

**California Regional Water Quality Control Board**  
**San Diego Region**  
**David Gibson, Executive Officer**



**Executive Officer's Report**  
**October 8, 2014**

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## **Part A – San Diego Region Staff Activities**

### **1. Personnel Report**

*Staff Contact: Lori Costa*

The Organizational Chart of the San Diego Water Board can be viewed at [http://www.waterboards.ca.gov/sandiego/about\\_us/org\\_charts/orgchart.pdf](http://www.waterboards.ca.gov/sandiego/about_us/org_charts/orgchart.pdf)

There have been some rotations to improve operational effectiveness and promote professional development.

#### Recruitment

The recruitment process has begun to hire an Environmental Scientist in the Wetland and Riparian Protection Unit and an Engineering Geologist in the Southern Cleanup Unit. Interviews have been conducted to fill a Water Resources Control Engineer vacancy in the Source Control Regulation Unit.

### **2. New Email for Electronic Submissions: [sandiego@waterboards.ca.gov](mailto:sandiego@waterboards.ca.gov)**

*Staff Contact: Lori Costa*

To improve efficiency in receiving electronic submissions from regulated and interested parties, we have established a new email account: [sandiego@waterboards.ca.gov](mailto:sandiego@waterboards.ca.gov). Staff has begun to inform dischargers to use this email address for electronic submissions and will include the email address into all new orders, announcements, and documents. Mission Support Services staff processes the incoming emails as they would paper submissions; and senders receive an auto reply to provide assurance that the submission was received.

This does not affect dischargers who currently submit electronic documents to CIWQS, Geotracker, or SMARTS. They should continue submitting as previously required.

In addition, staff may request some documents be submitted on paper, particularly drawings or maps that require a large size to be readable, or in other electronic formats where evaluation of data is required.

The San Diego Water Board uses a Paperless Office system to reduce paper use, increase efficiency, and provide a more effective way for our staff, the public and interested parties to view water quality documents in electronic form. There are approximately 103,000 documents from the San Diego Water Board in the statewide Paperless Office system.

### **3. Future Board Items**

*Staff Contact: David Gibson*

The September 10, 2014 Board Meeting of the San Diego Water Board resulted in Board Members requesting three items for additional discussion. This report provides an update on progress toward providing the requested information.

- A. Board Member Kalemkiarian requested an annual or biannual "Water Quality Summit," at which stakeholders and the public could gather in a more informal setting than a regular Board Meeting to discuss water quality in the Region. The other Board members expressed support for this idea, and the Executive Officer will discuss with the Chairman the scheduling and structure of this meeting.
- B. Chairman Abarbanel asked that the San Diego MS4 Copermittees be invited to a Board Meeting to update the Board regarding what changes they have made under the new Regional Storm Water Permit. Of particular interest to the Chair is what the Copermittees are doing to educate and inform the public. Staff will discuss this item, and gather feedback from the Copermittees.
- C. Chairman Abarbanel also requested that Ken Schiff, Deputy Director of the Southern California Coastal Water Research Project (SCCWRP) return to talk more about the inhomogeneous nature of beach water quality. Mr. Schiff has agreed to return, perhaps in the fall of 2015, after the next phase of the Surfer Health Study is completed.

Additional information will be provided through this forum and during the Executive Officer Report at Board Meetings, as developments arise.

## **Part B – Significant Regional Water Quality Issues**

### **1. Former Chatham Brothers Barrel Yard (*Attachment B-1*)**

*Staff Contact: Sean McClain*

Community concerns over environmental and human health threats posed by the illicit discharges of industrial wastes from the former Chatham Brothers Barrel Yard were addressed by the Department of Toxic Substances Control (DTSC) at a public meeting held in Escondido on September 30<sup>th</sup>. The Union Tribune estimated attendance at over 100 people. In addition to community members, County Supervisor Dave Roberts and City Councilperson Michael Morasco attended, as well as staff members from the San Diego Water Board, San Diego County Department of Environmental Health, and City of Escondido. The Community concerns had been expressed to the San Diego Water Board by neighbors of the site during the Public Forum at the June 2014 Board meeting. San Diego Water Board staff subsequently relayed those concerns to the DTSC, the lead agency overseeing the cleanup, who then scheduled the public meeting. This report provides a brief history of the site, describes the illicit discharges and efforts to characterize and remediate it, and summarizes the information provided by the DTSC at the public meeting.

