



THE CITY OF SAN DIEGO

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Item No. 11
Supporting Document No. 5a

November 3, 2011

Via Email to dgibson@waterboards.ca.gov and
bneill@waterboards.ca.gov and Hand Delivery

Mr. David W. Gibson, Executive Officer
San Diego Regional Water Quality Control Board
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Mr. Ben Neill, P.E.
San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
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Re: City of San Diego's Comments on Kinder Morgan Energy Partners Proposed Flow Increase for its Mission Valley Terminal Remediation Dewatering Discharge to Murphy Canyon Creek; CRU: 240988:bneil; WDID No: 9 000000506

Dear Gentlemen:

Thank you for the opportunity to comment on the request by Kinder Morgan Energy Partners ("Kinder Morgan") for an increase in the average daily discharge of treated groundwater to Murphy Canyon Creek ("Creek") from 795,000¹ gallons per day to 1.26 million gallons per day. These comments are submitted jointly by the City of San Diego ("City") Transportation & Storm Water Department ("TSWD") and Public Utilities Department.

The City prefaces these comments with the caveat that it has appealed the Regional Water Quality Control Board's ("RWQCB") adoption of the related Time Schedule Order No. R9-2011-0052 ("TSO"), which improperly allows Kinder Morgan to pollute Murphy Canyon Creek with Total Dissolved Solids ("TDS") in concentrations which significantly exceed the Creek's receiving water limits for TDS as established in the Basin Plan. That appeal is pending and, although your letter discouraged comments related to the TSO, the City is compelled to point out that a significant issue raised on appeal is the impropriety of separating the decision setting TDS effluent limits from the decision on increasing the flow of treated groundwater to the Creek.

¹ According to the City's records, the City was not provided an opportunity to comment on the increase of the flow rate from 505,000 gallons per day to 795,000 gallons per day; but was only informed of the RWQCB's approval of this increase after the fact.



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These two decisions are intricately interrelated because, if the flow increases, the mass loading will increase based on the interim effluent limits of the TSO. These two factors cannot logically be separated. Amongst other relief, the City has requested remand of that issue to the RWQCB and requested that the TDS effluent limits and flow increase request be rejoined for rehearing and action by the RWQCB itself. Thus, the City believes that any decision by the Executive Officer that would allow any increase in the discharge flow rate is premature.

Moreover, these comments are offered under a full reservation of rights with respect to the issues on appeal and any other issues related to this matter. That said, the City offers the following comments and proposal in response to Kinder Morgan's pending request for a flow rate increase. First, discharges to the City's storm water conveyance system, including the Creek, are prohibited in the absence of the City's prior approval of the discharge. The permit under which the RWQCB has allowed these discharges for many years expressly prohibits the discharge of extracted ground water waste into the City's municipal separate storm sewer system ("MS4") *without the prior approval of the MS4 operator*. [Order No. R9-2008-0002 NPDES No. CAG919002 ("Order") §II.D].² The City has never approved any discharge by Kinder Morgan of extracted groundwater to the Creek, and the RWQCB has not enforced this requirement of Kinder Morgan's permit. That permit violation must be rectified. The City's proposal in that regard is set forth later in this letter.

Second, that same permit expressly requires the discharger to demonstrate alternatives to discharging extracted groundwater waste into the MS4 and to demonstrate why it is technically or economically infeasible to implement these alternatives before any such discharge is permissible. [Order §II.D]. This demonstration is a prerequisite to obtaining the MS4 operator's consent to the discharge in the first place. Kinder Morgan must demonstrate infeasibility to the City's satisfaction as well as to the satisfaction of the RWQCB. But this requirement has not been met. The discharger has simply been allowed to implement and continue this practice in complete disregard of this permit condition.

