



California Regional Water Quality Control Board San Diego Region



Linda S. Adams
Secretary for
Environmental Protection

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

Arnold Schwarzenegger
Governor

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<http://www.waterboards.ca.gov/sandiego>

Item No. 8;
Supporting Document No. 13

October 28, 2010

VIA EMAIL ONLY

Ms. Jessica M. Newman, Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor
Sacramento, California 95814-2828

Mr. Gerald D. Shoaf, Esq.
Redwine and Sherrill
1950 Market Street
Riverside, California 92501

Dear Ms. Newman and Mr. Shoaf:

RE: ACL COMPLAINT NO. R9-2010-0085 – EASTERN MUNICIPAL WATER DISTRICT, SET FOR HEARING NOVEMBER 10, 2010; PROSECUTION TEAM’S NOTICE OF POTENTIAL BIAS OF BOARD MEMBER GREEN

This is to call the Advisory Team’s attention to a letter authored by newly-appointed Board Member William L. Green, which is addressed to Mr. Anthony J. Pack, General Manager of the named Discharger in the above-referenced proceeding. (A true and correct copy of the letter, with handwritten notes apparently from Mr. Green, is enclosed herewith.) The Prosecution Team believes the letter subjects Mr. Green to potential disqualification in this proceeding for bias, prejudice, and/or personal interest. (See Gov. Code, §§ 11425.10(a)(5), 11425.40(c).)

As you are no doubt well-aware, the Administrative Adjudication Code of Ethics, which incorporates certain provisions of the Code of Judicial Ethics, applies to this proceeding. (Gov. Code, § 11475.20.) Canons 2 and 3 of the Code of Judicial Ethics, require Mr. Green to “avoid all impropriety or the appearance of impropriety[,]” to “be faithful to the law regardless of partisan interests[,]” and to “perform judicial duties without bias or prejudice.” (Code of Judicial Ethics, Canon 2 Advisory Committee Commentary; Canon 3(B)(2); Canon 3(b)(5), respectively.) The enclosed letter to the Discharger’s General Manager requests his endorsement for the position Mr. Green now holds on the Regional Board. It is unclear whether the request for endorsement is being made to Mr. Pack as a friend, or in Mr. Pack’s capacity as the Discharger’s General Manager, particularly in light of the handwritten notation “Thank you Tony” below the signature block. In either event, the letter certainly raises, at a minimum, the appearance of impropriety, and a reasonable inference that Mr. Green may have a personal interest in the outcome of this proceeding, or be biased in favor of his friend or the entity who endorsed him for this position on the Regional Board.

Accordingly, the Prosecution Team respectfully requests that Mr. Green either recuse himself from participating in the adjudication of this matter, or state on the record at the

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beginning of the hearing that he is capable of adjudicating this matter without bias, in a fair and impartial manner, despite his relationship with the Discharger.

Thank you in advance for the anticipated courtesy of your prompt attention to this important matter.

Sincerely,



Christian Carrigan
Counsel for the Prosecution Team
San Diego Regional Water Quality Control Board

Enclosure



September 24, 2010

Mr. Anthony J. Pack, General Manager
Eastern Municipal Water District
2270 Trumble Road
PO Box 8300
Perris, CA 92572-8300

Re: Governor's Appointment to the California Regional Water Quality Control Board – San Diego

Dear Mr. Pack:

I have submitted my "Application for Appointment" to California Regional Water Quality Control Board – San Diego and I respect your stature as a leader in the community. Therefore, I would appreciate your endorsement for this position.

As you know, the California Regional Water Quality Control Board – San Diego has migrated toward an environmental emphasis requiring sensitivity in the endorsement.

All of my friends can vouch that I would represent the people of California in a moderate position in establishing policies of protecting California's water with sensitivity to the environmental community. I would serve as a dedicated and committed citizen working to better life, the environment, and the economic development of California.

Enclosed is a copy of my biography, resume and press release on my previous position as State President of ACEC-CA.

Please address the letter of endorsement to:

Office of Governor Arnold Schwarzenegger
Attn: Appointments Secretary John Cruz
State Capitol Building
Sacramento, CA 95814

And email to: Cathy.Edson@Gov.CA.Gov

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Eastern Municipal Water District
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I sincerely thank you for your time and effort in endorsing my leadership to the California Regional Water Quality Control Board – San Diego.

In your service,



William L. Green
Senior Vice President
Regional Manager

Thank You Tony