCWA is in the final phase of design for constructing a 7.0 million gallon per day tertiary treatment facility at the Latham Plant to provide a sustainable source of recycled water. This future recycled water project is an important link in the potable water resource chain for South Orange County because, like SCWD's GRF, it will significantly reduce the need to import water into the region from great distances.

The diversion of the brine from the GRF to the sewer system contributes an additional 200 mg/L to the Latham Plant's effluent total dissolved solids concentration. The SCWD GRF brine discharge to the Latham Plant will result in high concentrations of TDS affecting the quality of recycled water produced by the planned recycled water project. This situation will be exacerbated with the introduction of Phase II of the GRF. As discussed herein, the brine discharge from the GRF will affect the quality of the recycled water produced at the Latham Plant. Consequently, limitations on the amount of brine the GRF can divert to the Latham Plant will affect the amount of brackish groundwater which may be processed by the GRF. In other words, diversion of the brine to the sewer not only affects the ability of the Latham Plant to produce recycled water, it also affects the local water supply infrastructure by reducing the amount of potable water produced by the GRF. This unintended consequence contravenes the State Board's Recycled Water Policy (adopted February 3, 2009). In its Recycled Water Policy, the State Board declared that it "will achieve [its] mission to 'preserve, enhance and restore the quality of California's water resources to the benefit of present and future generations,'" and it "strongly encourage[s] local and regional water agencies to move toward clean, abundant, local water for California by emphasizing appropriate water recycling, water conservation, and maintenance of supply infrastructure and the use of stormwater (including dry-weather urban runoff)...."

In stark contrast, discharge of the GRF brine effluent to the SJCOO did not and would not result in any significant environmental impact or compromise any recycled water project. Note that abatement of the GRF's brine discharge to the SJCOO does not result in compliance at the SJCOO because **the SJCOO was in compliance even with the brine effluent**. The GRF's contribution of TSS to the SJCOO was approximately 1.1 mg/L. The average outfall TSS concentration over the period of GRF discharge was 11.5 mg/L which was well under the standard permit limit of 30 mg/L. Therefore, the GRF's contribution to the SJCOO was nominal and did not result in any significant environmental impact. See eGIS Letter, at 7.

The brackish water pumped by the GRF represents the final opportunity for the region to collect, treat, and reuse the underlying San Juan Basin groundwater for potable purposes, before the water flows underground to the Pacific Ocean. It simply does not make sense to discharge the brine from the water to the sewer where it must be processed and it will result in highly salinic recycled water when in the absence of the GRF, the brackish groundwater would reach the ocean naturally.

III. Other NPDES Permits Allow Brine Discharge to be Blended at Outfalls

The arbitrariness of the Regional Board's policy requiring SCWD to sample at the GRF is further demonstrated by the fact that it has not been consistently executed by the Regional Board or other regional boards in the state. The Central Coast Regional Board, in particular, has made it very clear that its policy is to promote the benefits of recycled water production by specifically diverting brine discharge directly to POTW outfalls where commingled discharge is monitored for compliance with the Ocean Plan.

A. Oceanside

The City of Oceanside operates a Brackish Groundwater Desalination Facility ("BGDF") that treats groundwater extracted from the Mission Hydrologic Subarea for potable uses. The facility provides treatment consisting of pH adjustment, filtration, and demineralization by reverse osmosis. The BGDF disposes waste brine to the Oceanside Ocean Outfall ("OOO") under NPDES Permit CA0107433 (Order Number R9-2005-0136) ("Oceanside Permit"), which is managed by the Regional Board. Waste effluent from the San Luis Rey Wastewater Treatment Plant ("SLRWTP") and La Salina Wastewater Treatment Plants ("LSWTP") is also discharged to the OOO under this NPDES permit. Discharges from these facilities and the BGDF are also commingled with discharge from the Fallbrook Public Utility District, U.S. Marine Corps Base Camp Pendleton and the Biogen IDEC Pharmaceuticals Corporation. See eGIS Letter, at 9.

Unlike the outfall monitoring requirements for the SCWD GRF, brine effluent to the OOO is not monitored directly from the BGDF. Instead, monitoring location M-003 characterizes the comingled effluent from the numerous contributors to the OOO including the BGDF. In other words, the waste brine is monitored at the outfall rather than the facility, exactly the condition described in the 2000 NPDES Permit under which the SCWD GRF was designed, yet the BGDF can clearly operate without any violation.

B. Monterey

The Monterey Regional Water Pollution Control Agency ("MRWPCA") discharges up to 81.2 MGD of secondary treated wastewater and brine waste from its Regional Treatment Plant ("RTP") to the Monterey Bay via a diffuser approximately 11,260 feet offshore. This discharge is performed under NPDES permit CA004851 (Order R3-2008-0008) ("Monterey Permit") issued by the Central Coast Regional Board. According to the NPDES documents, regional, commercial, and industrial wastewater is conveyed to the RTP, which is treated and comprises the majority of the secondary treated wastewater. The MRWPCA also accepts 30,000 to 50,000 gallons per day of brine wastes that include softener regenerant waste, groundwater nitrate removal brine and reverse osmosis brines. These brines are trucked to the RTP from businesses that would otherwise dispose these wastes to the sanitary sewer. The brine wastes are held at the RTP in a 375,000-gallon, lined holding pond and are ultimately discharged or blended with secondary treated wastewater from the RTP before being discharged to the diffuser. As such, like the Oceanside BGDF, the brine wastes are discharged to the outfall. See eGIS Letter, at 7-8.

The Monterey Permit further clarifies that "brine waste samples shall be collected as grab samples and manually composited per the Discharger's current brine waste and outfall facility configuration and sampling protocols." See eGIS Letter, at 8. Based on this information and the monitoring points identified in the NPDES documentation, although brine influent is sampled, brine effluent from the RTP is not monitored individually, but is instead monitored as part of the total blended effluent at location EFF-001. *Id.* Sampling of brine is conducted solely to determine how much of the blended secondary effluent is needed so that discharges to the outfall will meet permit conditions.

Furthermore, as noted in the Monterey Permit, during the dry season the facility "is recycling essentially 100% the wastewater flow less what is needed for blending with brine wastes." *Id.* Under this permit, the facility blends secondary treated effluent with brine as needed to meet the permit conditions for brine waste discharges. The permit contains a single set of water quality based effluent limitations ("WQBELS") that are consistent with the Ocean Plan and applicable to any ratio of blended secondary

effluent and brine waste flows, and dictate the amount of secondary effluent required for blending with brine waste. *Id.*

Moreover, it is not unprecedented for a groundwater recovery facility to be held to a different standard from POTWs and other industrial discharges. For example, Lower Sweetwater River Basin Groundwater Demineralization Plant (NPDES Permit CA0108952, Order No. R9-2004-0111) discharges brine concentrate from a reverse osmosis system and the discharge is considered "innocuous nonmunicipal wastewaters." Clearly, flexibility exists to address situations like this. The brine discharge from a groundwater recovery facility should not be cast in the same category as industrial process waste, and the focus should be on protection of the beneficial uses of the receiving water. Discharge of the brine effluent from the GRF to the SJCOO simply does not compromise the beneficial uses of the receiving waters from the SJCOO and as such, it should have been allowed.⁸

⁸ Recently, the Regional Board re-approved and extended the San Diego Point Loma Plant NPDES Permit which waives full secondary treatment of wastewater in favor of an enhanced monitoring program. This waiver allows the discharge of 46,000 pounds of wastewater solids (including SS, TDS and turbidity) per day to the Pacific Ocean. In contrast, the discharge from the GRF adds 289 pounds of innocuous iron and manganese salts per day. This disparate regulatory application by this Regional Board is patently unfair.

IV. Monitoring Requirements at the GRF are Not Precluded by Moving the Point of Compliance Back to the SJCOO

At the Regional Board hearing of May 13, 2009, Mr. Robertus indicated that one of the reasons why the monitoring point had to be moved was because of the need to obtain information. This is not true. Collecting information at any given point is not connected to having a monitoring point for the purposes of discharge requirements.

Mr. Robertus said: (p. 68, ll. 14-23) The convenience of an existing ocean outfall is the obvious you know, way to get rid of it, but if -- so far, this Board, when you put brine into an ocean outfall, we have individual permits, so that if there is an exceedence in the comingled effluent, the, the, the al--the alternative would be to have mandatory minimum penalties against everybody who uses the outfall and that not, not workable, so I just wanted to clarify that.

A regional board has authority to require monitoring without assessing penalties for violations because it has authority to require monitoring by people who are proposing to discharge but have not yet done so. A regional board may require monitoring by a person who proposes to discharge effluent or other regulated activity. Water Code § 13383(a) provides that ". . . a regional board may establish monitoring, inspection, entry, reporting, and recordkeeping requirements, . . . , for any person who discharges, or proposes to discharge, . . . or proposes to own or operate a publicly owned treatment works or other treatment works treating domestic sewage, . . . or proposes to use or dispose of sewage sludge." Under this provision, the regional boards may require a potential discharger to "establish and maintain monitoring equipment or methods, including, where appropriate, biological monitoring methods, sample effluent as prescribed, and provide other information as may be reasonably required." Water Code § 13383(b).

Furthermore, SOCWA would voluntarily perform said monitoring if the Regional Board requested it. Therefore, under any circumstances, the concern expressed by Mr. Robertus can be dealt with and does not afford a basis for denial of the requested modification.

V. The Members of the Regional Board Have Expressed Concerns About the Appropriateness of the Standards Applicable to the GRF in the 2006 NPDES Permit

At the Regional Board hearing of May 13, 2009 (transcript attached as Attachment 6), the issue of certain penalties assessed against SOCWA/SCWD regarding the brine discharge were discussed. Many of the facts discussed herein were put forth as reasons why the penalties should not be assessed. These issues clearly support the positions asserted for the modification of the 2006 NPDES Permit as requested herein.

**A. Page 26, Lines 2-6
Page 29, Lines 9-14
Page 29, Lines 20-22
Page 31, Lines 13-15**

(Mr. Wright) According to the Clean Water Act, all POTWs must meet effluent limitations for a secondary treatment. Clearly, again, the concern was with POTWs and there is no mention of any type of Groundwater Recovery Facility.

(Mr. Wright) We strong—we firmly believe that MMPs were never intended to apply to groundwater recovery and water recycling facilities. The difference between the GRF and a POTW is that a GRF simply does not treat any wastewater.

(Mr. Wright) In contrast, the GRF's brine effluent, effluent is simply a concentrated form of the natural constituents in groundwater.

(Mr. Wright) Without the GRF, this groundwater would have likely flowed to the ocean an--anyway.

B. Page 77, Lines 7-19

(Mr. Loveland) . . . but I do have a concern . . . but the solution we have now of adding the brine to the POTW, which is producing recycled water and raising that TDS seems like the wrong way to do it. And yet, if we're -- if we're discharging the combined effluent that meets the requirements, which seems we'll kill a couple of birds with a rock, by, by allowing that, and I'm not sure why we're not thinking of that in the big picture.

C. Page 81, Lines 9-15

(Mr. Anderson) I'm not totally convinced that these MMPs apply, and I, I think it's a shame that we -- we're going to probably penalize some [sic] a water district who's trying to do the right thing here, and I just think that you know, we need to consider this before we take this action today, so.

**D. Page 83, Lines 7-25
Page 84, Lines 16-25**

(Mr. Thompson) I also read into that that there really was no intent of the legislature to be punitive, either, to the extent that you are taking, essentially, an organization that's working very hard to, to correct the problems they have that have been identified through the process of, of starting up and implementing the requirements of the NPDES permit that they originally issued, and it kind of goes back to the same argument

before, concerning when your treading new ground, you don't know where you're going to end up until you get there, and now, we're talking about mandatory penalties that I don't really think were intended to mean this. I think they were intended to really mean we need to penalize people that are - that are - that are being unresponsive. And in my case, I think that I feel they've been responsive.

(Mr. Thompson) I think there is some room for interpretation concerning whether or not if - - if a [Time Schedule Order] had been in place, that these penalties might be less, and that is a process issue. If . . . you're accruing penalties that, that short of shutting down the plant entirely when they're still trying to figure out exactly what they have it is the catch 22.

VI. Conclusion

The GRF is neither a POTW nor an industrial discharger. It simply extracts brackish local groundwater and treats it for potable use. Given the State's severe water shortage, the GRF is the very type of facility that is encouraged by the Regional and State Boards. The GRF does not treat wastewater, or create discharge from industrial processes. As such, it should not be treated like a POTW or an industrial discharger, *i.e.*, it should not be subject to the standards set forth in the Ocean Plan. Moreover, the GRF simply does not discharge into "Waters of the United States," and thus, it should not be subject to effluent limitations under the Clean Water Act. The appropriate point of compliance is at the SJCOO where the effluent does, in fact, discharge to "Waters of the United States." Because the brine effluent from the GRF would not impact the SJCOO and brine discharge would enter the ocean (which is naturally saline), it is clearly the best facility to receive the brine effluent. This makes much more sense than discharging the brine to the Latham Plant which was not designed to treat brine effluent. Moreover, the impact of the brine effluent discharged to the Latham Plant is significant as the brine affects the salinity/quality of the recycled water. As such, SOCWA and SCWD respectfully request that the Regional Board modify the 2006 NPDES Permit to impose effluent limits at the SJCOO rather than at the GRF.

ATTACHMENT 1

cc: Betty



MWD
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

OCT 31 2008

Executive Office

October 27, 2008

Mr. Michael P. McCann
Assistant Executive Officer
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353

Dear Mr. McCann:

South Coast Water District Groundwater
Recovery Facility - NPDES No. CA0107417 Permit Order No. R9-2006-0054

We understand that the California Regional Water Quality Control Board, San Diego Region (Regional Board) issued an administrative civil liability against South Coast Water District's (SCWD) Groundwater Recovery Facility (GRF) and recommended penalties for violating effluent limitations contained in their waste discharge requirements. The Metropolitan Water District of Southern California would like to express support for SCWD's request that the Regional Board approve an amendment to their NPDES permit that would allow compliance to be determined at the San Juan Creek Ocean Outfall, rather than at the GRF.

Compliance at the outfall would provide a better measure of ocean impacts caused by the GRF. The GRF discharges about 230,000 gallons per day, which represent about one percent of the total flow discharged to the ocean via the Outfall. Because of the GRF's small contribution to the outfall flow, we suggest the Regional Board consider its impact to the ocean when mixed with other discharges from wastewater treatment plants.

Amendment to the NPDES permit would allow for continued operation of the GRF, which is capable of delivering up to 1,300 acre-feet of otherwise unusable groundwater, thereby increasing the regional water supply reliability. Through Metropolitan's Local Resources Program, we provide financial incentives for the development of new water recycling and groundwater recovery projects, such as GRF, which in turn reduces demand for imported water supplies and help address significant water supply challenges.

Early in June, Governor Schwarzenegger declared a statewide drought and ordered the State Department of Water Resources to coordinate with other state and federal agencies to help identify risks to water supply. In addition, there are uncertainties in State Water Project,

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Mr. Michael P. McCann

Page 2

October 27, 2008

operations over the next several years. Deliveries from the State Water Project, which serves two-thirds of the state, have recently been curtailed due to environmental and regulatory actions. Hence, maintaining operation of the GRF is of great value to Southern California and would help the region contend with water supply shortage conditions.

We urge the Board to consider moving SCWD's compliance point to the San Juan Creek Ocean Outfall. We believe the proposed amendment would be practical and more representative of the ocean impacts when combined with other discharges from Publicly Owned Treatment Works.

We would be happy to meet with your agency and SCWD if we can be of any help.

Sincerely,



Jeffrey Lightlinger
General Manager

JV: vs

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cc: Mr. Kevin Hunt
General Manager
Municipal Water District of Orange County
18700 Ward Street
Fountain Valley, CA 92708

Mr. Michael Dunbar
General Manager
South Coast Water District
P. O. Box 30205
Laguna Niguel, CA 92607-0205

ATTACHMENT 2



April 20, 2009

Ms. Betty Burnett
Assistant General Manager/District Counsel
South Coast Water District
31592 West Street
Laguna Beach, CA 92651

**Subject: Technical Memorandum
Evaluation of Discharge Impacts from the
South Coast Water District's Groundwater Recovery Facility and
Comparison of NPDES Permits for Other Facilities**

Dear Ms. Burnett:

At the request of the South Coast Water District (SCWD), Environmental & GIS Services, LLC (eGIS) assisted SCWD with the evaluation of the discharges from the SCWD Groundwater Recovery Facility (SCWD GRF). Specifically, eGIS reviewed the impacts on the combined San Juan Creek Ocean Outfall (SJCOO) effluent by discharges from the SCWD GRF and compared the National Pollution Discharge Elimination System (NPDES) permit requirements for the SCWD GRF to NPDES permits issued for other facilities with discharges to ocean outfalls. This technical memorandum summarizes the findings of the evaluation.

BACKGROUND

The following presents a summary of the SCWD GRF treatment facility operations, the raw water quality at the SCWD GRF, and the discharge and NPDES requirements for the SCWD GRF.

Summary of GRF Treatment

The SCWD GRF treats low quality groundwater removed from the San Juan Valley Groundwater Basin (SJV Groundwater Basin) to produce drinking water that is distributed to SCWD customers. The GRF water treatment process primarily consists of reverse osmosis (RO) treatment and iron/manganese removal. The GRF system is summarized as follows:

Groundwater well and sand filter – An on-site groundwater well extracts brackish water from an underground aquifer (the raw water quality is discussed further in the following section). Minimal sand present in the removed water is removed via a sand filter.

RO Treatment– The majority of the water provided to the SCWD GRF plant by the on-site well undergoes reverse osmosis treatment and is pre-treated prior to entering the RO system. During pre-treatment, a threshold inhibitor is added to prevent minerals from building up on the fine RO membranes, and cartridge filters within two stainless steel containers remove suspended particles from the water. Following pre-treatment, the water is forced through the fine membranes of the RO system to separate dissolved solids from the water.

Iron/Manganese-Removal – Due to the presence of high concentrations of iron and manganese in the groundwater, approximately 17-percent of the raw water passes through an iron and manganese removal system to be used as blend flow. The iron and manganese removal system consists of sodium hypochlorite dosing and greensand filtration. Water from this treatment system is blended with water treated by the RO system.

Decarbonation – Groundwater treated by RO and iron and manganese removal is blended and sent to the forced-air decarbonator which removes excess carbon dioxide from the water.

Post-Treatment – To disinfect the water, sodium hydroxide, aqueous ammonia and sodium hypochlorite are added to the water.

Potable Water Tank – Before the potable water is distributed in the SCWD system, it is held temporarily in a 20,000-gallon, underground concrete storage tank (also called a clear well) to allow chloramines to form. Three high-power pumps convey the potable water to the distribution system.

