



December 7, 2011

Mr. David Gibson
Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, California 92123

Subject: Response to City of San Diego Request for Hearing on Matters Subject to Regulatory Oversight, SFPP, L.P., an operating partnership of Kinder Morgan Energy Partners, L.P. (“Kinder Morgan”), Mission Valley Terminal Remediation Dewatering Project, San Diego, California (TSMC:40 0054)

Dear Mr. Gibson:

We have reviewed the letter dated November 30, 2011, from Marsi Steirer and Kris McFadden of the City of San Diego, which requests a hearing in connection with the Mission Valley Terminal Remediation Dewatering Project (the “City Letter”). I am writing to express our concerns over any further unjustified delay in this important remediation project.

The decision before you is Kinder Morgan’s August 2010 request for amendment of its enrollment under NPDES Permit No. CAG919002 (“General Permit”), to increase the rate of groundwater extraction in support of groundwater remediation. Given the looming December 2013 deadline under the Cleanup and Abatement Order for the project, Kinder Morgan has proceeded in good faith to construct the necessary facilities to implement the increased rate of extraction. Delays in this approval continue to jeopardize Kinder Morgan’s ability to comply with the December 2013 deadline in the Cleanup and Abatement Order, and to jeopardize timely cleanup.

The City Letter seeks to derail the procedure you established for concluding your consideration of Kinder Morgan’s request, and seeks to assume control of Regional Board proceedings for the City’s own purposes. Like the City’s earlier submission, the City Letter provides no additional useful information demonstrating negative impacts of the requested increase. It disregards the Board’s endorsement of your decision to act on the request for amendment in your capacity as Executive Officer. And it disregards the opportunities for input you provided the City and Kinder Morgan in your efforts to schedule a meeting of all parties, and your subsequent decision to use detailed written submissions for such input.

As you requested in your letter of October 21, 2011, Kinder Morgan provided additional, detailed information to assist your decision. In contrast, the City, having failed to respond to your request

with useful information, and fully *sixteen months* after Kinder Morgan's application was filed,¹ now asks you to delay the remediation project and expend more valuable and limited Regional Board resources in a hearing designed to air "disagreements between the City and Kinder Morgan." Having attempted to confuse a relatively simple decision, the City now complains that "the list of issues over which neither the facts nor their interpretation is agreed upon has grown." This includes the obscure and groundless new legal claims raised for the first time by the City in July, including an assertion that the Regional Board should force Kinder Morgan to pay the City unspecified (but undoubtedly large) sums of money.

The Regional Board has already entertained numerous City submissions on Kinder Morgan's request for amendment of enrollment, for over more than a year. No hearing is required for you to act on our application. We ask that you bring this decision to an immediate conclusion.²

The only factual issue mentioned in the City Letter is one the City has raised repeatedly over several years, regarding the potential for re-injection of extracted groundwater.³ This issue has already been reviewed many times by the Regional Board. For example, the letter dated July 19, 2009 from Mr. Robertus to Marsi Steirer noted,

"Specifically, a thorough and exhaustive evaluation of the re-injection of treated groundwater has been done by Board staff. To continue re-evaluation with the same set of data would seem pointless."

In any event, the question of re-injection is tangential to your current decision. The only aspect of re-injection relevant to the current Regional Board decision is whether alternatives to disposal of the increased flows are addressed in Kinder Morgan's application for amendment to enrollment. We are all aware that re-injection was addressed in the application as well as numerous other times, as stated above. Certainly, this requires no new hearing.

The City's own consultants, Richard Jackson and Rob Sengebush, have already acknowledged the importance of the requested increase in groundwater extraction, stating the following in an April 1, 2011 report the City submitted to the Regional Board:

"Groundwater extraction wells are progressively removing dissolved gasoline components from the MVA and are likely to achieve cleanup by December 2013, provided they implement their

¹ Letter dated August 24, 2010 from Marcelo Garbiero, Arcadis, to Whitney Gorham, Regional Board, "Request to Increase Daily Average Discharge Rate under Order No. R9-2008-0002 NPDES Permit No. CAG919002."

² See, e.g., letter dated September 28, 2010, from Marsi Steirer to Brian Kelley regarding Kinder Morgan's request to increase daily average discharge rate; letter dated April 28, 2011 from Marsi Steirer to Sean McClain regarding Mission Valley Terminal remediation; letter dated July 26, 2011 from Marsi Steirer to Ben Neill regarding Tentative Order No. R9-2011-0052 to provide a Time Schedule Order; letter dated July 27, 2011 from Kris McFadden to Ben Neill regarding Tentative Order No. R9-2011-0052 to provide a Time Schedule Order; letter dated November 3, 2011 regarding Kinder Morgan Energy Partners proposed flow increase for its Mission Valley Terminal Remediation Dewatering Discharge.

³ See, e.g., the City's Petition for Review filed with the State Water Resources Control Board ("State Board") on October 9, 2009 over claimed inaction by the Regional Board in "failing to require Kinder Morgan to re-inject treated groundwater back into the aquifer." This petition was rejected by the State Board on October 1, 2009.

plans to increase groundwater extraction, after which time these wells will become available for the City's use."⁴

"It appears from this analysis that the planned increase in groundwater extraction from the TBA plume will allow KMEP to meet the December 2013 deadline for cleanup."⁵

Indeed, the City's efforts appear designed to interfere with Kinder Morgan's ability to meet its Cleanup and Abatement Order deadline for groundwater remediation, in order to further the City's interests in its separate court action against Kinder Morgan. In the litigation, the City pursues damages for over \$300 million. Snarling the remediation in endless complication and delay appears designed to bolster the City's claim in court that Kinder Morgan's cleanup is inadequate. The Regional Board should not misdirect its valuable, limited resources by allowing itself to be drawn into the City's separate, high-stakes litigation against Kinder Morgan.

The information needed for the Regional Board's pending decision has been adequately addressed in existing correspondence, and a hearing would serve no purpose other than delay. We urge you to promptly act on the request for amendment to the enrollment under the General Permit.

Thank you for your attention and courtesy in the careful review of our application. Please address any questions in this matter to me at (303) 914-4634, at the address below, or by email at Nancy_VanBurgel@kindermorgan.com.

Sincerely,



Nancy Van Burgel
Assistant General Counsel

cc: Grant Destache, Chair, RWQCB
Ben Neill, RWQCB
Julie Chan, RWQCB
Scott Martin, KMEP
Rick Ahlers, ARCADIS
Marcelo Garbiero, ARCADIS
Steven Goldberg, Downey Brand LLP
Katharine Wagner, Downey Brand LLP
Grace Lowenberg, City of San Diego

⁴ *Remediation of the Mission Valley Aquifer*, Geofirma Engineering Ltd. & Intera Inc. at p. iii (April 1, 2011). This report was submitted to the Regional Board as an enclosure to the letter dated April 28, 2011 from Marsi Steirer to Sean McClain.

⁵ *Id.* at p. 87. Mr. Jackson made similar statements in his September 23, 2011 letter to Grace Lowenberg, enclosed with a letter dated November 10, 2011 from Marsi Stierer letter to David Gibson. *Status Report: Quarterly Report on Groundwater Remediation, Mission Valley Terminal, 2Q 2011*, Geofirma Engineering Ltd & Intera Inc., at 6, 8.