## Site History

The former Chatham Brothers Barrel Yard was a waste oil, solvent recycling, and bulk petroleum facility located on five acres at 2257 Bernardo Avenue in Escondido.<sup>1</sup> Paul Chatham purchased the property in 1941 and began operating a bulk petroleum distribution and oil recovery processing plant. In 1948 a still was added to reclaim kerosene and hydraulic oil. In the 1950's, Paul's sons, Robert and Thomas took over the operation. Solvent reclamation started at the property in 1965. Operations continued until the State Department of Health Services (DHS) and San Diego County Health Department closed down the site in December 1981 for an alleged lack of permits and unlawful waste handling practices. Subsequently, the property was sold to a housing developer, but the construction firm declared bankruptcy a year later and the land reverted back to the Chatham brothers.

The DHS began investigating the extent of contamination at the property in 1982. With pressure increasing from local citizens and politicians to clean up the site, the "Chatham Brothers Barrel Yard Site" was designated a "State Superfund Site" in June 1985, and funding was targeted for assessment and cleanup in the State Bond Expenditure Plan.<sup>2</sup> Using State Superfund resources, the DHS initiated an investigation to assess the severity of the contamination at the site and began cleanup. Surface soil contamination was found throughout the property. Over 200 fifty-five gallon drums were found, including some in a fresh water pond, plus trash and debris (Figure 1). A 65-foot deep well (5 feet in diameter) on the property had no surface seal, an inadequate well head cover, and chemical staining on and around it (Figure 2). Contamination was also discovered at the home property of one of the Chatham brothers, located west of the yard, indicating that the Chathams conducted their waste handling practices at that property as well as at the Barrel Yard.

The DHS (subsequently known as DTSC) issued a Remedial Action Order in January 1986 to the Chatham brothers requiring an investigation of the nature and extent of contamination at, or emanating from the property, a feasibility study, and a remedial action plan to clean up the Site. The Chatham brothers failed to comply with the Order. DHS also notified a small group of waste generators, who had sent hazardous materials to the Yard, of the Remedial Action Order. Neither the Chatham brothers nor the generators came forward to investigate or clean up the Site. A protracted legal battle ensued among federal, State, and local environmental agencies, the Chatham brothers, and the companies and government agencies identified as potentially responsible for waste material delivered to the site.

In 1989, the DHS made a determination of imminent and substantial endangerment and, unable to get cooperation from the Chatham brothers or the waste generators, continued cleaning up the site using State resources. Approximately 11,430 tons of heavily-contaminated soil was removed as well as the abandoned drums that were stored above ground on or near the former Yard. Ten buried drums, discovered in the course of the soil excavation, were also removed. The DHS continued cleanup operations financed with State funds until 1991.

<sup>1</sup>

[http://www.envirostor.dtsc.ca.gov/regulators/deliverable\\_documents/4017460465/Site%20Screening%20Assessment.pdf](http://www.envirostor.dtsc.ca.gov/regulators/deliverable_documents/4017460465/Site%20Screening%20Assessment.pdf)

<sup>2</sup> California Superfund: Hazardous Substances Account Act, Health & Safety Code sections 25300 to 25395.15

Finally, in 1992, the DTSC and 55 parties who had generated waste material delivered to the property (the PRP Group) entered into a Consent Order and the PRP Group took over the investigation and cleanup. This culminated in a Consent decree between the DTSC and the PRP Group in February 1999. Under the Consent Order and Decree, the PRP Group agreed to clean up the site without admitting to liability for the cleanup. The Consent Decree also allowed the DTSC to recover costs for the cleanup.<sup>3</sup> Attachment B-1 is the DTSC's press release concerning the two Consent Decrees.

Pursuant to the Consent Decree, the PRP Group is implementing the DTSC-approved Remedial Action Plan to clean up the site, and is conducting groundwater monitoring and surface water monitoring in Felicita Creek. The Consent Decree mandates that DTSC enforce to standards "no less stringent than" those contained in the San Diego Water Board's Basin Plan. This means that even though DTSC is the lead agency for the cleanup, the standard for the cleanup is the Basin Plan's more stringent requirement that water quality be restored to a level that supports the designated beneficial uses of the groundwater and Felicita Creek. The San Diego Water Board works closely with the DTSC assisting with cleanup oversight and providing guidance on Water Board policies, standards, and the Basin Plan. Every five years, the PRP Group submits a Remedial Review Report (5-Year Remedy Review) assessing the effectiveness of the cleanup. The most recent 5-Year Remedy Review was submitted to the DTSC in 2010.