Air Gap – The air gap structure prevents the return of brine/backwash into the facility.

GRF Raw Water Quality

At present, the SCWD GRF treats groundwater extracted from one on-site groundwater well. The SCWD and the well are located within the SJV Groundwater Basin. Prior to the use of treatment technologies such as those at the SCWD GRF, low water quality in this basin had previously been a barrier to viable potable groundwater production. According to the California Department of Water Resources (DWR), Groundwater Bulletin 118, "...groundwater mineral content is variable in this basin...in general, [total dissolved solids] TDS content in groundwater increases from below 500 mg/L in the upper reaches of the valleys to near 2,000 mg/L near the coast..."¹ Additionally, according to the basin report within the Southern California Metropolitan Water District's (SCMWD) Groundwater Assessment Study, "except for the Upper San Juan, the TDS of most of the groundwater in storage in the main part of the groundwater basin is too

¹ DWR, 2004. Groundwater Bulletin 118, Hydrologic Region South Coast, San Juan Valley Groundwater Basin.

high for domestic water use.² The SCMWD also identified TDS, iron, manganese and sulfate as key constituents of concern in the SJV Groundwater Basin.

Laboratory analyses of raw groundwater shows Influent at the SCWD GRF exhibits the following:

Table 1
Summary of Raw Groundwater Quality
SCWD GRF Facility

Parameter	Result	Units
Iron (Fe)	5.9 - 8.3	mg/L ³
Manganese (Mn)	1.0 - 1.2	mg/L
Sulfate	590 - 1,180	mg/L
TDS	2,080 - 2,240	mg/L

As shown above, source water for the SCWD GRF exhibits high concentrations of iron, manganese, sulfate and TDS,³ consistent with the expected condition for this location in the basin.

Summary of GRF Discharge and Original Ocean Outfall NPDES REQUIREMENTS

The SCWD GRF generates waste brine primarily from the RO and iron and manganese treatment systems. The facility also generates backwash discharge. The SCWD GRF was originally designed and constructed to dispose of facility effluent to the ocean via the San Juan Creek Ocean Outfall (SJCOO) under NPDES permit CA 0104717 (Order Number R9-2000-0013, April 12, 2000) issued by the San Diego Office of the California Regional Water Quality Control Board (RWQCB). According to this order, the requirements for effluent discharge from the outfall are based on the 1997 California Ocean Plan.

This original permit described the disposal of the waste stream from the planned SCWD GRF as the following: "...0.32 M [million] gallons/day will be discharged through the Chiquita Land Outfall to the [South East Reclamation Regional Authority] SERRA Ocean Outfall."⁴ In addition to the SCWD GRF, the following additional facilities were included in this permit and discharged to the ocean outfall:

- SERRA Jay B. Latham Regional Treatment Plant (JBL RTP)
- City of San Clemente WRF (CSC WRF)
- SMWD Chiquita Water Reclamation Plant (SMWD Chiquita WRP)
- Moulton Niguel Water District (MNWD) 3A Reclamation Plant (MNWD 3A Plant)

² SCMWD, 2007. Groundwater Assessment Study: A Status Report on the Use of Groundwater in the Service Area of the Metropolitan Water District of Southern California, Chapter IV, Groundwater Basin Reports.

³ mg/L – milligrams per liter (also parts per million)

⁴ The SERRA Ocean Outfall was later named the SJCOO

• Santa Marguerita Water District (SMWD) Oso Creek WRP

According to the Monitoring and Sampling plan included in the original permit (Order Number R9-2000-0013), the combined effluent was sampled at a point "...downstream of any in-plant return flows, and disinfection units, where representative samples of the effluent discharged through the ocean outfall can be obtained." The combined effluent limitations for this original permit were the following:

Table 2
Summary of Original Ocean Outfall Effluent Discharge Requirements
(Order Number R9-2000-0013)

Parameter	Period	Effluent Limitation	Units
TSS	Avg. Monthly	30	mg/L
	Avg. Weekly	45	mg/L
	Instantaneous Max.	50	mg/L
Settleable solids	Avg. Monthly	1.0	mg/L
	Avg. Weekly	1.5	mg/L
	Instantaneous Max.	3.0	mg/L
Turbidity	Avg. Monthly	75	NTU ⁶
	Avg. Weekly	100	NTU
	Instantaneous Max.	225	NTU

CURRENT SJCOO NPDES REQUIREMENTS

During construction of the SCWD GRF, the original NPDES permit (Order Number R9-2000-0013) was superseded by Order Number R9-2006-0054 (August 16, 2006). According to this order, the requirements for effluent discharge from the outfall are based on the April 2005 California Ocean Plan. According to the current permit, the SJCOO also currently receives effluent from the following facilities that are included in the permit: the SOCWA JBL RTP, the SMWD Chiquita WRP, the MNWD 3A Plant, the CSC WRF and the San Juan Creek GRF (SJC GRF).

Unlike the monitoring of combined effluent prescribed in the original permit, the 2006 permit requires contributions to the SJCOO to be monitored at the following locations:

- M-001 At a location where representative samples of commingled effluent from all contributors to the SJCOO. The location shall be specifically performed in the sampling vault in the Dohenny State Beach Park through a sampling port in the outfall pipe
- M-001A Final effluent from the SOCWA RTP and downstream of any in-plant return flows and disinfection units where representative samples of effluent treated solely at the treatment plant can be collected

⁶ NTU - Nephelometric Turbidity Units

- M-001B Final effluent from the SMWD Chiquita WRP and downstream of any in-plant return flows and disinfection units where representative samples of effluent treated solely at the treatment plant can be collected
- M-001C Final effluent from the MNWD 3A and downstream of any in-plant return flows and disinfection units where representative samples of effluent treated solely at the treatment plant can be collected
- M-001D Final effluent from the CSC RP and downstream of any in-plant return flows and disinfection units where representative samples of effluent treated solely at the treatment plant can be collected
- M-001E Brine discharge from the SJC GRF prior to mixing with any other flows directed to the Ocean Outfall
- M-001F Brine discharge from the SCWD GRF prior to mixing with any other flows directed to the Ocean Outfall
- M-001G Treated effluent from the Segunda Deshecha (M02) Flood Control Channel urban runoff treatment process prior to mixing with flows in the San Clemente Land Outfall

As is shown above, the 2006 version of the NPDES permit required individual monitoring of SCWD GRF effluent prior to discharge to the SJCOO. As such, the NPDES permit identified the following effluent requirements for the SCWD GRF:

Table 3
Summary of SCWD GRF Effluent Discharge Requirements (Order Number R9-2006-0054)

Parameter	Period	Effluent Limitation	Units
TSS	Avg. Monthly	60	mg/L
Settleable solids	Avg. Monthly	1.0	mg/L
	Avg. Weekly	1.5	mg/L
	Instantaneous Max.	3.0	mg/L
Turbidity	Avg. Monthly	75	NTU
	Avg. Weekly	100	NTU
	Instantaneous Max.	225	NTU

After commencement of the facility operations, SCWD received notification of compliance violations from the RWQCB. The RWQCB indicated that the GRF discharged effluent to the SJCOO with levels of turbidity, settleable solids, and total suspended solids that exceeded the discharge requirements. Following receipt of the notification of violations, SCWD temporarily terminated operations at the facility. To prevent further violations, the outflow at the GRF was redirected to a sewer lift station that contributes to the SOCWA sewage treatment facility and the SCWD GRF does not currently discharge effluent directly to the SJCOO.

EVALUATION OF IMPACTS TO SJCOO EFFLUENT FROM GRF DISCHARGES

According to Order Number R9-2000-0013, the GRF was originally designed under the expectation that the permit thresholds applied to the combined outfall flow from the SJCOO and did not apply to individual facility contributions to the SJCOO.

To determine the effect on the SJCOO effluent from GRF discharges directly to the SJCOO, eGIS reviewed available monitoring data for the SJCOO obtained between July 2007 and July 2008. To calculate the mass of TSS contributed by each discharger to the SJCOO, the following equation was used:

$$\text{Mass TSS (kg)} = \left(\frac{\text{Avg. flow volume}_{dw}}{\text{In gallons}_{dw}/\text{day}} \right) \times \left(\frac{3.78 \text{ liters}_{dw}}{1 \text{ gallon}_{dw}} \right) \times \left(\frac{\text{TSS in mg}_{ss}/\text{L}_{dw}}{\text{mg}_{ss}/\text{L}_{dw}} \right) \times \left(\frac{1 \text{ kg}_{ss}}{10^6 \text{ mg}_{ss}} \right)$$

Where:

dw - discharge water

ss - suspended solids

Using the equation above and available monitoring data for each facility contributing to the SJCOO, an average mass of TSS per day can be calculated for each contributing facility, as summarized in the following table:

Table 4
Comparison of Contributor's Effluent Discharges to SJCOO Effluent Quality

Facility	Average Flow (MGD) ⁶	Avg. TSS in Effluent (mg/L)	Avg. Mass of TSS per day (kg/day) ⁷
SJC GRF	0.47	34.8	61.8
MNWD 3A	1.81	5.6	38.3
CSC RP	3.54	9.8	131.1
SMWD CWRP	3.65	15.9	219.4
SOCWA JBL	8.19	7.9	244.6
SCWD GRF	0.22	94.6	78.7

Using the information provided in the table above, an average total daily flow of 17.88 MGD with a total TSS mass of 773.9 kg/day is generated by the SCJOO including discharges from the GRF. Without the contribution from the GRF, the SJCOO would discharge a total of 17.66 MGD with a total TSS mass of 695.2 kg/day.

To calculate the average TSS in the total effluent from the SJCOO, the equation presented above was rearranged to solve for TSS, which yields the following:

⁶ MGD - million gallons per day

⁷ kg - kilogram

$$\left(\frac{\text{TSS in mg}_{ss}/\text{L}_{dw}}{\text{mg}_{ss}/\text{L}_{dw}} \right) = \left(\frac{\text{Mass TSS (kg)}}{\text{Avg. flow volume}_{dw} \text{ in gallons}_{dw}/\text{day}} \right) \times \left(\frac{1 \text{ gallon}_{dw}}{3.78 \text{ liters}_{dw}} \right) \times \left(\frac{10^6 \text{ mg}_{ss}}{1 \text{ kg}_{ss}} \right)$$

Using this equation, the average TSS in the total effluent from the SJCOO can be calculated, yielding an average SCJOO effluent TSS of 11.5 mg/L, which is significantly less than the general effluent limitations presented in Table A of the 2005 California Ocean Plan (60 mg/L⁸). Additionally, the average TSS in the total effluent from the SJCOO without contributions from the GRF can be calculated, yielding an average SCJOO effluent TSS of 10.4 mg/L without contributions from the GRF. Therefore, discharges of effluent from the GRF directly to the SJCOO contribute only an additional 1.1 mg/L of increased TSS in the effluent from the SJCOO.

EVALUATION OF OTHER OCEAN OUTFALL NPDES PERMITS

To determine whether differences exist in the discharge requirements for other facilities that discharge to ocean outfalls, eGIS reviewed the NPDES permits and documents for other facilities that note compliance with the 2005 California Ocean Plan. The permit conditions, discharge characteristics, and monitoring requirements for these facilities are discussed in the following sections.

Summary of Monterey Ocean Outfall NPDES Permit

The Monterey Regional Water Pollution Control Agency (MRWPCA) discharges up to 81.2 MGD of secondary treated wastewater and brine waste from the Regional Treatment Plant (RTP) to Monterey Bay via an outfall diffuser approximately 11,260 feet offshore. This discharge is performed under NPDES permit CA004851 (Order R3-2008-0008) from the Central Coast RWQCB (Attachment A).

According to the NPDES documents, regional, commercial, and industrial wastewater is conveyed to the RTP, which is treated and comprises the majority of the secondary treated wastewater. During the dry season, treated wastewater is reclaimed by the MRWPCA facility for irrigation of farmland, greatly reducing the volume of wastewater being discharged to Monterey Bay via the outfall. The MRWPCA also accepts 30,000 to 50,000 gallons per day of brine wastes that include softener regenerant waste, groundwater nitrate removal brine and reverse osmosis brines. These brines are trucked to the RTP from businesses that would otherwise dispose these wastes to the sanitary sewer. According to Fact Sheet, Section II.E (Page F-8) of Order R3-2008-0008, the MRWPCA has recently sought to keep these brines segregated from the influent flow of the [RTP] "[t]o combat high salt concentrations in reclaimed wastewater..." because irrigation uses of reclaimed wastewater are sensitive to elevated levels of total dissolved solids (TDS). Therefore, the brine wastes are held at the RTP in a 375,000-gallon, lined holding pond and are ultimately discharged or blended with secondary treated wastewater from the RTP before being discharged to the diffuser.

⁸ Average monthly effluent limitation

As noted in Order R3-2008-0008 (Attachment E, page E-4), during the dry season the facility "is recycling essentially 100% the wastewater flow less what is needed for blending with brine wastes". Under this Order, the facility blends secondary treated effluent with brine as needed to meet the permit conditions for brine waste discharges. The Order contains a single set of water quality based effluent limitations (WQBELS) that are consistent with the ocean plan, are applicable to any ratio of blended secondary effluent and brine waste flows, and dictate the amount of secondary effluent required for blending with brine waste.⁹

According to Section II "Monitoring Locations" presented in Attachment E of the NPDES permit, discharge monitoring for this ocean outfall is performed at the following locations:

- INF-001 Influent wastewater with a domestic component (this excludes brine waste but includes hauled septage), prior to treatment and following all significant inputs to the collection system or the headworks of untreated wastewater and inflow and infiltration
- INF-002 Influent brine waste via haulers to the brine waste storage facility prior to blending with secondary effluent as applicable
- EFF-001 Locations where representative sample of effluent, which includes any component of brine waste, discharge through the ocean outfall can be collected, after treatment and chlorination/dechlorination and before contact with receiving water
- RSW-A Shoreline monitoring station -- 900 feet north of the outfall, 1,000 feet offshore
- RSW-B Shoreline monitoring station -- adjacent to the outfall, 1,000 feet offshore
- RSW-C Shoreline monitoring station -- 900 feet south of the outfall, 1,000 feet offshore
- RSW-D Shoreline monitoring station -- 1,800 feet south of the outfall, 1,000 feet offshore

Section IV of Attachment E further clarifies that "...brine waste samples shall be collected as grab samples and manually composited per the Discharger's current brine waste and outfall facility configuration and sampling protocols..." Based on this and the monitoring points identified in the NPDES documentation, although brine influent is sampled, brine effluent from the RTP is not monitored individually, but is instead monitored as part of the total blended effluent at location EFF-001.

According to Section VI.C.2.c "Brine Waste Disposal Study" presented in the NPDES permit, prior to performing the planned increases in the brine discharge volume, the discharger will complete a Brine Waste Disposal Study that includes the following elements: "... (1) a projection of the brine volume and characteristics; (2) an assessment

⁹ Central Coast RWQCB Staff report for regular meeting of March 20-21, 2008

of the impact of the increased brine volume on permit compliance; [and] (3) an assessment of the impact of the increased brine volume on the minimum probable initial dilution at the point of discharge...". Based on this, the impact of the brine waste as a component of the overall discharge has been considered in the development of the discharge requirements.

Summary of Oceanside Ocean Outfall NPDES Permit

The City of Oceanside operates a Brackish Groundwater Desalination Facility (BGDF) that treats groundwater extracted from the Mission Hydrologic Subarea for potable uses. The facility provides treatment consisting of pH adjustment, filtration, and demineralization by reverse osmosis. The BGDF has a design capacity of 6 MGD of final potable water, which results in 2 MGD of waste brine; however, in 2003, the average daily flow of waste brine from BGDF was 0.7 MGD. The BGDF disposes the waste brine to the Oceanside Ocean Outfall (OOO) under NPDES Permit CA0107433 (Order Number R9-2005-0136) (Attachment B), which is managed by the San Diego Office of the RWQCB. Waste effluent from the San Luis Rey Wastewater Treatment Plant (SLRWTP) and La Salina Wastewater Treatment Plants (LSWTP) is also discharged to the OOO under this NPDES permit. Discharges from these facilities and the BGDF are also commingled with discharged from the Fallbrook Public Utility District, US Marine Corps Base Camp Pendleton and the Biogen IDEC Pharmaceuticals Corporation. According to the NPDES permit, monitoring to the OOO is performed at the following locations:

- M-INF1 At a location where all influent flows to SLRWTP are accounted for in monitoring events; upstream of any in-plant return flows; and where representative samples of influent can be collected.
- M-INF2 At a location where all influent flows to LSWTP are accounted for in monitoring events; upstream of any in-plant return flows; and where representative samples of influent can be collected.
- M-001 Downstream of any in-plant return flows at SLRWTP where representative samples of effluent treated solely at SLRWTP can be collected.
- M-002 Downstream of any in-plant return flows where representative samples of effluent treated solely at LSWTP can be collected.
- M-003 Outfall 001 At a location where representative samples of commingled effluent from SLRWTP, LSWTP, BGDF and Biogen IDEC Pharmaceuticals Corp. can be collected before combining with wastewaters from Fallbrook Public Utility District and US Marine Corp. Base Camp Pendleton.

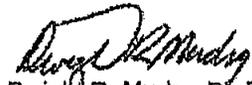
Based on Order Number R9-2005-0136, waste brines generated by BGDF are discharged directly to the OOO and monitored for compliance with effluent limitations at M-003 after commingling with other dischargers.

CLOSING REMARKS

Based on eGIS's review, the following conclusions were found:

- Based on calculations using monitoring data, discharges of effluent from the GRF directly to the SJCOO would contribute only an additional 1.1 mg/L of increased TSS in the effluent from the SJCOO. Additionally, the calculated average TSS in the combined effluent from the SJCOO would be 11.5 mg/L, which is significantly less than the general effluent limitations presented in Table A of the 2005 California Ocean Plan (60 mg/L). Therefore, the additional 1.1 mg/L contributed by the SJCOO does not appear to significantly affect the combined effluent from the outfall.
- Based on a review of other NPDES permits and waste discharge orders for facilities that dispose to ocean outfalls, variations exist in the monitoring and sampling location requirements for the contribution of brine to other ocean outfalls. Specifically, blending of brine waste with treated wastewater is permitted at the MRWPCA RTP to achieve the outfall effluent requirements and waste brines generated by Oceanside BGDF are monitored for compliance with effluent limitations after commingling with other discharges to the ocean outfall.

