



Linda S. Adams
Secretary for
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State Water Resources Control Board

Office of Enforcement

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Arnold Schwarzenegger
Governor

October 2, 2008

VIA EMAIL ONLY

Ms. Elizabeth M. Taylor
Brown & Winters
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Cardiff-By-The-Sea, CA 92007-1737
etaylor@brownandwinters.com

Dear Ms. Taylor:

ESCONDIDO ACL COMPLAINT SUPPLEMENTAL ENVIRONMENTAL PROJECT PROPOSAL


This follows our telephone conversation of October 1, 2008 in which I informed you that the Prosecution Team of the San Diego Regional Water Board in this matter is seriously concerned with the lack of completeness of the proposed SEP proposal submitted in this matter.

The parties to this matter began discussions in a meeting on July 1, 2008 centering on the ACL Order that had been remanded by the State Water Resources Control Board. At that time, we advised the City, Everett Delano and Gabriel Solmer that if a Supplemental Environmental Project (SEP) is proposed, it would have to meet certain requirements as set forth in the Enforcement Policy.

In a letter dated August 1, you provided an outline of a proposal in 6 bullet points. Thereafter, a Supplemental Environmental Project Application was submitted. We reviewed the information about the SEP proposal, and in an email to you dated August 15, I requested further information and clarification of six separate items, including amount of time to complete the project, availability of other sources of funding, what funding mechanisms would be used, and who would hold the money pending land acquisition (for example, an escrow account) and raised concerns about the amount of staff time that would need to be expended to help develop and oversee completion of the project as it was proposed then.

On August 29, 2008, you transmitted by email a revised draft SEP application, but provided no additional detail about the key concerns that we had raised.

California Environmental Protection Agency

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We have reviewed the August 29 submittal and find that critical elements of the City's SEP proposal remain unclear, and incomplete, or unacceptable. For example, as we had advised earlier, the proposed completion time of 18 months is too long for a viable project. A viable SEP proposal should be one that can be started, if not completed in a much shorter period, for example, six months. Additionally, the improvement to water quality from the proposal (a land purchase) remains unclear. If there are additional measures that would be taken to improve the water quality using the SEP funds, that information is not included in the proposal. There may be some impacts from the land acquisition to the creek, but they are not clearly measurable, immediate, or tangible in comparison to other possible SEPs. Additional funding would be needed to implement the proposed SEP as proposed, and the source(s) of those funds have not been explained, adding uncertainty to the completion date (acquisition of all proposed properties) and to the ability to measure improvement to water quality.

Of serious concern to us is the lack of a funding mechanism that can be accepted by the Regional Board. The proponent of an SEP must provide a proposed mechanism to pay the funds that will support the project. No proposal has been submitted. Submittal of a proposal and negotiation of an acceptable mechanism may well extend the currently projected 18-month completion period even longer. Another serious concern is the value of the land that is proposed to be purchased. We have asked for some kind of assurance that the funds that are committed to the proposed land acquisition are not spent on over-valued land. We recognize that this may be difficult to do and we lay no blame, but note that we would be irresponsible for failing to insist on clear and reliable information about this, which has not been provided.

We have worked with you for some three months now to identify the information that must be provided in an SEP settlement that the Prosecution staff is willing to support. You may recall that at our July 1 meeting we discussed a target date for bringing this matter to the Regional Board for its consideration during its October meeting. There remain far too many uncertainties and unknowns for the Prosecution staff to present the proposal to the Board as it exists. Moreover, we are unwilling to commit any further staff time, given the demands on our time by many equally deserving cases to attempting to assist development of this SEP proposal. Unfortunately, I must agree with your comment that the proposal is a "work in progress." We see that as precisely the problem.

Given the lack of completeness of the proposal, we have decided to withdraw from further discussion of the SEP proposal, but remain willing to continue discussions to resolve the ACL Complaint by settlement. In the meantime, we are moving forward with plans to place the ACL Complaint on the Regional Board's November 12, 2008 agenda.

Ms. Elizabeth M. Taylor

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If you have any questions or comments, please contact me at 916 341-5180.

Sincerely,



Jorge A. León
Senior Staff Counsel

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