



September 14, 2011
Item No. 7
Supporting Document No. 6b

THE CITY OF SAN DIEGO

July 27, 2011

Mr. Ben Neill, P.E.
San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123

Re: City of San Diego Transportation & Storm Water Department's Comments on Tentative Order No. R9-2011-0052 to Provide a Time Schedule Order for Kinder Morgan Energy Partners to Comply with a Discharge Prohibition in its NPDES Permit No. CAG919002 for Its Mission Valley Terminal Dewatering Discharge to Murphy Canyon Creek

Dear Mr. Neill,

Thank you for the opportunity to comment on proposed Time Schedule Order No. R9-2011-0052 ("TSO") concerning discharges of treated groundwater by Kinder Morgan Energy Partners ("Kinder Morgan") to Murphy Canyon Creek, which flows into the San Diego River and out to the ocean. These comments are submitted by the City of San Diego ("City") Transportation & Storm Water Department (TSWD) which has distinct concerns about the consequences and repercussions of the proposed TSO, which would allow an increase in the discharge rate of treated groundwater to Murphy Canyon Creek (from 795,000 gpd to 1.26 million gpd), as well as an increase in the discharge of Total Dissolved Solids ("TDS") to that creek (from 1500 mg/L to 2400 mg/L daily). It is noted that TSWD's concerns are distinct because the City Public Utilities Department has a separate set of comments on this issue, which TSWD acknowledges. While TSWD shares the City Public Utilities Department's desire to expeditiously remediate the affected aquifer, these comments reflect TSWD's unique concerns about the means to that end, as may be affected by the proposed TSO. As the TSO acknowledges, Murphy Canyon Creek is on the Clean Water Act §303(d) list of TDS impaired water bodies. The creek has limited, if any, capacity for additional TDS and/or sediment loading which could be caused by the proposed increased flow. Impacts on biology and added sedimentation reducing conveyance capacity of the creek for flood control are additional distinct concerns of TSWD. While City TSWD shares the goal of having the groundwater cleaned up, Kinder Morgan's objective of expediting the remediation of the aquifer (and not incidentally, at substantially reduced cost to Kinder Morgan) through live stream discharge should not come at the expense of violating permit conditions or laws relating to the receiving water, nor at the expense of the City in costs to maintain carrying capacity of the creek.

As you know, Order No. R9-2008-0002 (NPDES No. CAG919002), which governs Kinder Morgan's discharge of treated ground water to Murphy Canyon Creek, prohibits the discharge of extracted ground water waste into the City municipal separate storm sewer system ("MS4") *without the prior approval of the MS4 operator.* [§ II.D]. The same prohibition is contained in



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Kinder Morgan's previous NPDES Permit under Order No. 2001-96, Section A.11. ("The discharge of groundwater extraction waste to a storm water conveyance system without notifying and receiving authorization from the agency having jurisdiction over the storm water conveyance system is prohibited.") While the City was notified of Kinder Morgan's increased live stream discharge to Murphy Canyon Creek in 2009, a search of City TSWD records to date reveals that the City did not expressly approve Kinder Morgan's discharge. The proposal of the TSO to again increase the discharge rate renews the question of the need for consent from the MS4 operator. Were it not for the shared concern of expeditious remediation of the aquifer, City TSWD is disinclined to give its consent to the proposed increase, and will not give consent in this instance without prior concurrence and written approval to do so from the Regional Board.

Moreover, Order No. R9-2008-0002 expressly states: "The discharge of wastewater shall not create or cause conditions of nuisance or pollution." [§IV.B] The groundwater discharge general permit also commands that: "The discharge shall not cause, have a reasonable potential to cause, or contribute to an in-stream excursion above any applicable criterion promulgated by USEPA pursuant to section 303 of the CWA, or water quality objective adopted by the State or Regional Boards." [§ IV.C]. Yet, the proposed TSO expressly acknowledges that the proposed discharge to Murphy Canyon Creek "has a reasonable potential to contribute to an in-stream excursion above water quality objectives for TDS as set forth in the Basin Plan. . . ." [TSO Finding #4]. The Basin Plan limits TDS for these waters to 1,500 mg/L. But the TSO proposes to allow a significantly higher discharge of TDS levels of up to 2,400 mg/L per day.