Sincerely,



Dwight R. Mudry, Ph.D.
Environmental Specialist



Sarah L. Denton, PG CEM
Environmental Specialist

Attachments:

A MRWPCA NPDES Permit CA004851 (Order R3-2008-0008)

B Oceanside Ocean Outfall (OOO) NPDES Permit CA0107433 (Order R9-2005-0136)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION IX
 75 Hawthorne Street
 San Francisco, CA 94105-9901



David Hanson
 Water Resource Control Engineer
 California Regional Water Quality Control Board
 9174 Sky Park Court, Suite 100
 San Diego, CA 92123-4340

DEC 08 2004

Dear Mr. Hanson:

The U.S. EPA appreciates the opportunity to comment on the Tentative Addendum No. 3 to Order No. 2001-08, NPDES No. CA0107611; Waste Discharge requirements for the South Orange County Wastewater Authority discharge to the Pacific Ocean through the Aliso Creek outfall, Orange County (ACOO). The U.S. EPA supports the adoption of Addendum #3, Finding No. 10; the clarification that each wastewater treatment facility must meet the technology-based effluent limitations for municipal dischargers, set forth in 40 CFR Part 133 for TSS, CBOD₅, and pH. Finding No. 10 would read, upon adoption, as follows:

"Technology-based effluent limitations for total suspended solids (TSS), 5-day carbonaceous biochemical oxygen demand (CBOD₅), and pH specified in 40 CFR Part 133 apply to each individual municipal sewage treatment facility discharging to the ACOO, preventing poorly performing facilities from circumventing technology-based secondary treatment standards (as set forth in 40 CFR Part 133) through dilution and preventing the discharge of toxic materials causing exceedance of the water quality objectives set forth in the California Ocean Plan. This is consistent with USEPA interpretation of 40 CFR Part 133 as it applies to multiple municipal wastewater treatment facilities sharing common outfalls and with other similar permits issued by other Regional Boards within California."

We understand that the discharger prefers the point of compliance be determined at the outfall, however we support the Regional Board's determination that compliance should be determined at the individual treatment plants. Secondary treatment is a technology-based standard and should be met after the treatment process. According to the Clean Water Act (CWA), all publicly owned treatment works (POTWs) must meet effluent limitations for secondary treatment (CWA 301 (1)(b)(1)(B), 33 U.S.C. 1311(b)(1)(B)).

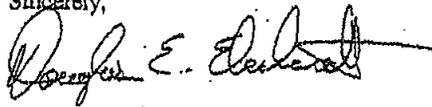
Determining compliance with secondary treatment requirements only at the outfall is inappropriate because the outfall does not meet the definition of a POTW. A POTW is defined in 40 CFR 122.2 and 403.3 as "any systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey waste to a POTW

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Treatment Plant." Because the ACCO does not convey waste to a treatment plant, the outfall is not included within the definition of a treatment plant. Thus, the effluent should be measured and compliance determined subsequent to secondary treatment at each treatment plant. Furthermore, technology-based requirements are to be met with treatment technology, not non-treatment such as flow augmentation (40 CFR 125.3 (f)) or dilution that could occur as various effluents mix in the outfall.

Thank you, again, for the opportunity to comment on the adoption of Addendum #3. Please contact Nancy Yoshikawa at (415) 972-3535, or Kim Driver at (415) 972-3539 if you have any questions.

Sincerely,



Douglas E. Eberhardt, Chief
CWA Standards and Permits Office

7-2

ATTACHMENT 4



South Orange County Wastewater Authority

September 27, 2007

John H. Robertus
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA. 92123

SUBJECT: AUGUST 2007 SUMMARY OF MONITORING OF ORDER NO. R9-2006-0054,
NPDES NO. CA0107417

Dear Mr. Robertus:

Five permit limits were exceeded at the South Coast Water District Groundwater Recovery Facility, monitoring location M-001F. The facility started preliminary test operations August 1, 2007. During this testing period, all RO brine, filter backwash, and product water was discharged to the San Juan Creek Ocean Outfall. The required monthly monitoring was performed on the discharge. The monthly average limits for suspended and settleable solids were both exceeded. All three turbidity limits were also exceeded. The South Coast Water District (SCWD) believes the sampling methodology used to collect the August monthly composite sample was in error. A review of the Groundwater Recovery System indicates that a more representative sample may be obtained from a standpipe which receives all of the component flows prior to discharge to the Chiquita Land Outfall. The August test results are substantially higher than the feed water from the source well. A sample station will be established at the standpipe where the flows are more homogeneous. SCWD has also indicated that they will conduct more frequent sampling during the month.

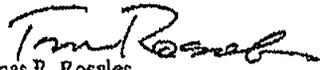
The anticipated start date for the City of San Clemente Segunda Deshecha Flood Control Channel runoff treatment process has been extended to December 2007.

All bacterial objectives, except one total coliform single sample maximum, were exceeded at surfzone monitoring station C1. Single sample fecal coliform objectives were exceeded twice at S15 and once at S19. Single sample enterococcus objectives were exceeded once at S3 and six times at S15; the 30-day geometric mean objective was also exceeded at S15. These sites are located in or adjacent to large urban runoff channels. SOCWA's discharge from the outfall is not believed to be the cause of these exceedances. At no time during August was there any surface water at Upper San Juan Creek monitoring station C2.

Section V.A. calls for calculation of a 30-day geometric mean using the five most recent samples from each surfzone monitoring site. Because Order R9-2006-0054 requires more frequent monitoring of the surfzone, all values for the month, for each site, were used to calculate the 30-day mean.

Sincerely,

SOUTH ORANGE COUNTY WASTEWATER AUTHORITY


Thomas R. Rosales
General Manager

34156 Del Obispo Street • Dana Point, CA 92629 • Phone: (949) 234-5400 • Fax: (949) 489-0130 • Website: www.socwa.com

A public agency created by: CITY OF LAGUNA BEACH • CITY OF SAN CLEMENTE • CITY OF SAN JUAN CAPISTRANO • EL TORO WATER DISTRICT • EMERALD BAY SERVICE DISTRICT
IRVINE RANCH WATER DISTRICT • MOULTON NIGUEL WATER DISTRICT • SANTA MARGARITA WATER DISTRICT • SOUTH COAST WATER DISTRICT • TABUCO CANYON WATER DISTRICT

South Orange County Wastewater Authority

NPDES No. CA0107417

DISCHARGE: San Juan Creek Ocean Outfall

SAMPLED BY: ECD Resources

REPORT FOR: August 2007

ANALYZED BY: Sierra Analytical

REPORT DUE: October 01 2007

SAMPLE SOURCE: SCWD GRF Brine/Backwash/Product

SAMPLE POINT: M-001F

Sample Type	Flow Meter MGD	Suspended Solids	Turbidity	Oil & Grease	pH	Settleable Solids
		24-HC	24-HC	Grab	Grab	Grab
		EPA 160.2 mg/L	EPA 180.1 NTU	EPA 413.1 mg/L	EPA 150.1 Standard Units	EPA 160.5 ml/L
Mo. Avg. Limit		60	75	25	6.0 to 9.0	1.0
Aug-01	1.14					
Aug-02	1.14					
Aug-03	1.14					
Aug-04	1.14					
Aug-05	1.14					
Aug-06	1.14					
Aug-07	1.14					
Aug-08	1.14					
Aug-09	1.14					
Aug-10	1.14					
Aug-11	1.14					
Aug-12	1.14					
Aug-13	1.14					
Aug-14	1.14					
Aug-15	1.14					
Aug-16	1.14					
Aug-17	1.14					
Aug-18	1.14					
Aug-19	1.14					
Aug-20	1.14					
Aug-21	1.14					
Aug-22	1.14					
Aug-23	1.14	119	260			
Aug-24	1.14			2.90	7.06	1.4
Aug-25	1.14					
Aug-26	1.14					
Aug-27	1.14					
Aug-28	1.14					
Aug-29	1.14					
Aug-30	1.14					
Aug-31	1.14					
Monthly Average	1.14	119	260	2.90	7.06	1.4

Comments: The facility began start-up operations with all RO Brine, filter backwash, and product water being discharged to the SJCOO.

ATTACHMENT 5



South Orange County Wastewater Authority

October 29, 2007

John H. Robertus
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA. 92123

SUBJECT: SEPTEMBER 2007 SUMMARY OF MONITORING OF ORDER NO. R9-2006-0054, NPDES NO. CA0107417

Dear Mr. Robertus:

There were six exceedences of Order R9-2006-0054 effluent limits during October.

One settleable solids analysis at the Santa Margarita Water District Chiquita Water Reclamation Plant, monitoring location M-001B, had a value of 4.0ml/L; the instantaneous maximum limit is 3.0ml/L. Bob Jordan, Water Quality Manger for SMWD, notified Joann Cofrancesco of the violation on September 19th; the cause of the high result is unknown.

Five permit limits were exceeded at the South Coast Water District Groundwater Recovery Facility, monitoring location M-001F. The facility discharged RO brine, filter backwash, and product water to the San Juan Creek Ocean Outfall. The monitoring results from the facility exceed the settleable solids instantancous limit, and the weekly and monthly average settleable solids and turbidity limits. Since the samples were collected, SCWD has redesigned the sampling location in order to obtain what they believe will be samples more representative of the discharge. The plant has been off-line since the change to the sampling location.

The anticipated start date for the City of San Clemente Segunda Deshecha Flood Control Channel runoff treatment process is December 2007.

All bacterial objectives, except one total coliform single sample maximum, were exceeded at surfzone monitoring station C1. The C2 site was dry for the first three weeks of monitoring; two samples collected the last week of the month exceeded all bacterial objectives. Single sample fecal coliform objectives were exceeded S0, S1, S2, S3 and S5. Single sample enterococcus objectives were exceeded at S0, S1, S2, S3 S5, S7, S9, S11, and S15; the 30-day geometric mean objective was also exceeded at S15. These sites are located in or adjacent to urban runoff channels. SOCWA's discharge from the outfall is not believed to be the cause of these exceedances.

Section V.A. calls for calculation of a 30-day geometric mean using the five most recent samples from each surfzone monitoring site. Because Order R9-2006-0054 requires more frequent monitoring of the surfzone, all values for the month, for each site, were used to calculate the 30-day mean.

Sincerely,

SOUTH ORANGE COUNTY WASTEWATER AUTHORITY

Thomas R. Rosales
General Manager

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South Orange County Wastewater Authority

NPDES No. CA0107417

DISCHARGE: San Juan Creek Ocean Outfall

SAMPLED BY: ECO Resources

REPORT FOR: September 2007

ANALYZED BY: Sierra Analytical

REPORT DUE: November 01 2007

SAMPLE SOURCE: SCWD GRF Brine/Backwash/Product

SAMPLE POINT: M-001F

	Flow	Suspended Solids	Turbidity	Oil & Grease	pH	Settleable Solids
Sample Type		24-HC	24-HC	Grab	Grab	Grab
Method Units	Meter MGD	EPA 160.2 mg/L	EPA 180.1 NTU	EPA 413.1 mg/L	EPA 150.1 Standard Units	EPA 160.5 ml/L
Mo. Avg. Limit		60	75	25	6.0 to 8.0	1.0
Sep-01	1.14					
Sep-02	1.14					
Sep-03	1.14					
Sep-04	1.14					
Sep-05	1.14					
Sep-06	1.14					
Sep-07	1.14					
Sep-08	1.14					
Sep-09	1.14					
Sep-10	1.14					
Sep-11	0.90					
Sep-12	1.14					
Sep-13	0.33					
Sep-14	0.00					
Sep-15	0.00					
Sep-16	0.00					
Sep-17	0.57					
Sep-18	1.14					
Sep-19	1.14					
Sep-20	1.14					
Sep-21	1.14					
Sep-22	1.14					
Sep-23	1.14					
Sep-24	1.14					
Sep-25	0.46					
Sep-26	0.79	73.0	204			
Sep-27	1.14	35.0	141	2.6	7.11	3.2
Sep-28	0.94					
Sep-29	0.94			1.4		0.2
Sep-30	0.94			<2.0	7.42	<0.1
Monthly Average	0.92	54.00	173	1.33	7.27	1.1

Comments: The facility is discharging RO Brine, filter backwash, and product water to the SJCOO.

ATTACHMENT 6

MILES CHEN LAW GROUP

Legal Transcription

[START DS3000069.WMA]

MR. WRIGHT: 12 administrative assessment of civil liability, South County Wastewater Authority, South County Coast Water District Ground Water Recovery Facility. And before I read a lengthy statement I would like to offer Mr. Rayfield the opportunity to make a brief statement of recusal.

MR. RAYFIELD: thank you Chairman Wright. I was elected to the Board of Directors from the South Coast Water District last November, and I serve in that capacity now, and since they are a named party in this complaint, I need to recuse myself from the discussion.

MR. WRIGHT: Thank you for that statement. Anybody else need to make a statement? Okay, all right.

MR. RAYFIELD: Give me a minute to clear the room.

MR. WRIGHT: If you would. With, with your indulgence, I would like to read about a two page statement regarding this hearing. Again this is administrative civil liabilities against the South County Wastewater Authority,

1 South Coast Water District Groundwater Recovery
2 Facility. This is the time and place for a
3 public hearing to consider issuance of an order
4 for administrative civil liability to South
5 Orange County Wastewater Authority for violation
6 of Regional Board Order R9-2006-0054. This
7 hearing will be conducted in accordance with the
8 hearing procedures published with the meeting
9 agenda, and with the applicable notice of public
10 hearing. For this hearing, the functions of
11 council and staff are as follows: Catherine
12 George Hagan, attorney with the State Water
13 Board's office the Chief Counsel, will provide
14 legal advice to the Regional Board. John
15 Robertus, Executive Officer, will also advise
16 the Regional Board and may offer a
17 recommendation to the Regional Board at the
18 conclusion of the hearing. Myumi Okamoto
19 [phonetic], attorney with the State Water
20 Board's Office of Enforcement, welcome, will
21 provide legal advice to the Regional Board's
22 prosecution team. Michael McCann, Assistant
23 Executive Officer, is assigned work with the
24 prosecution team in this matter, as is Jeremy
25

1
2 Haas, Enforcement Coordinator. At this time,
3 evidence should be introduced on the following
4 issues. One, whether Oran--whether South Orange
5 County Wastewater Authority has violated
6 effluent limits established in Regional Board
7 Order number R9-2006-0054, and whether the
8 alleged violations are subject to the proposed
9 mandatory minimum penalties alleged in the ACL
10 complaint. And, two, whether the Board should
11 order South Coun--South Orange County Wastewater
12 Authority to pay \$2,004.00 in mandatory minimum
13 penalties. All persons expecting to testify,
14 please stand at this time, raise your right
15 hand, and take the following oath, so if you
16 would please stand, all those expecting to
17 testify. Do you swear the testimony you're
18 about to give is the truth, and if so, answer I
19 do. Thank you very much. Designated parties
20 are as follows: Regional Board prosecution
21 staff and the South C--Orange County Wastewater
22 Authority. Each designated party will be
23 allowed a total of 30 minutes during this
24 hearing to testify, present evidence, and cross
25 examine witnesses. Cross examination of another

1
2 designated party will count toward a party's 30
3 minutes. The parties may use their time as they
4 choose. An additional five minutes will be
5 allotted to each designated party for closing
6 statements. A Chair may modify these procedures
7 and time allocations as needed and upon request.
8 The timer will be adjusted to show the time
9 remaining for the party speaking. At the
10 discretion of the Chair, the timer may be
11 stopped for procedural questions, questions from
12 Board Members, or other causes. Interested
13 persons shall have three minutes to present non-
14 evidentiary policy statements, and Mr. King to
15 my right, will be using the timer to keep track
16 of, of how much time is used. The order of
17 this hearing is as follows. One, testimony by
18 prosecution staff followed by cross examination
19 of pru--prosecution staff, if any, testimony by
20 South Orange County Wastewater Authority,
21 followed by cross examination of SOCWA. If it's
22 okay, I'll use that uh short terminology,
23 instead of say--saying South County Orange
24 Wastewater Authority each time. Comments by
25 interested persons, and closing statement by

Ubiquus Reporting

2222 Martin Street Suite 212, Irvine, CA 92612
Phone: 949-477-4972 FAX 949-553-1302

1
2 SOCWA and then, closing statement by
3 prosecution staff. If you would when you come
4 to the podium please state your name, address,
5 affiliation, and indicate whether you've taken
6 the oath before testifying. So let's begin with
7 testimony by staff. So who speaks for staff at
8 this time? And I see--

9 MALE VOICE 1: [Interposing] Jeremy Haas
10 will.

11 MR. WRIGHT: --Mr. Jeremy Haas who is
12 dapper, as usual, coming to the podium so.

13 MR. HAAS: Thank you. Okay. Good after,
14 Chairman Wright and Members of the Board. My
15 name is Jeremy Haas, and I am a senior
16 environmental scientist in the Compliance
17 Assurance Unit, and I have taken the oath. I
18 will present information today for Item 12,
19 which is a tentative order for administrative
20 assessment of mandatory minimum penalties. I am
21 joined today by Myumi Okamoto from the State
22 Water Board's Office of Enforcement, who has
23 assisted us on this matter. And at this time,
24 I'd like to enter the--our files in--on the
25 order into the administrative record. Now, we

1
2 are here today because Tentative Order number
3 R9-2009-0048 would impose liability against the
4 South Orange County Wastewater Authority, SOCWA,
5 for allegations within complaint number R9-2009-
6 0028. We have a revised Tentative Order in the
7 supplemental package, as supporting document
8 number six, and this is the order we're asking
9 you to consider today. The allegations are for
10 violations of effluent limitations in Order
11 number R9-2006-0054, which is the NPDE--NPDES
12 permit for waste discharge requirements for the
13 South Orange County Wastewater Authority
14 discharged to the Pacific Ocean via the San Juan
15 Creek Ocean Outfall in Orange County. First,
16 I'd like to go over the roster a little bit.
17 The NPDES permit is issued to SOCWA, the South
18 Orange County Wastewater Authority, and SOCWA is
19 a joint powered authority of ten member
20 agencies, and it retains the San Juan Ocean
21 Outfall NPDES permit, on behalf of the member
22 agencies, one of which is the South Coast Water
23 District. The South Coast Water District owns
24 and operates the facility that is subject to the
25 MMPs. This is the groundwater recovery

1 facility. You may hear from both agencies
2 today. This is a straightforward case. The
3 prosecution staff is recommending that you do
4 two things, first, that you find that violations
5 of the NPDES permit did, in fact, occur, and
6 second, that those violations are subject to the
7 mandatory minimum penalties, as ascribed in the
8 complaint, and I'll ask, third, that you
9 actually adopt the Tentative Order. SOCWA and
10 South Coast Water District do not refute the
11 violations. They will try to persuade you that
12 the MMPs should not be assessed. However, the
13 statute is clear, and does not provide the Board
14 with that flexibility. So, first, I'm going to
15 summarize the alleged violations and the
16 complaint, and why mandatory minimum penalties,
17 which I'll refer to often as MMPs do apply in
18 this case. Ms. Okamoto is available to
19 elaborate on the statutory and legal issues
20 raised by SOCWA in its evidentiary submittal,
21 which is supporting document number five. We've
22 also provided you with a preliminary evaluation
23 of those arguments in the supplemental mailing
24 as supporting document number seven. The

1
2 supplemental mailing also included our motion to
3 strike certain evidence submitted by SOCWA, and
4 it also included SOCWA's opposition to our
5 motion. Those are supporting documents number
6 eight and nine in the supplemental agenda
7 package, respectively. In short, the
8 prosecution staff objected to SOCWA's attempt to
9 argue the appropriateness of the NPDES permit
10 provisions today because this hearing concerns
11 the assessment of mandatory minimum penalties,
12 and is not the proper forum for arguing permit
13 provisions. Ms. Hagan agreed and issued a
14 ruling that sections three and four of SOCWA's
15 evidentiary submittal are not relevant to the
16 MMPs, to the assessment of MMPs. I'm now going
17 to pass out a copy of that ruling. I'd like to
18 enter it into the administrative record as
19 Supporting Document number ten. I've provided
20 additional copies in the back of the room for
21 the public. As that's passed around I'd like to
22 provide Ms. Hagan with a few moments to maybe
23 elaborate on the ruling, if she'd like to.
24 Otherwise, I can briefly summarize it and she
25 can provide some explanation--okay, at any--at

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any point along the day.