In contrast, the City has repeatedly argued for and submitted scientific analyses suggesting that some, if not all, the extracted groundwater could be re-injected to the aquifer and thereby accelerate the remediation of the MTBE/TBA plume. Re-injection via recharge basins or injection wells is being used successfully in other jurisdictions in California under similar circumstances, i.e., the recharging of treated groundwater recovered under pump and treat remediation. Other alternatives for beneficial re-use of this water also may be available. But those alternatives have not been studied and demonstrated to the City's satisfaction because Kinder Morgan has ignored this requirement, and the RWQCB has not enforced it. The City would expect the RWQCB, as the agency responsible for enforcing Kinder Morgan's permit, to require Kinder Morgan to perform a comprehensive evaluation of alternatives to the current waste of this water and demonstrate to the City's satisfaction that it is technically or economically infeasible to implement alternatives, e.g., re-injecting it into the aquifer (now that

² The prior permit under which the RWQCB allowed these discharges also contained the same prohibition. [Order No. 2001-96 NPDES No. CAG919002 §A.11]

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the manganese treatment system is apparently functioning properly)³ or recycling treated groundwater On-Terminal through a recharge basin.

Third, the RWQCB has the power to order Kinder Morgan to compensate the City for the cost of replacing the water Kinder Morgan extracts from the City's aquifer to clean-up the contamination Kinder Morgan created. California Water Code section 13304(a) provides broad authority to the Regional Boards to include the costs of replacement water as part of clean-up and abatement orders. Specifically, Regional Boards "may require the provision of, or payment for, uninterrupted replacement water service . . . to each affected public water supplier . . ." Cal. Water Code § 13304(a).

The City is a public water supplier and has Pueblo rights to the use of the groundwater of the Mission Valley Aquifer. These are the oldest and highest priority water rights in California. The use of the City's ground water is an *essential* component of the remediation system unilaterally selected by Kinder Morgan and accepted by the RWQCB. The City had no choice in the selection of this remedial technology and indeed advocated early on for the use of different remedial technology which would have minimized the use of the City's water. Those pleas were ignored, and the City has been subjected for over a decade to the taking of its water without any compensation. The sole reason for this use of the City's water is the remedial methodology chosen by Kinder Morgan to fulfill its obligations to clean up its mess at the lowest possible cost. Why should taxpayers continue to bear the burden of Kinder Morgan's failures? The City urges the RWQCB to remedy this inequity and exercise its discretion to order Kinder Morgan to pay the City for the cost to replace the water Kinder Morgan extracts.

Fourth, just how the proposed increased flow rate will aid in expediting remediation as claimed in the TSO has yet to be explained. Kinder Morgan's application included only cursory statements in this regard. The City understands that staff reviewed some documentation provided by Kinder Morgan, but no technical analysis has been made available to the City or the public. The City is perplexed that such a request would even be entertained without the technical backup materials.

Finally, with respect to obtaining the City's approval of the discharge of extracted groundwater from Kinder Morgan's remediation system to the City's MS4 system, we would recommend the City consider such approval, for a period of one year, under the following conditions:

1. Kinder Morgan pays the City, on a monthly basis, for the replacement cost of groundwater Kinder Morgan extracts from the City's Mission Valley Aquifer to clean-up the contamination; and
2. Kinder Morgan completes and submits within 2 months a comprehensive analysis demonstrating alternatives to discharging extracted groundwater waste into the MS4 and demonstrating why it is technically or economically infeasible to implement these alternatives for some or all of the discharge; and
3. If the analysis is thorough and shows to the City's satisfaction that it is technically or economically infeasible to implement any of the alternatives other than a live stream discharge to the City's MS4 system, then:

³ Arcadis 3Q 2011 GW Monitoring & Remediation Progress Report, p. 46.

- a. To avoid maintenance impacts to the Creek, Kinder Morgan must be required to discharge to a location other than the Creek, such as directly to the San Diego River; and
- b. Kinder Morgan must bring TDS levels in the discharge promptly into compliance with the Basin Plan standard of 1500 mg/L; and
- c. Kinder Morgan must be required to conduct monthly monitoring (and quarterly reporting to the City) of the extracted groundwater treatment system; and
- d. Kinder Morgan must be required to produce to the City on a quarterly basis all data related to wells, pumping tests, and water quality for all work performed by Kinder Morgan, its consultants or contractors on City property; and
- e. Kinder Morgan must obtain annual approval from the City for continued discharges to its MS4 system.

Thank you again for the opportunity to comment on this very important issue. Please contact us if you have any questions. We look forward to working with you to reach a mutually acceptable resolution to this matter.

Sincerely,



Alex Ruiz
Assistant Director
Public Utilities Department



Kris McFadden
Deputy Director
Transportation & Storm Water Department

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