Further, although the proposed TSO indicates that Order No. R9-2008-0002 does not specify effluent limitations for discharge of TDS, limitations for TDS are in fact found under Section VI., Receiving Water Limitations, at the table on page 36 that breaks down the hydrographic units (HU) of the basin and objective (mg/L TDS) for each HU. The TDS limit for the San Diego River is 1,500 mg/L. [§VI.A, p. 36].

In addition, under its MS4 Permit, Order No. R9-2007-0001 ("MS4 Permit"), the City "cannot passively receive and discharge pollutants from third parties." If it does, it may be responsible for the discharge. (§D. 3.d, p.8). Under the City's MS4 Permit: "Discharges into and from municipal separate storm sewer systems (MS4s) in a manner causing, or threatening to cause, a condition of pollution, contamination, or nuisance (as defined in CWC section 13050), in waters of the state are prohibited."(A.1, p. 11). Under the MS4 permit, "Discharges from MS4s containing pollutants which have not been reduced to the maximum extent practicable (MEP) are prohibited. (A.2, p. 11). Under the MS4 permit, "Discharges from MS4s that cause or contribute to the violation of water quality standards (designated beneficial uses and water quality objectives developed to protect beneficial uses) are prohibited. (A.3, p. 12). Therefore, the proposed discharge would result in violations of the City's MS4 permit.

As examples of prohibited discharges in the San Diego River watershed, the City has previously been issued Notices of Violation R9-2010-0015 (Vulcan Materials quarry incident) and R9-2007-0110 (Mission Valley Library decorative pool incident). It is difficult to reconcile those previous NOV's with this proposed TSO action. Reducing pollutants to Maximum Extent

Practical entails prevention of discharges and/or reducing pollutant loads to levels not inconsistent with the Basin Plan. Additionally, the biological effects of the increased TDS loads to the ecosystem from the proposed TSO have not been identified or mitigated.

Further, the proposed TSO does not appear to have adequately analyzed the increased sedimentation effects of the substantially increased discharge. City TSWD has the responsibility to maintain portions of the flood control channel within Murphy Canyon Creek located directly downstream of the Kinder Morgan discharge point. Generally, discharges of water to the City's storm drain system increases sediment loads in City facilities and increases the growth of vegetation, which results in accretion of even more sediment and impairs the conveyance system's capacity to efficiently and effectively carry storm water runoff downstream and prevent flooding. For example, during the Winter 2009 and 2010 rains, Murphy Canyon Creek overflowed into the Qualcomm Stadium parking lot. Because the 2010 flooding occurred right before a scheduled football game, City crews had to work 24 hours a day to pump the water out (at great expense to the City) so the event could go on as scheduled. In addition, City TSWD crews had to make repairs to the berm that had breached, and removed significant amounts of sediment from the Qualcomm parking lot. Portions of the parking lot were underwater for weeks due to this breach. Thus, increasing groundwater discharges from 795,000 gpd to 1.26 mgd raises grave concerns about the increased rate of sediment load and vegetation growth in a channel and potential mitigation responsibilities that the City would have to undertake to reduce impacts to biological resources and water quality. Increasing the sediment and vegetation loads may also increase the frequency of the need for maintenance of the channel to reduce flooding risks.

Consequently, the City respectfully objects to discharges of treated groundwater into Murphy Canyon Creek that exceed the TDS limits in the Basin Plan or any other applicable laws, and the City will not approve such discharges. The Regional Board should require Kinder Morgan to study the impacts of the increased TDS loads and accelerated sedimentation which would be caused by the added volume of discharge. Unless no impacts are identified, Kinder Morgan should be required to upgrade its treatment system forthwith so as to bring the TDS levels in the extracted groundwater to the levels required by the Basin Plan, and any other applicable laws. There is no need to wait for a future study to discover what is already known and understood. Technologies, such as reverse osmosis, exist today to deal with this problem.

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If this increased discharge is to be permitted, Kinder Morgan should also be required to assume the liability for any harm the City has suffered and will suffer from (i) the discharge of treated groundwater to Murphy Canyon Creek; (ii) the waste of this precious water resource; and (iii) the increased costs of maintenance of Murphy Canyon Creek to prevent flooding.

Sincerely,



Kris McFadden
Deputy Director
Transportation & Storm Water Department

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