MS. CATHERINE HAGAN: I think it might be just worth the Board Members just taking a quick look at it. It's fairly short and I'm happy to answer any questions, if it--if something is unclear.

MR. GARY THOMPSON: I do have a question, when--

MR. WRIGHT: [Interposing] Mr. Thompson, go ahead.

MR. THOMPSON: Well, one of the--one of the issues, and I know it's going to be probably discussed as part of the presentation and everything, but as I read through the information, it appeared to me that part of the dilemma we have facing us is not so much non-compliance from a purposeful matter, as far as the violations that occurred, but, but the chain of events, based on the original NPDES permit that was issued kind of led to that because they were walking into ground that they really weren't sure about yet. and as I read this, it, it appears that there's, there's going to be some discussion concerning at what point in time

1 the violation should have actually be effective,
2 versus what we've, we've recommended here, based
3 on the, the SOCWA's when they stopped the
4 processing plant to start addressing the issues
5 that it uncovered that they didn't really
6 recognize when they started, which led to the
7 violation, so I guess my question is, in this
8 particular case, under normal circumstances, I
9 would certainly agree that, that, that that
10 would be the correct course of action, but I'm
11 just wondering if there's enough nexus there
12 between the initial permit, what was permitted
13 to do, and what happened, and now, maybe why
14 that whole permit issue isn't necessarily to
15 revisit the permit, itself, but at least allow
16 the discussion of the permit as part of this
17 process, so that we can have a clear
18 understanding of how we got to where we are, and
19 that would be the, the real question.
20

21 MR. WRIGHT: Ms. Hagan?

22 MS. HAGAN: excuse me. Because I, I
23 recommended that the ruling and, actually, ruled
24 that the, the material remain in the record I,
25 I think it's per--perfectly appropriate for you

1
2 to discuss them however with the understanding
3 that, that the MMP statute is fairly clear, and
4 you'll hear from the prosecution team and from
5 the discharger about that statute today but I
6 think if you are, are just talking about the
7 underlying permit and the series of events to
8 see how, how you, you know, the party arrived--
9 how the discharger arrived at where they are
10 today I, I think that's perfectly appropriate.

11 MR. THOMPSON: Thank you.

12 MR. WRIGHT: Okay. Mr. Haas, could you
13 continue?

14 MR. HAAS: Sure. The ruling effectively
15 prohibits SOCWA from arguing whether the NPDES
16 permit provisions are appropriate, as you
17 consider whether to assess the mandatory minimum
18 penalties. as indicated in the ruling, were you
19 to consider imposing discretionary penalties, in
20 addition to the MMPs, then the Board could base
21 its evaluation on a number of factors, including
22 other matters as justice may require, however,
23 the prosecution staff is not recommending any
24 discretionary liability be assessed, only the
25 mandatory minimum penalties required by the

1
2 statute. Therefore, the appropriateness of the
3 provisions set forth in the NPDES permit are not
4 relevant to the consideration of the Tentative
5 Order. As a result, we're going to focus our
6 presentation today on whether the violations
7 occurred and whether the MMPs apply. So now,
8 I'm going to go into the violations within the
9 complaint. The complaint alleges turbidity,
10 total suspended solids, and settle--settle-able
11 solids effluent limitations were exceeded in the
12 discharge of brine from the groundwater recovery
13 facility to the San Juan Ocean Outfall. The
14 violations occurred over a period of about 15
15 months from August, 2007, through October, 2008,
16 and they were identified to the Regional Board
17 in discharge monitoring reports submitted per
18 the terms of the NPDES permit. Copies of the
19 relevant monitoring report pages are an
20 attachment to the complaint. They're attachment
21 number two to the complaint, and the complaint
22 is one of the supporting documents in the
23 original agenda package. The Tentative Order
24 includes a summary of these violations and the
25 recommended penalties in attachment one. This

1 violation table also summarizes the applicable
2 effluent limitations. Those effluent
3 limitations in the table are excerpted from the
4 NPDES Order, itself, which is in supporting
5 document five as Exhibit C. Briefly, the NPDES
6 permit establishes technology based effluent
7 limitations, based on the California Ocean Plan
8 of the Ocean Outfall, and also, for each
9 facility that discharges directly into it. The
10 technology based effluent limitations were
11 established for the two non-municipal wastewater
12 treatment facilities that discharge into the
13 Outfall, including the groundwater recovery
14 facility's brine discharge, and also, an urban
15 runoff treatment facility in the City of San
16 Clemente because they are considered industrial
17 discharges, for which effluent guidelines have
18 not been established, they are, therefore,
19 subject to the Table A effluent limitations
20 contained in the California Ocean Plan. Weekly
21 monitoring requirements were also established in
22 the NPDES Order, to ensure compliance with those
23 effluent limitations and to collect data for use
24 during the next permit reissuance, which is

1
2 currently scheduled for 2011. The NPDES permit
3 was adopted in August of 2006 by a unanimous
4 vote of the Board, following a public hearing,
5 and it became effective on October 1, 2006,
6 approximately ten months before the alleged
7 violations occurred. Next, why the violations
8 are subject to the mandatory minimum penalties,
9 the 68 violations in the Tentative Order are
10 subject to MMPs under California Water Code,
11 Section 13385 H and I, as described in finding
12 five and table one of the Tentative Order. 58
13 of the violations are subject to mandatory
14 minimum penalties, under Section 13385 H, and
15 they are identified as serious in the table
16 because effluent concentrations exceeded the
17 respective effluent limitations by 40% or more.
18 The ten other violations are subject to MMPs,
19 under Water Code, Section 13385 I because, while
20 they did not exceed their effluent limit by 40%,
21 each was the fourth or higher effluent
22 limitation violation within a six month period.
23 We sometimes refer to these as the chronic MMPs.
24 None of these 68, in total, are subject to any
25 of the narrowly defined statutory exemptions.

1
2 Findings six and seven in the Tentative Order
3 describe specifically why the two exemptions
4 sought by SOCWA do not apply in this case.
5 Later, in response to SOCWA's presentation, Ms.
6 Okamoto plans to further discuss the statutes
7 and the legal arguments. In the meantime, I'm
8 going to move on to the Revised Tentative Order,
9 and the proposed Supplemental Environmental
10 Project, or SEP. Again, the Revised Tentative
11 Order is supporting document number six in the
12 supplemental package. I have a few extra
13 copies, if you'd like them, and I have also
14 placed a number of copies on the back table
15 there. This Ten--Revised Tentative Order was
16 provided to the dischargers and posted online
17 last week, when it was provided to you in the
18 supplemental mailing. Okay. There are a couple
19 of minor edits, but the most significant
20 revision is the inclusion of a Supplemental
21 Environmental Project, a SEP. Two SEP proposals
22 were submitted to us on April 24th, and they were
23 included in your original mailing within
24 supporting document five as Exhibits F and G.
25 At the time of the first mailing to you, we had

1 not completed our review of the SEP
2 applications. At this point, following our
3 review, we are now recommending that you accept
4 the one titled Bite '08 Rocky Reef Study. This
5 SEP would provide \$109,500.00 to the Southern
6 Califor--Southern California Coastal Water
7 Research Project, SCCWRP, for a survey and
8 assessment of the Rocky Reefs and the Bite,
9 several of which are within our region,
10 including the shore off of South Orange County.
11 A representative from SCCWRP is here today, if
12 you have any questions. This amount is equal to
13 the maximum amount that the statute provides can
14 be directed towards a supplemental environmental
15 project within a mandatory minimum penalty. The
16 Revised Tentative Order also includes a schedule
17 of submittals which the Regional Board staff
18 would use to make sure that the project is on
19 track and completed as proposed. I'm now going
20 to wrap up my presentation by saying that
21 because the effluent violations did occur, the
22 question for us became are they subject to
23 mandatory minimum penalties. Clearly, they are,
24 and further, none of the statutory MMP

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1
2 exemptions apply in this case. Next, you're
3 going to hear from SOCWA and South Coast Water
4 District, who have, nonetheless, suggested that
5 MMPs should not be imposed. We expect their
6 arguments will be most--mostly legal ones, so
7 following their presentation, Ms. Okamoto will
8 lead the prosecutions staff's rebuttal. In the
9 meantime, and before I lower the projection
10 screen for SOCWA and South Coast, I'll gladly
11 field any questions about the complaint or the
12 Tentative Order.

13 MR. WRIGHT: Any questions, comments? Okay.
14 Thank you, Mr. Haas. Ms. Chen or who's--I have
15 three speaker slips Ms. Chen, Patricia Chen, Mr.
16 Michael Dunbar, and Mr. Tom Rosales.

17 MR. TOM ROSALES: I am Tom Rosales and, uh--

18 MR. WRIGHT: [Interposing] So you'll be
19 speaking first and--

20 MR. ROSALES: [Interposing] First and we're
21 going to--yeah, we're going to stage this, if
22 you don't mind.

23 MR. WRIGHT: That's fine.

24 MR. ROSALES: Good morning Members of the
25 Regional Board. As I indicated, my name is Tom

1
2 Rosales. I'm the General Manager for--I'll use
3 the acronym SOCWA, South Orange County
4 Wastewater Authority, and I thank you this
5 morning for giving us the opportunity to speak
6 before you on this matter. I'm going to make
7 some brief opening comments, and then, turn it
8 over to Ms. Chen for the Power Point
9 presentation you see on the screen, and then,
10 we're going to ask Mr. Dunbar from South Coast
11 Water District to make some closing comments.
12 As indicated, but to present to you from our
13 perspective of who SOCWA is, we're a regional
14 wastewater agency. We have nine POTWs,
15 wastewater facilities connected to either one of
16 two ocean outfalls. Each of our facilities
17 meets at least secondary treatment effluent
18 standards and quite a few of our facilities
19 actually produce recycled water, as well.
20 Combined, in fact we produce about 17,000 acre
21 feet per year of recycled water in our system.
22 Our mission as an agency, and we try to meet
23 every day is to meet all our environmental
24 regulatory obligations and, you know, nobody's
25 perfect, neither are we, but our record is

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2 pretty good, and we feel pretty good that we
3 meet the technical and performance--performances
4 that we set out for ourselves, and we have
5 several awards to go along with that. I can
6 tell you that in my time working for SOCWA just
7 a few years ago, managing a regional wastewater
8 authority meant just that. We dealt with
9 primarily wastewater issues but as you saw in
10 the presentation on the Poseidon issue, that the
11 picture is a little blurred now, and that that
12 relates to us, as well. we commonly now deal
13 with issues related to storm water issues,
14 runoff issues the brine issue that we're
15 dealing with today, so i--it--it's really a
16 water management issue, now, that, that we're
17 dealing with. Not long ago, we, we only had
18 POTWs in our system. That's all we dealt with.
19 We had the two ocean outfalls, but we now have
20 three groundwater facilities in our system
21 operated by our member agencies, and they do
22 discharge the brine into, like I said, either
23 one of the two outfalls. And it's no secret, as
24 you saw in the presentation before, that
25 California has a pretty significant water crisis

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1
2 and local member agencies that we have in our
3 system are looking for ways to augment and bring
4 in local water supply projects, and we obviously
5 try to support them in that and we advocate for
6 that, as well. When we first started working
7 with the regional board on the first
8 groundwater facility that had brine that needed
9 to go into our outfall several years ago we
10 started working with the staff here. I c--I
11 can't I can't say confidently whether or not
12 the staff here had dealt with that issue before,
13 so it was new to us. I think it was new to
14 them. but because of the nature of the
15 groundwater origin, it was pretty clear to me,
16 I'm not an engineer, that it was a policy issue,
17 in terms of how you dealt with these things and
18 I won't--I won't go belabor the issue, but
19 we'll cover that, somewhat, in our--in our
20 presentation, but that, that is a significant
21 issue to us. It really, truly is a policy
22 issue, and it doesn't conveniently fit into what
23 traditionally has been a POT--POTW system. What
24 we hope to accomplish today is to present our
25 case. Not long ago, I, I addressed this very

1 Board, a few meetings ago, on, on what's
2 happening in Orange County on the recycle end of
3 things saw a presentation by what's happening on
4 the inland empire area, as well, and what I
5 heard from this Board and from some of the
6 members in the audience, at that point, was a
7 need to advocate for some flexibility because,
8 as I stated earlier in my comments, what we're
9 dealing with today is a little untraditional.
10 It's not just wastewater. It's not just water.
11 The issues kind of are o--overlapping each
12 other, and so, there needs to be some
13 flexibility in policies. There needs to be some
14 thought put into this. We're dealing with a lot
15 of different development type issues in the
16 industry, as I pointed off, runoff issues, and
17 brine, and so forth, and there needs to be some,
18 some thought put to that. We believe our issue
19 falls into that category, and I'm, I'm hoping
20 the Board takes up the issue of how to handle
21 these things from a policy point of view. I
22 would disagree with Mr. Haas' comment that this
23 is pretty straightforward. It ties into my
24 point of this is a policy issue, regionally and
25

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1
2 statewide on, on what you do with these
3 facilities that are not POTWs and I think some
4 thought needs to be put to that. I do think you
5 have some discretion on the MMPs, on the
6 enforcement policy that is aligned with that,
7 because, if I'm correct, the enforcement policy
8 does not address MMPs as they relate to these
9 types of facilities, and so, I'd like to see how
10 that's touched upon by legal counsel and the
11 Board, as well. You're going to hear in our
12 presentation about a number of things, but one
13 thing you're going to hear about is
14 inconsistency. I'll stop there, and I'd like to
15 turn it over to Ms. Chen now for the
16 presentation.

17 MR. WRIGHT: Ms. Chen?

18 MS. PATRICIA CHEN: Thank you. My name is
19 Patricia Chen. I'm with Miles Chen Law Group,
20 and I represent South Coast Water District and
21 SOCWA, in connection with the pre--the ACL at
22 issue.

23 MS. WRIGHT: And, and you've taken the oath?

24 MS. CHEN: And I've taken the oath, yes.

25 MR. WRIGHT: Thank you. By way of

1 background, South Coast Water District has
2 12,500 water accounts and serves a population of
3 about 40,000 residents. South Coast Water
4 District imports approximately 7,500 acre feet
5 of, of potable water annually. The GRF produces
6 10% of South Coast Water District's supply. The
7 Groundwater Recovery Facility at issue cost
8 approximately \$5.8 million to construct, and it
9 treats low quality or brackish groundwater
10 extracted from the San Juan Valley Groundwater
11 Basin. The GRF water treatment process consists
12 of reverse osmosis treatment, and then, iron and
13 manganese removal. To give you an idea of the
14 timeline of what occurred in this case from 2001
15 to 2002; the design of the GRF was initiated,
16 based on the NPDES permit in place at the time,
17 which allowed for compliance to be determined at
18 the outfall. In 2005, the construction of the
19 GRF commenced. August of 2006, the NPDES permit
20 was amended, and at that point, compliance was
21 to be determined at the GRF. In June, 2007, the
22 GRF began its startup operations, and during
23 this time, the plant operated sporadically as
24 adjustments were being made to the operations.
25

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1 South Coast was aware of exceedances of the
2 permit, but it was unclear as to whether it was
3 an operational issue or a sampling issue until
4 December of 2007, when it began working on a
5 solution. In March of 2008, the GRF began 24--
6 or full time operations, and then, in May of
7 2008, South Coast developed a remedy. June,
8 2008, the original ACL in this case was issued,
9 and in July of 2008, the South Coast Water
10 District Board approved the remedy, and in
11 November of 2008, the implementation
12 of the remedy was complete. The 2006 NPDES
13 permit, again incorporated a change in the
14 sampling location, and this change was due to
15 concern with POTWs. As EPA articulated, and
16 this is in a letter from EPA in attachment D of
17 our evidentiary submittal, EPA stated, and I
18 quote, we understand that the discharger prefers
19 the point of compliance to be determined at the
20 outfall; however, we support the Regional
21 Board's determination that compliance should be
22 determined at the individual treatment plants.
23 Secondary treatment is a technology based
24 standard, and should be met after the treatment

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1 process. According to the Clean Water Act, all
2 POTWs must meet effluent limitations for a
3 secondary treatment. Clearly, again, the
4 concern was with POTWs and there is no mention
5 of any type of Groundwater Recovery Facility.
6 The change in the sampling location resulted in
7 the GRF exceedances of the permit limits. The
8 recycled water policy that was adopted by the
9 State Board on February 3rd of 2009 really
10 provides a backdrop to the construction and
11 operation of the GRF. As the State Board
12 articulated, quote, California is facing an
13 unprecedented water crisis, and the Board
14 strongly encourages local and regional water
15 agencies to move towards clean, abundant, local
16 water for California by emphasizing appropriate
17 water recycling and water conservation and
18 maintenance of supply infrastructure and the use
19 of storm water. Consistent with this policy,
20 MWD has voiced its support of the GRF, and I, I
21 have provided s--for your reference, a copy of
22 this, this letter that was sent to the Regional
23 Board. In the letter, MWD points out that the
24 Governor has declared a statewide drought and
25