### **Cleanup Activities**

The main contaminants present at the Site are volatile organic compounds (VOCs) such as trichloroethylene (TCE), 1,1,1-trichloroethane (1,1,1-TCA), tetrachloroethylene (PCE), and vinyl chloride; semi-volatile organic compounds such as bis (2-ethylhexyl) phthalate; polychlorinated biphenyls (PCBs), and some metals. The groundwater contaminant plume today extends approximately one mile southeast of the site, and has migrated vertically from the shallow fracture zone to the deeper fracture zone of the aquifer. The plume has impacted the quality of groundwater pumped from several downgradient domestic water supply wells. The plume also discharges contaminated water into Felicita Creek within Felicita County Park at concentrations that cause the creek to violate water quality objectives for municipal and domestic use, which is a designated Beneficial Use of the creek.

A soil cover was placed on the property in 2000 to prevent exposure to impacted soils left in place after the excavation action. A soil vapor extraction (SVE) system was installed in 2000 to remove VOCs from shallow soil. This system is still operating, but the mass of VOCs removed in 2013 has decreased sharply compared to 2000. Today, the SVE system is operated in pulses, running 2 weeks on and 2 weeks off, and removes approximately 0.2 pounds of VOCs per operating day.

A groundwater treatment system was installed in 1999 to pump and treat contaminated groundwater. Treated groundwater is discharged to the sanitary sewer. This system is still

<sup>3</sup> A second Consent Decree settled the DTSC's claims against the Chatham family. Under this decree the 5-acre Chatham Brothers Barrel Yard property, along with approximately 30 surrounding acres, were deeded to a limited liability corporation controlled by the Chatham Site PRP Group Remedial Action Plan Trust Fund. Both Robert and Thomas Chatham passed away in the early 2000s.

operating but VOC mass removal is so low<sup>4</sup> the system currently serves primarily to minimize any further migration of contaminants off the property. The selected remedy for off-site groundwater contamination is monitored natural attenuation.

A "Well Limitation Area" around the groundwater contamination plume was established in 1995 by the San Diego County Department of Environmental Health (DEH).<sup>5</sup> The DEH relies on the DTSC as the lead agency overseeing the clean-up of the Site to determine those areas where the installation of domestic water supply wells could cause the plume to spread. The well limitation area is 2,000 feet from the plume boundary and encompasses most of the Felicita Hydrologic Subarea. The DEH will not issue permits for new domestic water supply wells within the Well Limitation Area until the groundwater contaminant plume is remediated.

In 2013, the PRP group agreed to install well-head treatment systems on domestic wells that pump groundwater with VOC concentrations in excess of water quality objectives for municipal and domestic uses. A typical well-head treatment system for a domestic well consists of two composite treatment vessels containing activated carbon media connected in series. As the contaminated water flows through the treatment vessels, the contaminants absorb to the activated carbon media removing them from the water. The systems are designed to remove all of the VOCs but don't remove other contaminants that may be present in groundwater. According to the PRP Group, groundwater pumped from all of the domestic supply wells impacted by the plume is used only for irrigation. Comments made during the San Diego Water Board public forum, and DTSC Public Meeting by home owners with wells affected by the plume have not contradicted this assessment. Nonetheless, there are no structural or institutional controls limiting the use of water from those wells to only irrigation, thus, the need for the well-head treatment systems. Persons wishing to drill new domestic wells in and around the plume could protect themselves from exposure to VOCs by installing well-head treatment systems. The County, however, will not approve any new well installations that could spread the plume because of fears that such approvals will expose it to liability for the cleanup. To date, the County has refused to grant permits for eight proposed wells within the "Well Limitation Area." The PRP Group has not yet agreed to fund well-head treatment on all future wells.

### **Monitoring Activities**

The PRP Group conducts semi-annual monitoring and reporting on 31 groundwater monitoring wells and 14 domestic water supply wells. Surface water is also monitored semi-annually at 13 locations in Felicita Creek. San Diego Water Board staff and DTSC staff evaluate these reports with respect to progress of the cleanup and the protection of human health and the environment. In addition, there is a more extensive 5-Year Remedy Review process to evaluate the progress of the cleanup, evaluate areas that may require additional remedial actions, and determine if the remedy is protecting public health and the environment.

