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October 19, 2011

**VIA E-MAIL & HAND DELIVERY**

Catherine Hagan  
Frank T. Melbourn  
Regional Water Quality Control Board  
San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123

**Re: In the Matter of Tentative Cleanup and Abatement Order No. R9-2011-0001;  
Comments on the Shipyard Sediment Remediation Project Draft EIR Response to  
Port Comments found in the Proposed Final Environmental Impact Report  
(Proposed FEIR)**

Dear Mr. Melbourn and Ms. Hagan:

The San Diego Unified Port District (District) has reviewed the above referenced Proposed Final EIR (Proposed FEIR) and provides this response to the comments that the San Diego Regional Water Quality Control Board (San Diego Water Board) [California Environmental Quality Act (CEQA) lead agency] and the Cleanup Team (CUT) prepared in response to the District's August 1, 2011 comments on the Draft PEIR. The District's response to the CUT's comments follows.

There is a fundamental shortcoming in the way the Proposed FEIR defines the proposed project as it pertains to the dewatering sites and the environmental impacts associated with this part of the proposed project. As indicated on page 2-4 in the Draft PEIR, a Programmatic EIR is prepared for a series of actions that can be characterized as one large project and are related:

- Geographically;
- As logical parts in the chain of contemplated events;
- In connection with issuance of rules, regulations, plans or other general criteria to govern the conduct of a continuing program; or
- As individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects that can be mitigated in similar ways.

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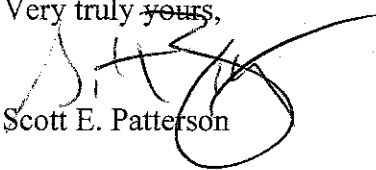
However, the proposed project dewatering areas are described as *potential* dewatering areas. This results in a couple of shortcomings. First, the dewatering sites do not legitimately constitute logical parts of the project. They are instead *potential* dewatering sites that may or may not be used in implementing the project. As the District indicated in its previous comment letter on the Draft PEIR, dated August 1, 2011, it is more appropriate for the feasibility of these sites to be considered prior to the San Diego Water Board's preparation of the Draft PEIR. It is very possible that none of these dewatering sites will be feasible based on the issues raised by the District in their comments A-2-2 through A-2-14, and as a result the environmental impacts associated with this part of the project are unknown and therefore not adequately addressed in the Proposed FEIR. In other words, the environmental analysis of the proposed project took place too early in the planning process, before the issues were ripe for a decision. (*In re Bay-Delta etc.* (2008) 43 Cal.4<sup>th</sup> 1143, 1170).

The second issue pertains to the selection of project alternatives that were addressed in the Draft PEIR. Although one of the project alternatives involved minimal landside dewatering (Alternative 2: Confined Aquatic Disposal Site), an alternative that *completely* avoids landside dewatering would be appropriate to include in Chapter 5.0 Alternatives in the Proposed FEIR. This alternative would avoid the issues raised by the District in its comments A-2-2, through A-2-14 with respect to the feasibility of the landside dewatering sites, which as indicated above, none of which may be feasible. The District's comment A-2-3 specifically requests that the Proposed FEIR should analyze a project alternative that would result in "less space intensive sediment dewatering systems, such as centrifuges and /or reagent dehydration of sediments, which could be used on barges and would allow for sediment to be directly off-loaded from barges to trucks for disposal." The CUT did not include this analysis as requested, and as a result the Proposed FEIR is deficient in this regard.

District's comments A-2-10 through A-2-14 pertain to the projects impacts on operations associated with the Tenth Avenue Marine Terminal (TAMT) and the National City Marine Terminal (NCMT). The CUT's responses inadequate because the land use and rail transportation impacts described in these comments, which are associated with the operations of TAMT and the NCMT, should be, and were not, addressed in the Proposed Final EIR.

In conclusion, the District considers the CUT's responses to the District comments listed above to be inadequate for the reasons described. As a result, the Proposed Final EIR in its current state is incomplete and should not be certified.

Very truly yours,

  
Scott E. Patterson

SEP/jd

cc: All Counsel & Designated Parties (via electronic mail only)  
Craig Carlisle, Project Manager, California Regional Water Quality Control Board,  
San Diego Region (via electronic mail only)