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1
2 ordered the Department of Water Resources to
3 coordinate with state and federal agencies to
4 identify risks to water supply. MWD further
5 states maintain operation of the GRF is of great
6 value to Southern California, and would help the
7 region content with water supply shortage
8 conditions. Also, because of the GRF's small
9 contribution to the outf--outfall flow, we
10 suggest the Regional Board consider its impact
11 to the ocean, when mixed with other discharges
12 from wastewater treatment plants. As MWD
13 recognized, the discharge of the GRF brine does
14 not signify--significantly impact the outfall.
15 In fact, the GRF contributed only 1.1 milligrams
16 per liter of total suspended solids to the
17 outfall of the 11.5 milligrams per liter, liter
18 total monthly average. Contrast this to the
19 previously permitted average of 30 milligrams
20 per liter. Here's the comparison on a graph.
21 As you can see, the comparison of the average
22 TSS in milligrams per liter with and without the
23 GRF at the outfall is well below the 30
24 milligrams per liter prior permit limit. To
25 give some perspective on these numbers if--in--

1 and this is in pounds per day, the GRF is
2 contributing 289 pounds per day, as compared to
3 the 1,580 from San--from the San Juan Creek
4 Ocean Outfall, and if you compare this to the
5 City of San Diego, the Point Loma Outfall, we're
6 looking at 45,822 pounds per day. As you know,
7 the City of San Diego is operating under a 301H
8 waiver. To avoid further violations of its
9 NPDES permit, South Coast has installed a
10 holding tank and diverted the brine flow to the
11 JB Latham treatment plant at a cost of 225,000.
12 And, again, this was implemented by November of
13 2008. But this is not a long term solution.
14 There's a serious impact of brine on water
15 recycling. SOCWA is planning a 7 million gallon
16 per day tertiary treatment facility to provide
17 for a sustainable source of recycled water for
18 landscape irrigation, and the GRF brine that's
19 skewered to the plant adds an additional 200
20 milligrams per liter of TDS to the effluent. If
21 South Coast goes forward with its plans to drill
22 a second well, that number would double, and the
23 TDS will certainly affect the quality of the
24 recycled water produced by the planned facility.
25

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2 We believe that South Coast is not being treated
3 equitably, equitably, given the fact that other
4 facilities which have brine effluent are allowed
5 to dich--discharge to outfalls. For example,
6 Oceanside, the Brackish Groundwater - - Facility
7 disposes brine to the Oceanside Ocean Outfall.
8 Also, Monterrey Regional Water Pollution Control
9 Agency runs a treatment plant, whereby secondary
10 treated wastewater and brine waste is discharged
11 to Monterrey Bay. Interestingly, the sampling
12 of brine at this facility is conducted solely to
13 determine how much of the blended secondary
14 effluent is needed, so that the discharges stay
15 within the permit conditions. We believe that
16 this type of blending at the outfall is
17 appropriate here, particularly because the GRF
18 is simply discharging the natural constituents
19 in the groundwater. Given all the policy
20 considerations, we believe that a MMP should not
21 apply. The GRF is the very sort of project that
22 will help the region contend with the statewide
23 drought conditions, as declared by the Governor.
24 It's also the type of project that the State
25 Board encourages in its newly adopted recycled

1 water policy. Application of MMPs would
2 discourage--certainly discourage these types of
3 projects, particularly in poor quality basins.
4 The change in compliance point at the GRF was
5 based primarily on concerns that POTWs need
6 effluent limits at the point of discharge from
7 each plant. Language of the statute refers to
8 industrial dischargers and POTWs. We strong--we
9 firmly believe that MMPs were never intended to
10 apply to groundwater recovery and water
11 recycling facilities. The difference between
12 the GRF and a POTW is that a GRF simply does not
13 treat any wastewater. It extracts local
14 groundwater and filters and treats the water for
15 potable use. The GRF is also distinguishable
16 from your run of the mill industrial discharger
17 because most industrial dischargers generate
18 contaminated effluent, as a result of industrial
19 processes. In contrast, the GRF's brine
20 effluent, effluent is simply a concentrated form
21 of the natural constituents in groundwater. In
22 other words, it's essentially dirt. In lieu of
23 the MMPs, we believe that Water Code, Section
24 13385E factors should apply, and these factors
25

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2 include, for example, the nature of
3 circumstances, extent, and gravity of the
4 violation or violations, whether the discharge
5 is susceptible to cleanup or abatement, degree
6 of toxicity of the discharge. If you apply
7 these factors you see that the poor brackish
8 water quality led to really no significant harm
9 at the outfall. Also, the, the discharge has
10 already been abated, and the degree of toxicity
11 of the discharge is none. The non--the brine
12 discharge is non-toxic, and, again, it's
13 essentially dirt. Without the GRF, this
14 groundwater would have likely flowed to the
15 ocean an--anyway. If the Board finds that it's
16 required to apply MMPs, we would assert that
17 they ought to be reduced. The amount of MMPs is
18 unreasonable and oppressive, in our view.
19 According to S--Supre--California Supreme Court
20 Case, Hale versus Morgan, and the penalty may be
21 violative of SOCWA and South Coast Water
22 District's due process rights. Uniformly,
23 courts have looked with disfavor on ever
24 mounting penalties and have narrowly construed
25 statutes which either require them or permit

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1
2 them. As such, we urge the Board to construe
3 the MMP statute narrowly, and find that
4 assessing, for example, three MMPs for a total
5 of \$9,000.00 for each sampling event is
6 unreasonable. In addition, although the MMT--
7 MMP statute is silent as to groundwater recovery
8 facilities, it seems that the spirit and intent
9 of the statute would allow for a waiver of
10 violations during the GRF's startup period.
11 Finally, SOCWA and South Coast should have had
12 an opportunity to enter into compliance--time
13 compliance order. SOCWA made the request, but
14 was summarily demi--denied by staff because of
15 the purported five month timeframe for adoption
16 of a time schedule order. This seems to be
17 unfair. In closing, SOCWA and South Coast find
18 themselves trapped between the pro--a proverbial
19 rock and a hard place. They could either, one,
20 operate the GRF and discharge brine to the
21 outfall and incur MMPs, two, operate the GRF,
22 discharge brine to the sewer, and compromise
23 SOCWA's water recycling program, or three, stop
24 operating the GRF and continue, continue
25 importing water from the Colorado River and the

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2 delta and exacerbate California's water shortage
3 problem. Note that we've already asked for a
4 permit amendment and have been told by staff
5 that it will be denied, thus, we have no viable
6 options here, and, and this is why we're before
7 the Board. We urge the Board to give serious
8 consideration to these policy issues we've
9 raised and exercise your discretion to reduce
10 the penalty against SOCWA and South Coast.
11 Thank you.

12 MR. WRIGHT: Thank you. Mr. Dunbar?

13 MR. MICHAEL DUNBAR: Okay. Thank you. Good
14 morning. I'm Mike Dunbar, the Manager of South
15 Coast Water District, and I'm just going to
16 provide just a couple of closing remarks and,
17 and summaries. As you heard earlier from
18 Poseidon we took our district took the
19 Governor's issue of providing local resources to
20 heart. We didn't have to do this. We could
21 continue to import water from the delta,
22 continue to import water from the Colorado River
23 but we went ahead. We looked at this space,
24 and, and this is very poor quality water. I
25 mean, this is--this is water that's right, right

1 on the edge. Our groundwater well is within,
2 oh, approximately three quarters of a mile from
3 the ocean. It--believe me, it would have been
4 very easy for us to not do anything at all, and
5 continue to import water. This groundwater
6 plant is costing us the equivalent of \$1,600.00
7 an acre foot, when we could buy water from - -
8 for \$700.00 an acre foot, so this is not a money
9 saver for us. The other thing and the EPA
10 letter when I received a copy of that EPA letter
11 and I read it, I though, you know, they're
12 referring to publically owned treatment works,
13 wastewater treatment plants. They want to deal
14 with wastewater solids and we totally support
15 the Regional Board's staff in having each one of
16 the treatment plants meet those effluent
17 limitations for wastewater plants, for
18 wastewater solids. We are not a wastewater
19 discharger, as Ms. Chen pointed out. I mean,
20 we're basically discharging iron and manganese.
21 I mean, it's basically dirt. I mean, that dirt
22 comes from the basin, and that dirt would go out
23 to the ocean. I mean its iron and manganese.
24 It's naturally found occurring, so these are not
25

1
2 wastewater solids. and just, just as kind of a
3 little closing just to kind of give you a
4 visual she put up the slide that showed that
5 our discharge is about 200 and I think 80 pounds
6 per day, versus the City of San Diego's
7 46,000, roughly, pounds per day. As a visual
8 that 46,000 pounds a day is about the equivalent
9 of eight large elephants. That Hun--that 289
10 pounds that we discharge is the equivalent of
11 two small men, so keep that visual in mind.
12 That's every single day, wastewater solids are
13 being discharged into the ocean from the City of
14 San Diego, and we're discharging basically dirt.
15 So thank you and we'll be here to answer any
16 questions.

17 MR. WRIGHT: Okay. Let's see. Ms. Okamoto,
18 are you ready to hold fourth?

19 [Long pause]

20 MS. MYUMI OKAMOTO: Good morning, Chair
21 Wright, I guess, almost afternoon, and Board
22 Members. My name is Myumi Okamoto, and I am an
23 attorney with the Office of Enforcement at the
24 State Water Resources Control Board and I'm
25 representing the prosecution staff on this

1 particular ACL complaint R9-2009-0028 against
2 SOCWA and the South Coast Water District for an
3 administrator's--administrative civil liability
4 complaint for mandatory minimum penalties, or
5 MMPs, in the amount of \$204,000. So far, today,
6 you've heard SOCWA's arguments, as to why it
7 believes that MMPs can and should be exempted or
8 reduced in this particular situation, and we
9 briefly laid out our responses in supporting
10 document number seven but I'd like to briefly
11 just expand on some of our responses now that
12 we've heard from counsel from SOCWA. First
13 off, just in response to SOCWA's argument that
14 13385E factors should apply in this particular
15 case. the consideration of 13385E factors is
16 typically done in the assessment of
17 discretionary penalties, and for purposes of
18 this hearing, we're dealing solely with the
19 imposition of mandatory minimum penalties, so
20 considerations like degree of toxicity to the
21 particular water shed or any other mitigating
22 factors that would reduce the assessment of the
23 penalty in this situation are not considered in
24 the scope of a mandatory minimum penalty
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2 complaint. furthermore, SOCWA argues that MMPs
3 should not apply to groundwater recovery
4 facilities, based on certain public policy
5 considerations and I was present at the item
6 before ours regarding Poseidon and the - -
7 facility, so I can definitely appreciate the
8 need for use of recycled water in this region,
9 and, however, notwithstanding the State Board's
10 recycled water policy, we still are constrained
11 by the existing statutory scheme regarding man-
12 -the imposition of mandatory minimum penalties,
13 so I just want to reiterate that the prosecution
14 staff initially issued this ACL complaint in
15 response to a very narrow and discrete set of
16 NPDES effluent limitation violations, which are
17 covered by Section 13385, Subdivision H and I,
18 and violations of these sections trigger the
19 imposition of mandatory minimum penalties,
20 unless a exemption to that imposition under
21 Subdivision J applies. So this point goes to
22 SOCWA's first argument against the imposition of
23 MMPs; and they argue that MMPs should not apply
24 to the GRF, given certain public policy
25 considerations. However, as you know, the MMPs

1
2 apply, based on specific violations of the NPDES
3 permit, so when the legislature initially
4 created Section 13385 H and I, their--they did
5 not differentiate between the types of
6 facilities being regulated by the NPDES permits.
7 Rather, the broader concern was implementing a
8 piece of legislation that would ensure that
9 discharges from NPDES permitted facilities
10 complied with effluent limitations and waste
11 discharge requirements. So for purposes of
12 initially assessing MMPs against the discharger,
13 there is no differentiation between a facility
14 that, let's say, treats industrial wastewater,
15 versus a purveyor of potable water. Rather, the
16 purpose--for purposes of assessing MMPs, the
17 underlying commonality between NPDES facilities
18 that treat industrial wastewater and public
19 purveyors of potable water is the fact that the
20 discharges from both are regulated and subject
21 to NPDES effluent limitation requirements, and
22 that specified violations of those permits
23 necessitate the imposition of MMPs. And this
24 point goes to dr--address Mr. Rosales' comment,
25 as to why the enforcement policy may appear

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2 silent as to the differentiation between let's
3 say a POTW and a purveyor of potable water, and
4 it's because, specifically, the MMP section
5 looks to the underlying NPDES permit and the
6 violations, rather than distinguishing between
7 different types of facilities. Secondly, SOCWA
8 also argues that the Regional Board has
9 discretion to waive the initial violations of
10 the NPDES permit during the startup and the
11 adjusting and testing phase. Again, unless the-
12 -an exemption can be found under Subdivision J,
13 MMPs must be applied. Under Subdivision 13385
14 J1D, violations occurring during a defined
15 period of adjusting or testing of a new or
16 reconstructed wastewater treatment unit would be
17 exempted from MMPs. In its initial evidentiary
18 submittal, SOCWA contended that this exception
19 was silent, as to its application to a type of
20 facility like the GRF. I mean, I would have to
21 agree with that contention as this provision
22 specifically carves out an exception for
23 wastewater treatment units that use biological
24 processes. AB2351 created this exemption in
25 Subdivision J in 2002. The legislative purpose

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2 of that bill indicates that this exemption was
3 narrowly drafted to address waste--wastewater
4 treatment processes and microbiological
5 systems. So because this exemption is specific
6 to violations during the startup and adjusting
7 process of a wastewater treatment unit, the
8 imposition of MMPs to SOCWA still applies.
9 However, even if this provision was - -
10 sufficiently analogous to the GRF in our
11 current situation, the requirements under this
12 subdivision have not been sufficiently met by
13 the discharger. Thirdly, SOCWA further argues
14 that it should have had the opportunity to enter
15 into a time schedule order. And SOCWA argues
16 that, quote, neither the statute, nor the policy
17 concerning time schedule orders prohibits the
18 compliance schedule to be retroactive. And I
19 must content that this argument is contrary to
20 the plain reading of the statute. Under Section
21 13385, Subdivision J3, MMPs will not apply where
22 the waste discharge is in compliance with either
23 a cease and desist order or a time schedule
24 order, if certain requirements under that
25 Subdivision are met. There is no legal support

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2 for interpreting Section 13385 J3's exemption
3 from MMPs as being allowed to have a retroactive
4 application allowing an exemption an exemption
5 to the violations that occurred prior the
6 adoption of a time schedule order. A plain
7 reading of the statute stating that MMPs will
8 not apply to, quote, a violation of an effluent
9 limitation where the discharge is in compliance
10 with a time schedule order, necessarily means
11 that a waste discharge cannot be in compliance
12 with a TSO until that TSO has been either
13 adopted by the Board, or issued by the Executive
14 Officer, through his delegated authority.
15 Furthermore, as we stated in supporting document
16 number seven, at the time the TSO process was
17 discussed by SOCWA with the--with the Regional
18 Board staff around September of 2008, 56 of the
19 68 violations and already occurred, and 12
20 additional violations occurred about four weeks
21 after that, so I bring this up because the
22 timeline for a TSO issuance by the Executive
23 Officer or adoption by the Board is important
24 because there is a statutory notification
25 requirement under S--Section 13167.5 and a

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1 tentative time schedule order is subject to a
2 30 day public comment period, prior to adoption
3 by the Board. So given the dates in which the
4 violations occurred, and adding on top of that,
5 the required 30 day notice period the TSO
6 cannot have feasibly been adopted before the
7 discharges subject to the MMPs occurred. And,
8 finally, SOCWA argues that imposing MMPs in this
9 case raises certain due process considerations.
10 and they argue that the assessment of
11 statutorily required MMPs are unreasonable and
12 violative of due process and they cite this
13 California Supreme Court case, Hale versus
14 Morgan and this case is often cited as an
15 illustrative example of a penalty that's been
16 held constitutionally excessive by the
17 California Supreme Court. And the particular
18 section that was at issue in Hale was a
19 mandatory penalty section of former Civil Code,
20 Section 789.3 and the Court made their
21 determination that the mandatory penalties were
22 constitution--constitutionally excessive, based
23 on a very fact specific determination. In Hale,
24 the mandatory penalty was accumulated on a per
25

1
2 day basis, rather than on a per violation basis,
3 and the Court was concerned that the mandatory
4 nature of the penalty and the accumulation of
5 the penalty could result for a unlimited
6 duration. So there is a factual distinction
7 between the factual background in Hale, and
8 then, the current s--the current case we have
9 before us. This mandatory minimum penalty
10 section of 13385 is a per violation statute,
11 when we're talking about effluent limitation
12 violations, under Subdivisions H and I. So
13 there are some factual differences, and the
14 Court, in Hale, did state that it could envision
15 some situations where the penalty would be
16 necessary for deterrent purposes. So, in
17 conclusion, the prosecution staff requests that
18 the Regional Board find the MMPs for effluent
19 limitations apply, that they find that the
20 violations are not subject to an exemption,
21 under Subdivision J, and that we recommend the
22 adoption of the Revised Tentative ACL Order
23 referenced as supporting document number six.
24 And I'm available to answer any additional
25 questions. Thank you.

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MR. WRIGHT: Any questions at this time?
Yes? Go ahead, George.

MR. GEORGE LOVELAND: First of all, was, at any time, the discharge from the ocean outfall in violation, or was it merely the discharge from GRF?

MR. HAAS: The violations in the Tentative Order all come from discharges from the Groundwater Recovery Facility.

MR. LOVELAND: All right, but my question is--

MR. HAAS: [Interposing] Yes.

MR. LOVELAND: --did that result in a violation of the outfall?

MR. HAAS: I did not correlate those with the outfall monitoring. You may remember just a couple of months ago the Board adopted another mandatory minimum penalty order against SOCWA for it was a combined of, I think, five complaints, four of which were for the individual treatment facilities other than the Groundwater Recovery Facility, and one complaint was for violations of the outfall's effluent limitations, but I don't know the correlation

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between today's violations and the ones that were subject to the previous.

MR. LOVELAND: And I guess I'd ask SOCWA, then, do you know, or have any idea?

MR. BRENDAN FLAYHIVE: Excuse me Board, my name is Brendan Flayhive [phonetic], and the--

MR. WRIGHT: [Interposing] what's your name, again?

MR. FLAYHIVE: --Brendan Flayhive, and I'm with the--

MR. WRIGHT: [Interposing] Have you taken the oath and you, you have?

MR. FLAYHIVE: No, I have not.

MR. WRIGHT: Well, you should. Let me go back so I can read this. So do you swear the testimony you're about to give is the truth, and if so, answer I do.

MR. FLAYHIVE: I do.

MR. WRIGHT: And, also, would you fill out a speaker slip when you finish?

MR. FLAYHIVE: All right. In terms of these suspended solids violations, which these--all the violations that are accrued from GRF were suspended solids violations. We have never had

1
2 a, a cumulative effect from those suspended
3 solids violations, turbidity violations, and
4 settle-able solids violations that would have
5 caused the outflow to have also violated the
6 previous limitations for the outfall, or the
7 outfall limits.

8 MR. LOVELAND: So you--so your answer would
9 be you did not--the outfall did not violate--

10 MR. FLAYHIVE: [Interposing] The GRF didn't
11 contribute to an outfall what would have been a
12 traditional outfall violation for suspended
13 solids, turbidity, or settle-able solids.

14 MR. LOVELAND: Okay. And my, my other
15 question would be I guess for legal staff.
16 Reviewing the argument that essentially, we
17 have no options, this is mandatory and statutory
18 constraints so why are we here, Miss?

19 MR. WRIGHT: Ms. Hagan?

20 MS. HAGAN: well, you're, you're essentially
21 correct. If the allegations--if you find that
22 the violations occurred, and the violations are
23 of the, the type that are subject to mandatory
24 minimum penalties, you do not have discretion to
25 decide not to apply the mandatory minimum

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penalties, or to lower the amount of those penalties.

MR. LOVELAND: Then I'm correct that there was asserted there that SOCWA and its sub-agencies did not contest the facts of these violations?

MR. WRIGHT: Mr. Haas?

MR. HAAS: - - is this on? - - . Excuse me. That's correct.

MR. LOVELAND: Okay. So, so essentially, we have no discretion here, and it seems like the real issue comes down to, as I heard described, the policy question. Are we shooting ourselves in the foot, on one hand, when we're trying to accomplish two or three different things? The, the desire--the capability of producing usable recycled water is a very good one. The desire to produce effluent that goes into the ocean and that it meet certain standards is a good one. If we're not violating the standard of what we put in the ocean, how do we get to the point of not shooting ourselves in the foot with what we do with the recycled water? And it seems to me like a real - - choice here, and I'm not sure

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2 where we're going with this--with this hearing.
3 It, it, it--it's just plainly sounds to me we're
4 being put in a position and we have no choice.
5 You've got to do it, but if there is a choice
6 for this Board, it is to think about the
7 ramifications of this and talk about what in the
8 heck are we doing? Should we have been doing
9 something different than what we're doing?

10 MR. WRIGHT: Mr. King?

11 MR. DAVID KING: Just in terms of the
12 procedure here, I, I, I don't feel like I heard
13 rebuttal. I felt like I heard you case, in
14 chief with your legal arguments here, and I
15 think that we should invite Ms. Chen back to the
16 microphone for maybe five minutes or so to be
17 able to make her legal opposition to the
18 arguments about whether the violations should be
19 subject to the mandatory minimum penalties.

20 MR. WRIGHT: That was my intention to get
21 to that point but Mr. Loveland wanted to jump
22 ahead and get into policy, policy issues, which-

23 -

24 MALE VOICE 2: [Interposing] before you do
25 that, though, I do have a couple of questions

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that were just questions.

MR. WRIGHT: Of?

MALE VOICE 2: Of Ms. Okamoto.

MR. WRIGHT: Yeah, that's, that's appropriate, so.

MALE VOICE 2: Basically, there was a lot of obvious discussion in your--in your presentation concerning the Water Codes and the interpretation of such, as well as legislative intent. Do you have, by any chance, copies of the legislative counsel's dissertation, if you will, on legislative intent, number one, and number two, is there any case law out there that provides any guidance on interpretation of any parts of these sections of the Water Code to kind of help us with this because it sounds like -- time, you know, there's a--there's an interpretation issue here of what we can or cannot do, based on the case--on the--on the Code, and how it reads, and I just would like to know if--what is out there.

MS. OKAMOTO: first of all, to answer the first part of your question I do have a copy with me of a legislative committee analysis for

1
2 - - 709 and 2165 which both deal with the MMP
3 statute, and also, some discussion about
4 Subdivision J, which is the exemption section,
5 and also I have committee analysis on 2351,
6 which was the section that I had mentioned in my
7 presentation about exemptions to exemptions
8 from violations regarding the startup and
9 adjusting period, so.

10 MALE VOICE 2: During, during lunch 'cause I
11 know we're going to break for lunch before we
12 finish this, I'm sure could I get copies of
13 those, so I can read them?

14 MS. OKAMOTO: I don't have a problem giving
15 copies to all the Board Members. and secondly,
16 as far as if there was ever existing case law
17 on, on interpretation of the MMP statute the
18 most significant case that I can think of on the
19 spot which I do have a copy of, also is the
20 City of Brentwood--the City Brentwood versus the
21 Central Valley Regional Water Quality Control
22 Board and this is a Court of Appeal decision
23 from the First District, and I have a copy of
24 that that I can provide to the Board Members,
25 also, at lunch.

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MR. WRIGHT: Okay. Eventually, we'll hear from Ms. Chen. Mr. Destache?

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MR. GRANT DESTACHE: actually, why don't we let Ms. Chen go first, and then, we'll get into further discussion because I think it's a broader--

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MR. WRIGHT: [Interposing] Yeah. I, I, I appreciate that. Ms. Chen and, also I, I, I didn't sense that there was an interest in cross examination as we've been going along in this process otherwise I would have recognized that, but if, if that's your desire to, to do that as part of your closing statements, that would be fine, but so--

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MS. CHEN: [Interposing] Okay.

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MR. WRIGHT: --why don't you proceed?

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MS. CHEN: First of all, I just wanted to say I also have a copy of Hale versus Morgan. If we're going to copy all these cases, you might as well take a look at that case, as well. I want to go back to some of the comm--

22

23

MR. WRIGHT: [Interposing] Well--

24

MS. CHEN: --Oh, sorry.

25

MR. WRIGHT: Unless - - could I just get a

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1 sense of - - my, my intention, unless I'm
2 overruled by the Board, is to finish this item
3 before we break for lunch. Now, if it's the
4 desire of, of the Board Members to start reading
5 the case law before we finish this item I need
6 to know that, but I--so, anyway, that's, that's
7 where you're - - in terms of trying to finish up
8 this item.
9

10 MR. DESTACHE: Yeah, just one quick comment,
11 and I'll ask Mr. Thompson to either concur with
12 me or, or to - - to disagree with me, but I
13 think that the--this issue, stands alone. The
14 ACL should stand alone, and I think the policy
15 issue is a further discussion item that we
16 should get into, and whether we do it today, or
17 we do it at the next meeting, I think it's
18 important because it affects the type of
19 facilities that we're really looking at here and
20 the difference between wastewater treatment
21 plants and groundwater recovery and/or any other
22 recycling type facility.

23 MR. WRIGHT: Mr. Thompson, since--

24 MR. THOMPSON: [Interposing] Well, I don't
25 have a issue with--

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MR. WRIGHT: --back to you and then, Mr.
King - - .

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MR. THOMPSON: I don't have an issue with
the policy decision coming later. I agree with
that, but I think that the documents I want to
look at goes to the ACL issue because they raise
the issue of interpretation, and that's the crux
of the ACL complaint is the interpretation of
how much penalty, if any, there should be, so
that's why I kind of wanted to look at those
documents. In deference to the Board Chair, I
really want to look at the documents, whether
it's now, instead of lu--you know, before lu--
during lunch, that's fine. I understand what
you want to do here, but I, I think it would be
appropriate, at least to give a quick review of
them, um--

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19

MALE VOICE 3: [Interposing] I agree with
Mr. Thompson.

20

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MR. THOMPSON: --it sounds like--

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MALE VOICE 3: --I'd like to review them, as
well.

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MR. WRIGHT: Can we get copies of those
made as this discussion goes on? Mr. King?

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2 MR. KING: I, I was going to sort of argue
3 to the contrary that, that Co--Counsel are here
4 for both sides. To tell us what the case law
5 that you're relying upon says, tell us what the
6 most relevant portions of the policy are that
7 support your arguments, and let us hear them,
8 that's what you're the attorneys for. Tell us
9 what, what the case law says, what does it stand
10 for, represent the case law accurately,
11 represent the policy accurately, and to the
12 extent we--we've already got a copy of the
13 policy coming, but tell us what the case law
14 says.

15 MR. WRIGHT: Thank you. Ms. Chen?

16 MS. CHEN: Okay. I just wanted to respond
17 to some of the points that Ms. Okamoto made one
18 of which is she says the 13885 E factors simply
19 don't apply because the mandatory minimum
20 penalties apply. And I just want to make clear
21 to you, we are suggesting and we're arguing that
22 the 13885 factors ought to apply, in lieu of the
23 MMPs, and the reason is, is because we believe
24 that there is room for interpretation under the
25 MMP statute. The, the MMP statute is silent.

1
2 It does not talk about groundwater recovery
3 facilities. All it talks about is industrial
4 dischargers and POTWs, and our argument is, is
5 that we shouldn't fall under either category for
6 the reasons I, I articulated in the
7 presentation. the Hoover Report, which was
8 issued in January of 2009, specifically
9 recommends that regional boards ought to focus
10 more on policy, rather than permits, and, and I
11 took from that that we ought to be looking more
12 at the big picture and see the forest from the
13 trees, and I think this is exactly the type of
14 case that we ought to kind of take that
15 approach. With respect to the time schedule
16 order, I just wanted to clarify that. We are
17 not saying that they should have been able to
18 adopt a time schedule order quickly and in time
19 for us to get it in place. We're saying that,
20 given that the process is so long, it makes
21 sense that there should be some process that
22 would allow you to have the, the time schedule
23 order adopted, and it be retroactive to, say,
24 for instance, that we complied as of X date.
25 That may have been two months before, but at

1
2 least the, the penalty clock should have stopped
3 at that point. That's all we care about. It's
4 not when the, the TSO is actually put in place,
5 but when the, the clock stops and it's kind of
6 an equitable issue that we're raising. With
7 respect to Hale versus Morgan Ms. Okamoto
8 tries to distinguish the facts, and I just
9 wanted to kind of point out the broader issues
10 that the, the Court was very concerned with.
11 The Court was concerned with the utter lack of
12 discretion that the Board had in that case, or
13 the decision making body had in that case, with
14 respect to the penalties. They were mandatory,
15 like in this case, and that it was specifically
16 concerned that various dischargers would be
17 treated the same, so if take that to the present
18 case, that means, you know, a NPDES permit
19 holder who's discharging raw sewage would be
20 treated the same as, as South Coast and SOCWA,
21 where we're discharging brine. So I, I think if
22 you look at the case, it certainly gives you--
23 will give you some pause for thought on some of
24 these issues, with respect to application of
25 MMPs. - - .

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MR. WRIGHT: Thank you. And any questions?

Ms.--oh, Mr. King?

MR. KING: yeah, and I apologize if I missed this in your briefing here, but I understand that your argument is that the \$204,000.00 of mandatory minimums is excessive and that, that it's--how much should the proper mandatory minimum penalty be in this instance here?

MS. CHEN: Well, we would suggest that the penalties ou--if--okay, first of all, our first layer of argument is that we don't think MMPs should apply, and we think that the Board should exercise its discretion to apply the, the factors in 1385--885 E. To the extent the Board feels that it is under--it must apply MMPs, we think that it still has room if you narrowly construe the MMP statute and, and say that, you know, groundwater facilities ought to also be given a break for their startup period. We didn't start operating full time until March 5th of 2008, so we would suggest that the MMPs begin on March 5th, and then, end when the Board approved the remedy for the diversion of the brine to the sewer. That would be our--

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MR. KING: [Interposing] Ha--have you run those numbers that would--

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MS. CHEN: [Interposing] you know what? I, I have, and I apologize, I don't have them handy right now. I, I can get them during the break.

6

7

MR. KING: If--yeah, if anybody could get those numbers.

8

9

MR. WRIGHT: we're not taking a break.

10

MS. CHEN: Oh, okay. I'm sorry.

11

[Laughter]

12

MS. CHEN: Okay. Well, I'll have--

13

14

MR. WRIGHT: [Interposing] unless I'm overruled by the Members of the Board, so.

15

MS. CHEN: Okay.

16

MR. WRIGHT: But if you can get those, uh--

17

MS. CHEN: [Interposing] Sure.

18

MR. WRIGHT: --in the next few minutes.

19

MS. CHEN: Yeah, I'll do that right now.

20

MR. WRIGHT: I appreciate that. Ms.

21

Okamoto?

22

MS. OKAMOTO: just, again, to I guess

23

reiterate, the prosecution staff's original

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contention in our presentation is that the if,

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if the Board determines that these effluent

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2 limitation violations did, in fact, occur, um
3 which we contend they did, as evidenced by the
4 dischargers self monitoring reports, that the
5 Board does not have discretion to opp--to assess
6 less than the mandatory minimum penalty, which
7 is statutorily defined as \$3,000.00 per
8 effluent limitation violation. and,
9 furthermore, just to respond again to Ms. Chen's
10 point about the retroactivity of time schedule
11 orders under the exemption in Subdivision J to
12 allow a retroactive application of a time
13 schedule order to some date prior to that time
14 schedule order's actual adoption by the Board is
15 contrary to a plain reading of the statute.
16 This time schedule order must be in place for
17 the exemption to apply, prospectively. It is
18 not there is no legal support to content that
19 that time schedule order can have a retroactive
20 application, as the statute says that the waste-
21 -if a waste discharge is in compliance with the
22 time schedule order, meaning that one has to be
23 in place already.

24 MR. WRIGHT: Could, could you elaborate a
25 bit on the time schedule order notion? I don't

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know that--I don't know that we've, uh--

MS. OKAMOTO: [Interposing] Sure.

MR. WRIGHT: --and the deal with that is--

MS. OKAMOTO: [Interposing] well, I know
that--

MR. WRIGHT: --Mr. Robertus, have, have we
had--

MR. ROBERTUS: - - adopted a time schedule
order earlier in the morning.

MR. WRIGHT: Okay.

MR. ROBERTUS: Or another discharger.

MR. WRIGHT: Yeah, that's true.

MR. ROBERTUS: In a similar circumstance.

MR. WRIGHT: Yeah, that's a different--yeah.
It's a different situation, but...

MS. OKAMOTO: So just to elaborate, I guess,
a little bit about this particular procedural
mechanism either a cease and desist order or a
time schedule order under Section 13301 for a
cease and desist order, and 13300 or 13308 for
time schedule orders, and I apologize, I know
I'm throwing a lot of Code Sections around but
the Board as an exemption to allow some cover
for a discharger, if they are threatening

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2 violations of an effluent limitation or are
3 currently violating effluent limitations, the
4 Board may adopt either a cease and desist order
5 or a time schedule order to provide the
6 discharger some type of prospective protection
7 from that imposition of MMPs, under 13385 H and
8 I and this whole procedure is defined in
9 Subdivision J3. It talks about both cease and
10 desist orders and, also, time schedule orders,
11 and the factual findings that the Board has to
12 make, in order for this--for these two
13 mechanisms to be adopted to provide for some
14 cover for a discharger.

15 MR. WRIGHT: Okay. That helps. Ms. Chen?

16 MS. CHEN: Yeah. I have the numbers. From
17 March 5th, to July 10th, there were 24
18 violations, and that totals 72,000. If the
19 Board agrees that it's inequitable to, to get
20 South Coast and SOCWA for three violations per
21 sampling event and just so you understand, each
22 sample, we were hit with a violation for
23 instantaneous maximum average weekly, and
24 average monthly. If you believe that that--that
25 that doesn't make sense, then you would divide

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that number by three.

MR. WRIGHT: Okay. Back to staff what do your calculations show? Have you done a similar calculation, or no?

MR. HAAS: You know, we have not done that calculation and because it's inappropriate to do so. The effluent limitations in the NPDES order, there are I think it's weekly, monthly average, instantaneous that apply in these particular cases, as you'll see in the table, to a Tentative Order and the complaint. The NPD-- NPDES monitoring plan does not require SOCWA or Southwest Water District to take a single sample to determine compliance with a monthly or a weekly effluent limitation. Because they chose to do so, they're relying on that one event to assess compliance with all three effluent limitations. Unfortunately for them, in this case, often, that one sample exceeded all three of the effluent limitations. As a result, in the cases where they do trigger the MMPs, that one sampling event, because it exceeded--it's used to determine compliance with three different effluent limitations and three

1
2 different effluent limitations were violated,
3 three different mandatory minimum penalties must
4 apply.

5 MR. WRIGHT: Okay. Mr. King?

6 MR. KING: And, and why would we be wrong if
7 we limited the scope from March 5th, to, to July
8 10th?

9 MR. HAAS: Well, I'm not sure that the
10 statute for the MMP exemption under 13385 J3
11 permits us to do that. As, as Ms. Okamoto
12 mentioned, the exemption applies to discharger--
13 discharges that are in compliance with and
14 adopted time schedule order or a cease and
15 desist order at the time of the, the, the
16 discharge and none were in place at that time.
17 So the exemption--they had not met the statutory
18 requirements for the exemption.

19 MR. DESTACHE: - - Chairman Wright?

20 MR. WRIGHT: Yes, Mr. Destache?

21 MR. DESTACHE: The is there--within the
22 NPDES permit, is there a requirement on when
23 they start that testing? Is it upon initiation
24 of the plant, or startup of the plant, or when
25 is that--any effluent that comes out of the

1
2 plant is required to be tested?

3 MR. HAAS: I would have to refer to the
4 permit for that. I don't know that, offhand.
5 Generally, that's the way that it works. You
6 can't discharge you can't have a point source
7 discharge - - the United States, unless it's su-
8 -covered by an NPDES permit, and typically the-
9 -we - - we establish monitoring requirements on
10 all of the effluent out there. The with
11 respect to a monitoring during the startup
12 period, the monitoring is required to meet the
13 conditions of the permit, to make sure the
14 effluent limitations are being met. the startup
15 period exemption within the MMP statutes, they
16 don't make a distinction between wastewater
17 treatment plants, groundwater recovery
18 facilities, etcetera, and neither do we, but
19 they do lay out other statutory requirements to
20 meet those exemptions, and we assess whether
21 South Coast Water District or SOCWA met those
22 statutory conditions and they did not, so we
23 were unable to apply the--even the 30 day
24 startup period that could be allowed, if the if
25 the statute is met but in this case, they're

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1
2 essentially asking for a much longer startup
3 period, which we felt was inappropriate, given
4 the statute.

5 MR. WRIGHT: Okay. Mr. King? Okay. Any
6 other questions of Mr. Haas, Ms. Chen, Ms.
7 Okamoto? getting back to Mr. Thompson's desire
8 to have--do we have--did we provide information
9 to--

10 MS. JULIE CHAN: [Interposing] for the
11 record, this is Julie Chan. I gave the copies
12 to our business support staff. They said they
13 would bring the copies in when they were
14 finished. I made copies for all the Board
15 Members and for the parties.

16 MR. WRIGHT: That's been some time ago, uh--

17 MS. CHAN: [Interposing] I'll go check.

18 MR. WRIGHT: Okay. Would you, please?

19 Thank you. Mr. Robertus?

20 MR. ROBERTUS: This is one of the support
21 staff items and I have not been involved with
22 this staff action, and it's a bit awkward.
23 I'm still trying to figure out where--at what
24 point I can--I would come in, and my
25 recommendation normally having been involved

1 with stuff would be curt, as it was earlier with
2 the agenda item, but I'm compelled to share some
3 thoughts because I've watched the Board struggle
4 with mandatory minimum penalties since they were
5 adopted by our legislature, and I'll preface my
6 comments by saying that the legislature took
7 that action because the presumption was the
8 Regional Boards weren't using discretion in
9 imposing penalties, so they--their intent was to
10 remove the, the discretion from the Regional
11 Boards. And that reality has been the subject
12 of discussion of WQCCs repeatedly. So with
13 spoken and I--I'd like to comment on some, some
14 things. Mr. Rosales indicated that, perhaps,
15 the Regional Board staff didn't have experience
16 in groundwater discharges with effluent
17 limitations, and I would remind the Board he
18 also said that there are three groundwater
19 facilities in the system. This Board is, in
20 fact, your staff has dealt with, with reverse
21 osmosis treatment of groundwater extraction in
22 several locations for many years. We've dealt
23 with dewatering of the convention center
24 downtown. They've had repeated MMP violations.
25

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2 The utility vaults throughout the region, we've-
3 -we give them a--an NPDES permit for dewatering,
4 construction dewatering at many sites and, in
5 fact, the discharge of dewatering effluent into
6 the MS4 has given us extensive period
7 experience because they must meet surface water
8 effluent standards before they can discharge any
9 MS4. Secondly we've--the Board has discussed
10 exemptions. For example the discussion that if
11 a discharger doesn't have the money and can't
12 afford to pay the MMP, there is an allowance for
13 that. There was also an allowance for an upset
14 in the treatment process or the intentional act
15 of a third party and, and the exceptions the
16 Board can consider the exceptions, if they
17 apply, but I would caution the Board that there
18 has to be a legal basis for the applicability of
19 the exemption. third, the permit that was
20 written for this discharger, as with all
21 dischargers, is based on their submission of a
22 report of waste discharge, so the Board can't
23 necessarily fabricate conditions unless there's
24 a reasonable nexus with the report of waste
25 discharge that's been submitted, and the Board,

1
2 I think is, um can assume a certain knowledge
3 of what effluent constituents would be in the
4 discharge because they submitted, and also, that
5 the changes to the permit the addition to
6 make a time schedule order or cease and - -
7 order retroactive I think is I would recommend
8 that that not be considered. I don't think
9 that's appropriate or legal. Fourth, the
10 question by Mr. Loveland about the outfall, the
11 joint use of an outfall, we're increasingly
12 seeing brine discharges wanting to be
13 discharged dischargers wanting to have brine
14 discharged to the ocean. The convenience of an
15 existing o--ocean outfall is the obvious you
16 know, way to get rid of it, but if--so far, this
17 Board, when you put brine into an ocean outfall,
18 we have individual permits, so that if there is
19 an exceedance in the coming led effluent, the,
20 the, the al--the alternative would be to have
21 mandatory minimum penalties against everybody
22 who uses the outfall and that's not, not
23 workable, so I just wanted to clarify that. the
24 fifth point I would make is that there have been
25 some comments about I interpret them as

1
2 suggestions that the Board should have special
3 considerations for discharges of effluent that
4 come from recycled water projects, and this
5 Board has I think worked extensively to ensure
6 that there are waste discharging requirements
7 available for the discharge of water quality
8 that meets the standards for, for reuse, but
9 there are no exemptions or exceptions for the
10 discharge of the waste that's produced.
11 Wastewater is wastewater and if it's discharged
12 as surface water, then there are surface water
13 standards that must be met, so generating
14 wastewater that goes into an ocean outfall from
15 a recycling project shouldn't have any precedent
16 over wastewater that comes from a sanitary
17 sewage system. sixth the Board can look at
18 whether a violation occurred, but the, the, the
19 problem with the items that have before this
20 Board today, I believe these violations have
21 been submitted to this Board, under penalty of
22 perjury, by the discharger and the, the
23 enforcement team can validate that. So once
24 they report their violations, which is required
25 in the permit, how does this Board, then, say

1
2 that the violation didn't occur? That's the
3 dilemma. And my seventh point is that and I'm
4 somewhat reluctant to say this, but for, for
5 matters of policy on MMPs Regional Boards have
6 had items petitioned to the State Board. They-
7 -all dischargers always have the recourse of
8 petitioning a decision, so if the Board's in un-
9 -you know, a position where you feel that you,
10 you can't do anything, other than approve the
11 mandatory minimum penalty there is always the
12 option for the discharger to petition this
13 matter to the State Board. And the, the last
14 thing I'll say is that we will--we will work
15 with the discharger and bring to the Board a
16 time schedule order that's appropriate provided
17 we, we get the input from them, and that will
18 take some time. Are there any questions?

19 MR. WRIGHT: Any questions of Mr. Robertus?

20 MR. ROBERTUS: Thank you.

21 MR. WRIGHT: Mr. Thompson how are you doing
22 on your reading of the--

23 MR. THOMPSON: [Interposing] Just about
24 done.

25 MS. OKAMOTO: Chair, if I could, I - - help

1
2 Mr. Thompson out and point him in the right
3 area. The discussion of legislative purpose and
4 history in the City of Brentwood case is located
5 on page nine under section two. And I apologize
6 if your copies are marked out because my copies
7 were marked out, so.

8 [Long pause]

9 MR. WRIGHT: Okay. Unless I hear otherwise
10 I'm going to close the hearing, so. Okay.

11 Well, Mr. Haas?

12 MR. HAAS: Yeah, one, one, one, one
13 procedural matter to clarify, and I apologize
14 for this, this mistake. The Revised Tentative
15 Order supplemental--in the supplemental package
16 as supporting document six is a red line version
17 of the original Tentative Order; however, I
18 failed to include another copy of the
19 attachment, the table one, which has a table of
20 violation which is in the original Tentative
21 Order. It is unchanged so as you consider
22 adoption of the Tentative Order, R9-2009-48,
23 please consider the table one as part of that,
24 which you'll find as table one to the Tentative
25 Order in the original mailing.

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MR. WRIGHT: Okay. Mr. Robertus?

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MR. ROBERTUS: Oh, one item I'd like to point out is that there is a SEP, I believe, in the - - order.

4

5

6

MR. WRIGHT: yeah.

7

MR. ROBERTUS: And no speaker has addressed-

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9

MR. WRIGHT: [Interposing] Oh, it was my attention to get to that as part of our discussion. So I--yeah, I think we can close the hearing, and then although, do you think that there may be some questions of--

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MR. ROBERTUS: [Interposing] Well, I, I want to make sure that the, the Board the, the Board understands that you can't impose a SEP against the will of the discharger.

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MR. WRIGHT: You can or you can't?

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MR. ROBERTUS: You cannot.

20

MR. WRIGHT: You cannot.

21

MR. ROBERTUS: The, the discharger must be willing to participate in, in the SEP and accept the responsibilities for completion.

22

23

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MR. WRIGHT: Okay. Before we close the hearing, then we have a proposal. We have two

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2 SEPs proposed, one of which is recommended by
3 staff. Mr. Destache, did you care to comment
4 on, on those? I know you--you're pretty
5 familiar with--

6 MR. DESTACHE: [Interposing] Yeah.

7 MR. WRIGHT: --the situation, so.

8 MR. DESTACHE: And I would I, I do
9 appreciate staff's recommendation of the SEP
10 with the Bite 0--or the '08 Bite, is that how
11 it's described, Jeremy, or the Bite '08?

12 MR. HAAS: Right, the Bite '08 Rocky Reef
13 Study.

14 MR. DESTACHE: Right, right. And the, the
15 other SEP, I think, is would be unacceptable,
16 simply because it's a SEP that would be run by
17 the discharger, which I think we can shy away
18 from those SEPs, so I think the, the Bite '08
19 Rocky Reef is a--is a good way to go if the
20 discharger is willing to, um accept that.

21 MR. WRIGHT: Okay. Let's hear from the
22 discharger regarding the SEPs.

23 MS. CHEN: I can just make a, a comment
24 about it.

25 MR. WRIGHT: Please, Ms. Chen.

1
2 MS. CHEN: We, we presented those two
3 options, and we were leaving it to the
4 discretion of the Board to determine which one
5 was more appropriate, so the '08 Bite SEP w--
6 would be--would be fine with us, only to the
7 extent that we don't want to waive our right to
8 appeal this to the State Board.

9 MR. WRIGHT: Okay, understood. Anything
10 else on the any questions to the Orange County
11 folks regarding SEPs? Okay. Um--

12 MS. CHEN: [Interposing] and can I address
13 this?

14 MR. WRIGHT: Oh, yes, please, go ahead.

15 MS. CHEN: I'm so sorry. I, I wanted to
16 address just one point that Mr. Robertus--Ro--
17 Robertus made, and he, he had mentioned that
18 the, the Board has extensive experience dealing
19 with this type of facility and that brine
20 effluent, they--they're well familiar with it,
21 and we would like to just point out that, you
22 know, as I said in my presentation, in the
23 Oceanside, the Brackish Groundwater Facility,
24 they, they were treated differently, so I just
25 want to point that out.

1
2 MR. WRIGHT: Okay. Thank you for that
3 clarification. Okay let's close the hearing and
4 proceed to some discussion. Mr. Anderson?

5 MR. ERIC ANDERSON: Yeah. Actually, I had a
6 question for Jeremy real quick before you close
7 the hearing, and there was - - why didn't the
8 startup exemption--

9 MR. WRIGHT: [Interposing] Okay. The
10 hearing is not closed.

11 MR. ANDERSON: --oh, thank you. Why didn't
12 the startup exemption not apply to this
13 facility?

14 MR. HAAS: the statute in 13385 J3, and,
15 Myumi will correct me if I'm wrong lays out some
16 certain conditions that need to be met by a
17 discharger who is seeking a startup period
18 exemption and these things include notifying the
19 Board during the startup period that there's
20 going to be this defined time by which they're
21 going to get things correct and further limits
22 it to 30 days or, or longer, if there's
23 biological treatment involved. And none of
24 those conditions were met in this case by South
25 Coast or, or SOCWA.

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MR. ANDERSON: Okay. Thank you.

MR. WRIGHT: Okay, thanks. Thank you, Jeremy. Ms. Chen, and then, Ms. Okamoto, and then, I'm going to close the hearing.

MS. CHEN: I just want to address that, that ex--the exemption, it only relates to POTWs, so what you're dealing with are POTWs and there's 30 days startup for POTWs, and then, if they have biological treatment, it's 90 days, so it wouldn't apply to us anyway. Our argument is that, you know, given the spirit and intent of that exception and, and the way the MMPs work, we ought to have some carve out.

MR. WRIGHT: Thank you. Ms. Okamoto, anything?

MS. OKAMOTO: No.

MR. WRIGHT: Thank you. All right. The hearing is closed. Discussion Mr. Thompson, you've had a chance to--

MR. THOMPSON: [Interposing] - - moment.

MR. WRIGHT: Okay. [Laughs]. Okay. And George, did you want to add to where you were going before?

MR. LOVELAND: Well, not much, but I am

1
2 disturbed by this. I understand the, the lack
3 of discretion, and, and I appreciate what
4 Director Rober--or Executive Officer has, has
5 said about the legislature's intent not to let
6 the Regional Boards get too wishy-washy with
7 this thing, but, but I do have a concern - -
8 and, and it's, it's outside of what I think,
9 ultimately, the motion will have to be on this,
10 and, and, maybe it does need to go to the State
11 Board, but the solution that we have now of
12 adding the brine to the POTW, which is producing
13 recycled water and raising that TDS seems like
14 the wrong way to do it. And yet, if we're--if
15 we're discharging the combined effluent that
16 meets the requirements, which seems we'll kill a
17 couple of birds with a rock, by, by allowing
18 that, and I'm not sure why we aren't thinking of
19 that in the big picture, and there may be some
20 good reason, and at some point, I'd like to--I'd
21 like to have that discussion. I, I--I'm
22 frustrated by the fact that our hands are tied,
23 tied on this without looking at a bigger picture
24 and when Mr. Robertus, I thought, made a very
25 good argument, I, I, I disagree with one part,

1
2 you know, you got to--if we monitored every
3 discharger at the point of discharge, and then,
4 also monitored the combined discharge, and if
5 the combined discharge doesn't exceed our, our
6 requirements, or violate our requirements, I
7 don't see why we wouldn't give this thing
8 further discretion to work with the individual
9 dischargers within that combined outfall to try
10 and accomplish a larger goal, and I think
11 there's some work there that maybe needs to be
12 chewed on a little bit.

13 MR. WRIGHT: Yeah, and I, I guess there's,
14 there's a need to have some, some discussion on
15 that. you know, you've got two different
16 philosophies operating you know, source control
17 and monitoring, versus outfall control and
18 monitoring, and--but maybe we can have that
19 discussion in a future board meeting, so
20 perhaps that--that's another agenda item, so
21 Chris, anything?

22 CHRIS: No, I was just going to comment. I
23 feel frustrated, too. I think it's, it's
24 pretty evident what we have to do with the
25 issues that are in front of us, but it is--it's

1
2 not something I feel good doing. I think it's,
3 it's kind of contrary to, to maybe some of the
4 policy that, that we do want to see put in
5 place and follow, but...

6 MR. WRIGHT: Mr. Destache?

7 MR. DESTACHE: yeah. I also am a little bit
8 frustrated with the--with where we sit today,
9 although we have to deal with the policies that
10 we have in place, and we need to--we need to
11 move forward and I think the little Hoover
12 Commission said it best when they said that we
13 should be talking about policy and not permits,
14 and let staff and our executive officers, and
15 this is globally on a regional board basis,
16 that, that we should be dealing with policy. I
17 think this is one policy issue that we really
18 need to look at because we are not going to see
19 a diminishing amount of these types of actions,
20 and this--these types of facilities. They're
21 just going to increase, and we got to have--we
22 have to get to a point where we're better, our,
23 our policies are better suited for this type of
24 facility, and I, I feel for SOCWA, but the
25 reality is, is that, um that we are where we

1
2 are, with the legislation today. but I, I do
3 mean to make it a point to, to push this and,
4 and to a point where we can clarify where we go
5 with these groundwater recovery facilities, the
6 recycling facilities, and they--how they affect
7 PTL and we may have to split off some of this
8 policy issue with on the recycling side.

9 MR. WRIGHT: - - but it sounds like it's the
10 kind of discussion that, that we not only need
11 to have at, at the board level, but also,
12 statewide, and so you know, I can communicate
13 that up through the chairs conference calls, but
14 it's, it's probably something that we could put
15 on an agenda for the statewide meeting of the of
16 the Members of the Board. I think we have a
17 meeting coming up in October, so I'll suggest
18 that as an agenda item, so. Eric?

19 MR. DESTACHE: - - ashamed to, to lose, not
20 only the 17,000 acre feet but the other
21 applications in the future that have difficulty
22 with, with the MMP statute th--that, that that
23 flexibility and discretion is an important
24 thing, and, and, and it, it is frustrating not
25 to be able to, to use discretion, especially for

1 something that, that is in this case, and I, I
2 apologize, but I don't--I do feel like we don't
3 have that discretion in this case although you
4 made a good case.
5

6 MR. WRIGHT: Eric, anything?

7 MR. ANDERSON: Yeah. You know I think we do
8 have some room for here--for interpretation
9 here. I'm not totally convinced that these
10 MMPs apply, and I, I think it's, it's a shame
11 that we--we're going to probably penalize some
12 a water district who's trying to do the right
13 thing here, and I just think that you know, we
14 need to consider this before we take this action
15 today, so.

16 MR. WRIGHT: David, anything?

17 MR. KING: I, I also feel like Mr. - - I
18 haven't really had the issues--the, the
19 application of the law to the fact set forth
20 clearly enough to know, 100% that, that I'm--my
21 discretion--that, that--or that these particular
22 violations are absolutely subject to mandatory
23 minimums and looking to other indications in
24 this record here, such as the, the motion to
25 strike reflects an absence of the use of

1
2 discretion about your use of resources and an
3 absence of discretion about the prosecution--
4 pro--prosecutorial discretion. I would say that
5 this was not a wise use of Ms. Mo--Okamoto's
6 time, Ms. Chen's time, or Ms. Hagan's time, to
7 have to deal with something like a motion to
8 strike. That being said, - - applaud the
9 criticism across the Board here. If, if there
10 was a, a rational argument for not applying
11 mandatory minimum penalties to certain
12 violations, we see people come in and, and
13 prepare the numbers and show which violations
14 should not be subject to penalties, what--how
15 much the penalties should be. When we're
16 talking about strict statutory application, we,
17 we don't have equitable consideration. We have
18 law to apply - - not in equity. so, I, I--I'm
19 not 100% convinced that the case has been made
20 very strongly applying the law to the facts,
21 and wouldn't be opposed to continuing this and
22 seeing if either we could have this back on the
23 calendar later or if the parties could work out
24 an appropriate resolution.

25 MR. WRIGHT: Mr. Thompson?

1
2 MR. THOMPSON: Thank you, Mr. Chairman. I
3 do have some concerns, myself, concerning the
4 application of the law. I have read through the
5 legislative analysis and, and although I concur
6 with Ms. Okamoto's position concerning her
7 interpretation of that, I also read into that
8 that there really was no intent of the
9 legislature to be punitive, either, to the
10 extent that you're, you're taking, essentially,
11 an organization that's working very hard to, to
12 correct the problems they have that have been
13 identified through the process of, of starting
14 up and implementing the requirements of the
15 NPDES permit that they originally issued, and it
16 kind of goes back to the same argument before,
17 concerning when you're treading new ground, you
18 don't know where you're going to end up until
19 you get there, and now, we're, we're talking
20 about mandatory penalties that I don't really
21 think were intended to mean this. I think they
22 were intended to really mean we need to penalize
23 people that are--that are--that are being
24 unresponsive. And, and in my case, I think that
25 I feel they've been responsive. They trying to,

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2 to correct the problems coming up with
3 solutions, and, and I have to agree with Mr.
4 King and Mr. Lukar [phonetic]. I'm not so sure
5 that we really do have enough information here
6 to say we can legally justify these penalties,
7 when there may be some interpretation in here.
8 one of the things that I will--I will bring up
9 quickly is when Mr. Wiles [phonetic] gave us our
10 indoctrination, myself and George, he talked
11 about when we're sitting in this position, we're
12 the judge and the jury. Well, we are the court.
13 Don't have a lot of case law. Granted, we're
14 not a real court, judge-wise, but in a sense, we
15 are, so maybe we set the case law in this case.
16 I'm not sure. I think there is some room for
17 interpretation concerning whether or not if a--
18 if a TSO had been in place, that these penalties
19 might be less, and that is a process issue. If-
20 -and it does take a while to put one of those in
21 place, but in the meantime, you're accruing
22 penalties that, that short of shutting down the
23 plant entirely when they're still trying to
24 figure out exactly what they have it is the
25 catch 22, as was originally discussed. So I--

1
2 I'm amiable to continuing this and see if there
3 might be a better solution to this. I really
4 would like a better interpretation, and maybe
5 it's a function of the State Board, itself,
6 concerning the real intent of mandatory minimum
7 penalties, and how they should be applied. and
8 then, the other piece is, is, you know, it's not
9 clear to me 'cause we don't have a copy of the
10 permit, itself, in here that, in fact, it was
11 intended that each one of those samplings would
12 be a separate violation, versus where you
13 couldn't group those as a violation, based on
14 some criteria not met and, you know, I suspect
15 maybe that is the case, and I'm, you know, if it
16 is, that's fine, but that's kind of where I'm
17 at right now.

18 MR. WRIGHT: Okay. - - prefer not to
19 continue this but Ms. Hagan, do you have any
20 advice to the, the Board? I, I, I personally
21 think that, that our hands are really tied. I
22 think it's pretty straight forward, although I--
23 the only area of question that I had related to
24 Mr. King's questioning about the about the
25 actual events and the dates of those and, and so

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2 on. I thought there might be some, some wiggle
3 room in, in that arena, but we don't seem to
4 have gone anywhere with that. Ms. Hagan can you
5 advise your Board?

6 MS. HAGAN: Well, I'm, I'm happy to answer
7 questions. I mean, I--like I said earlier
8 unless you can find that the violations did not
9 occur you, you, you do not have discretion to
10 work out a solution or to determine that a
11 lesser amount should be applied. So I think it,
12 it comes down to did the violations occur and
13 they were presented in a discharger monitoring
14 report, or, or do--does an exception apply, and
15 I, I, I do agree with the prosecution staff that
16 the statute--the statute that provides the
17 exceptions specifies wastewater treatment
18 plants. And so perhaps, you know, a legislative
19 fix might be the most appropriate, but,
20 obviously, if you want to continue the hearing
21 and get more information on the nature of the
22 violations that's obviously some--something you
23 can do, if you want to do that.

24 MR. WRIGHT: Okay. Let's throw a motion out
25 - - speak to a motion.

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MR. KING: I, I move that we continue this matter for a future hearing.

MR. WRIGHT: Okay. We have a motion to continue this matter. Do we have any --Mr. Robertus, any date in the future that--

MR. ROBERTUS: [Interposing] I presume the separation of function would continue, so I think you have to address that question to Mike McCann.

MR. WRIGHT: Mr. McCann?

MR. MCCANN: That--that's difficult. We have quite a few items coming up.

MR. WRIGHT: Mm-hmm.

MR. MCCANN: I'm going to say August, at the earliest, our August Board meeting, maybe September.

MR. WRIGHT: I just want to make sure staff has adequate time - - .

MR. MCCANN: Right, right, yeah.

MR. WRIGHT: Together with SOCWA.

MR. MCCANN: Yeah, I'm not sure, at this point, how much more work it's going to be. We do have a full schedule of items coming up. I would say August at the earliest, maybe Sep--we

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2 try for September. There--there's no urgency in
3 this, in the sense of, of it's all in the past,
4 so but to iron these things out and present
5 adequate information--

6 [Crosstalk]

7 MR. WRIGHT: --yeah, we obviously need to
8 have full information. On the other hand, - -
9 to drag something out doesn't make any sense
10 either. Mr. Haas?

11 MR. HAAS: Yeah I'm sorry for the
12 interruption. I want to mention two things.
13 First, we would not be able to bring it back in
14 August, as our schedules are--would--wouldn't
15 allow for that. September, we could come back
16 with it. I'm not sure exactly what to come
17 back--what kind of materials you're interesting
18 in bringing, but I have two observations for
19 you. The first one, and I'm sorry I didn't
20 speak up earlier, Mr. Thompson, there--a copy of
21 the NPDES permit is in the spiral-bound binder
22 that is supporting document five. SOCWA
23 provided a copy of the permit. I think it's I'm
24 sorry, C? I'm sorry, so it's tab C. You can
25 identify the effluent limitations. It would be

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2 easier if I had my copy in front of me. I'm
3 sorry. The effluent limitations are identified
4 on page 13 in table eight. And then, the
5 monitoring requirements, or the, the monitoring
6 requirements are on attachment E to that, E-11,
7 where it sets out the monitoring locations, so.

8 MR. WRIGHT: Okay. So we have closed the
9 hearing, but I just--this--your, your
10 information--

11 MR. HAAS: [Interposing] I wanted--

12 MR. WRIGHT: --relates to the, the - -
13 notion of, of continuance.

14 MR. HAAS: That's correct.

15 MR. WRIGHT: Okay.

16 MS. HAGAN: Mr. Chair, might I just offer
17 that it--

18 MR. WRIGHT: [Interposing] Ms. Hagan?

19 MS. HAGAN: --it, it might be useful or the
20 Board could consider whether it would be useful
21 to reopen the hearing and walk through some of
22 the provisions in the NPDES permit that might
23 provide more clarity for the Board Members. And
24 so, I just suggest that as an option.

25 MR. WRIGHT: Okay. That's - - would you--we

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defer action on this until after lunch? Is that--

MS. HAGAN: [Interposing] that's certainly possible.

MR. WRIGHT: --one of the alternatives.

MS. OKAMOTO: Mr. Chair, if we are going to reopen the hearing, I do have a document with me that would perhaps provide the Board a little bit more clarity, as far as the intent of the MMP provisions we--and about the State Board recalled the MMP question and answer, and I do have a copy of that which was provided by the Office of Chief Counsel for guidance to Regional Boards when this statute was enacted.

MR. WRIGHT: Okay. We, we have a motion on the floor. What's, what's the--what are the wishes of the Board? You want to look--take continue this until after lunch or, you know, after lunch, until we've had a chance to--Mr. King?

MR. KING: [Interposing] -- get a--let a subsidiary motion here. We--we've--

MR. WRIGHT: [Interposing] Well, a substitute motion, I'd call it.

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2 MR. KING: Okay, substitute. I, I haven't
3 withdrawn the motion and I'd like to allow--if
4 people speak in favor of the motion and--

5 FEMALE VOICE 1: [Interposing] Sure.

6 MR. KING: --against the motion?

7 FEMALE VOICE 1: That's appropriate.

8 MR. KING: Thank you.

9 MR. WRIGHT: Okay. Any discussion regarding
10 Mr. King's motion? Does anybody wish to offer a
11 substitute?

12 MALE VOICE 3: I want to go along with Mr.
13 King's motion. I think it's important that we
14 investigate deeper into the permit. However, I,
15 you know, I'm, I'm, I'm torn between the fact
16 that we're looking at a permit that's been in
17 place for a while, and, and we're not going to
18 rule on the permit, itself, but we're going to
19 rule on what the permit means, and that is
20 contrary to where we should be standing on this,
21 but, um at this point, I, I would--I would
22 venture to go along with that, with that--with
23 the motion.

24 MR. WRIGHT: Any other comments? Are you
25 speaking to the motion, Mr. King?

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2 MR. KING: I have nothing to - - call to
3 question.

4 MR. WRIGHT: Okay. We have a motion to
5 continue this item, and I'm - - from what we've
6 heard the purpose of the continuance is to be
7 able to, to go back and look at the , NPDES
8 permit. Anything else? Do us any other
9 specific instructions for staff, Mr. Loveland?

10 MR. LOVELAND: I think - - for me to put it
11 off and just discuss the permit, if we're not
12 going to use that time to get into the policy
13 issues and what we're trying to accomplish with
14 the water supply and, and environmental issues
15 with discharge and how to mold this into--to a
16 policy that makes sense. If it's just on the--
17 on the permit, I have no problem - - today, and
18 I think--I think those issues are probably
19 fairly clear. I'm not sure I, I, I buy the, the
20 fact that, that the legislative intent - -
21 discretionary ability is, is compromised here,
22 or not compromised. It seems to me that we're
23 between a rock and a hard place with, with the
24 mandatory fines, here, but the overall question
25 and, and maybe it's--I'd just as soon see SOCWA

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2 take it to the State Board and, and appeal it on
3 that then us get into a discussion on what we're
4 trying to accomplish on a policy level. - - on
5 this permit I'm I think we can go around the
6 mulberry bush for a long time--

7 MR. WRIGHT: [Interposing] I agree and it -
8 - I'm not sure--we can discuss the policy issues
9 at a later meeting, but the policy questions
10 are much bigger than, than this Regional Board.
11 They, they are policy matters that need to come
12 from, from all the Regional Boards, from the
13 State Board and filter back down to the Regional
14 Boards 'cause what we're now is applying
15 policies that have been set up by the by the
16 State and I don't think we have a, a lot of
17 leeway, so I, I intend to vote against the
18 motion to continue the, the matter. I think we
19 need to settle it today. I would I just want
20 to add that--an--and I would ask Mr. King that,
21 if, if policy is what we're trying to affect,
22 then, potentially, it's better that we, um vote
23 to put the ACL in place and vote for the fine,
24 and push this to the State Board faster than, um
25 than would be as if we deferred it because it's

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2 be another three or four months before we do
3 that, and then effectively, as effective as we
4 can, lobby the Board to look at the policy, so
5 th--that's really my question to you on the--on
6 the continuance motion and--

7 MR. KING: [Interposing] the--no, I - - my
8 motion had nothing to do with our opening this
9 up and, and playing the legislature and, and,
10 and making matters of policy injecting
11 ourselves into something that's straight
12 statute. My motion was driven more on the fact
13 that kind of analogous to, to watching a, a
14 classic boxing, and then, watching - - see today
15 on the TV. I--I've seen better fights. I've
16 seen the law applied in better instances, and
17 I've seen better application of the law to the
18 facts, and, and I want to see the burden of
19 proof met in this case before we go impose
20 something that's a mandatory minimum penalty.

21 MR. WRIGHT: Okay. Any other discussion of
22 the motion? the motion is to continue, but I,
23 I--it'd be--I'd like to see as much specific
24 instruction as possible to--could you get some
25 specific guidance to staff, or do you think

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2 they--

3 MR. KING: [Interposing] I think I've been
4 specific.

5 MR. WRIGHT: Okay. All right. Any other
6 guidance for staff, if we continue this? Okay.
7 Well, maybe that should come after the motion.
8 Okay. All those in favor of the motion, raise
9 your hands. The motion, one, two, three, four.
10 Those against the motion, one, two, three, four.
11 Wait a minute. Oh, we're missing--yeah. The
12 motion fails. Okay. On a tie, the motion
13 fails, so now to the staff recommendation, I
14 assume that's, that's where we're at now. Is
15 there a motion to approve the staff
16 recommendation?

17 MALE VOICE 4: So move.

18 MR. WRIGHT: Okay. Is there a second?

19 MALE VOICE 5: Second.

20 MR. WRIGHT: All those in favor of the staff
21 recommendation?

22 MR. KING: Can, can I make a little--

23 MR. WRIGHT: [Interposing] Pardon?

24 MR. KING: Can I make a comment?

25 MR. WRIGHT: of course.

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2 MR. KING: It--I, I would love to send this
3 up to the State Board with a statement from our
4 Regional Board stating that this may be a, a
5 case where they should look at MMPs and the
6 application as, as, as it is applied here. So-
7 -and that might not be appropriate to be
8 applying to this type of situation.

9 MR. WRIGHT: who made the motion was it - -
10 is that an acceptable addition to your motion?

11 MALE VOICE 6: Yes.

12 MR. WRIGHT: A second or is that an
13 acceptable addition? Any discussion to the
14 motion? All those in favor of the motion.

15 MS. HAGAN: Excuse me, Mr. Chairman?

16 MR. WRIGHT: Yes. - - .

17 MS. HAGAN: Okay. I just wanted to get
18 clarity as to how that will affect the motion to
19 adopt the ACL order.

20 MR. WRIGHT: - - .

21 MS. HAGAN: It's just a statement in the
22 record that the Board that would be included in
23 a Board votes, if the Board were to approve the
24 staff recommendation.

25 MR. WRIGHT: Yes. It doesn't--it--yeah.

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2 It's just a message sent on high. So all those
3 in favor of the motion? I guess we better have
4 a show of hands. Raise your hands. One, two,
5 three, four. The motion fails.

6 MALE VOICE 7: - - .

7 MR. WRIGHT: Catherine, where are we? We
8 have two failed motions.

9 MS. HAGAN: Consulting my motion book at the
10 moment.

11 [Laughter]

12 MR. WRIGHT: Well, we don't have a
13 recommendation, basically.

14 [Crosstalk]

15 MR. WRIGHT: Well, Catherine, we, we simply
16 don't have a recommendation.

17 MS. HAGAN: Right. And I'm just trying to
18 figure out, procedurally, if the --what occurs
19 and I mean, obviously, the action won't occur
20 today, but I'm trying to decide if there needs
21 to be anything done affirmatively wi--with
22 regard to this item, or if it will just languish
23 or be brought back, so I--one thing I can do is
24 look at it over the lunch break.

25 MR. WRIGHT: yeah, okay. That--my

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assumption is--

MS. HAGAN: [Interposing] and it may be that
I don't have--

MR. WRIGHT: --that this move on up to the
State, but, uh--

MS. HAGAN: I don't think that would--I--
that could be the result, but I don't think so,
so--

MR. WRIGHT: [Interposing] I mean, that
could be a, a recommendation of this board--

MS. HAGAN: [Interposing] Okay.

MR. WRIGHT: --that we are incapable of--I
mean, I shouldn't say incapable of making--

[Laughter]

MR. WRIGHT: --unable.

MS. HAGAN: So if you're--

MR. WRIGHT: [Interposing] - - .

MS. HAGAN: --amenable, I would, would like
just an opportunity to look at--look at the - -

MR. WRIGHT: All right. We'll carry this
over now after lunch. Let's take a break for
lunch. We'll be back here in at 2:00.

[END OF DS3000069.WMA]

1 [START OF DS3000070.WMA]

2 MR. WRIGHT: --approve the staff
3 recommendation and Catherine have you had a
4 chance to think about this?
5

6 MS. HAGAN: I have and I--one possibility
7 for the, the Board to consider is whether a
8 motion to postpone the matter with certain
9 specific direction, like parties to brief legal
10 issues or a confidential memo from me, as the
11 Board's Advisor, might be helpful, if that would
12 change the b--the composition of the votes.
13 That would be one way to move the matter along.
14 alternatively one thing the Board could
15 consider doing is asking the Executive Officer--
16 -or making a motion that the Executive Officer
17 explore with the State Board management if they
18 would be inclined to hear this matter. just
19 sort of - - and, on, on the complaint that
20 exists, I don't think there's a--there's not a
21 referral process, so it would be a matter of
22 inquiring and if you were to do something like
23 that, I would recommend that you ensure that the
24 discharger would waive the 90 day--right to a
25 90 day he--a 9--a hearing within 90 days because

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2 it would be a new hearing. So those are some
3 thoughts. Otherwise, I think the--if the Board
4 takes no action today the matter would really
5 fall back in the court of the prosecution team
6 to decide whether they will bring the matter
7 back, revise it withdraw it, or resubmit it
8 with additional information.

9 MR. WRIGHT: Okay. Board Members my
10 suggestion before we talk about this is that we
11 - - send this up to the Board. We, we have
12 responsibilities to take action at, at this
13 level and it's a problem we need to deal with,
14 so with that anybody? George?

15 MR. LOVELAND: our made a suggestion there,
16 or gave us an option that I thought was a pretty
17 good one, and that is just have the two sides
18 brief us, which would address Mr. King's issues
19 about how adequately they've identified the, the
20 legal arguments or not and bring it back and
21 act on it.

22 MR. WRIGHT: Mr. King?

23 MR. KING: Yeah, I would agree with that. I
24 would maybe provide like a page limit that,
25 that both sides could submit legal briefs and

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2 maybe ten pages, maximum not introducing any
3 new exhibits, but just making citations to
4 existing documents and the record submit that
5 within 30 days or so, and then, bring this
6 matter back in due course, and that's a motion
7 that would be a full continuance to continue
8 this matter with additional legal briefing, no
9 more than ten pages, ordinary pleading form,
10 citations only to existing documents on the
11 record.

12 MR. WRIGHT: So that's a motion. Is there a
13 second?

14 MALE VOICE 8: I'll second.

15 MR. WRIGHT: Any discussion to the motion?
16 Catherine?

17 MS. HAGAN: May I just inquire no reply
18 briefs, just, um briefs submitted
19 simultaneously by both parties?

20 MR. KING: Correct.

21 MS. HAGAN: - - .

22 MR. KING: yeah, a deadline 30 days from
23 now, un--unless such day is on a weekend, then,
24 the--that following Monday ten pages, no
25 supplemental briefs after that.

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MR. WRIGHT: Okay. All those in favor of the motion, say aye. Aye.

MALE VOICES: Aye.

MR. WRIGHT: Those against. The motion is approved unanimously. Okay. Ms. Okamoto and Ms. Chen, - - clear? Okay. And let's see. Ms. Hagan anything that we need to report out on closed session?

MS. HAGAN: The Board discussed a matter under item 14, which is the potential exposure to--or significant exposure to litigation and that's, that's all that needs to be reported.

MR. WRIGHT: Okay. Okay. - - anything else for the good of water quality in the region? Nothing? We are adjourned.

[Background noise]

[Crosstalk]

MALE VOICE 9: Mr. Chairman, - - .

MR. WRIGHT: Thanks.

[Crosstalk]

MALE VOICE 9: You know, we're going to-- we'll try to resolve it.

MR. WRIGHT: I think you will. I have a feeling--

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[Crosstalk]

MS. CHEN: Thank you so much.

MR. WRIGHT: Nice presentation. Thank you.

[Crosstalk]

[Background noise]

[END OF DS3000070.WMA]