<sup>4</sup> In the six months ending April 2014, the system has removed approximately 2 million gallons of water and 4 pounds of VOCs. Overall approximately 130 million gallons of water have been removed along with 2,300 pounds of VOCs.

<sup>5</sup> DEH Memorandum dated January 25, 1995.

## 5-Year Remedy Review

As previously mentioned, the last 5-Year Remedy Review was submitted to the DTSC in 2010. In comments on the Review, San Diego Water Board staff noted that the remedy had failed to limit the migration of the groundwater plume, no evidence had been provided showing that the VOC plume was naturally attenuating other than by diffusion and dispersion, domestic water supply wells were showing increasing concentration trends of site-related chemicals, and surface water concentrations of site-related chemicals in Felicita Creek were not decreasing. Staff concluded that the 5-Year Remedy Review demonstrated that implementation of the RAP was failing to restore water quality to State water quality standards within a reasonable time frame, and that the San Diego Water Board could use its enforcement authority under the Water Code and other applicable State laws to compel additional action if necessary.

The PRP Group requested that periodic technical meetings be held with the PRP Group, DTSC, the San Diego Water Board, and County DEH to discuss the Water Board staff's concerns regarding the remedy. Several technical meetings were held with the agencies and the PRP Group in 2013 and 2014 to discuss remedial actions at the Site, impacts to domestic water supply wells, the discharge of contaminants to Felicita Creek, and the human health risk assessments. Subsequently, the San Diego Water Board encouraged DTSC to require that the PRP Group propose a monitoring contingency plan that includes the installation of well-head treatment systems on domestic water supply wells impacted by the groundwater plume from the Chatham Site. The PRP Group initiated access negotiations with well owners, designed seven well-head treatment systems, and made plans for their installation which will be completed by December 2014. Additional surface water sampling in Felicita Creek was completed in 2013 and 2014 to help identify segments with the highest groundwater contaminant concentrations.

## Potential Human Health and Ecological Risk Concerns

The DTSC concluded in the 1990s, and again in 2011 that the contamination from the Chatham Brothers Barrel Yard did not pose an unacceptable risk to the public. The DTSC's conclusions were based on risk assessments conducted by the PRP Group. In the 2011 risk assessment, the PRP Group re-evaluated the risks to the public by updating the risk exposure criteria, toxicity factors, and thresholds used in the 1990 risk assessment. At the DTSC's request, a soil vapor survey was performed to evaluate risks to residents living above the groundwater plume. The updated risk assessment evaluated:

- Potential soil vapor exposure to residents living above the plume;
- Potential exposure to the public, including children, playing in Felicita Creek;
- Ecological risks; and
- Potential exposure to well water used for irrigation purposes.

Based on the data provided, the DTSC did not find significant risk from the detected VOCs to ecological receptors and found that Felicita Creek is safe for Park visitors, including children. The DTSC is currently evaluating the soil vapor survey report.

As previously mentioned, the PRP Group reported that the domestic water supply wells are used only for irrigation. To be more protective, the DTSC, however, required the PRP Group provide well-head treatment on any domestic water supply well producing groundwater not meeting

water quality objectives for municipal and domestic uses. Seven domestic water supply wells will require well head treatment to remove site-related VOCs. The PRP Group has installed three well-head treatment systems and will install the other systems by December 2014. As stated previously, the treatment systems only remove VOCs, and not other contaminants that may be present in groundwater that could affect the suitability of the water supply for municipal and domestic use.

### **Potential Enforcement**

The discharge of contaminants to Felicita Creek, the groundwater contamination, and the discharge of waste constituents to land have violated water quality standards and waste discharge prohibitions in the Basin Plan. To date, the San Diego Water Board has taken only informal enforcement actions in the form of comment letters identifying these violations and recommending additional actions by the PRP Group. The need for any formal enforcement actions will be evaluated along with other enforcement priorities via our regular Compliance Oversight Group meetings.

### **September 30<sup>th</sup> Public Meeting**

DTSC staff began the public meeting with an open house poster session to allow the public to review technical information about the site, and speak with DTSC technical staff one-on-one. San Diego Water Board staff was also on-hand to speak to members of the public during the poster session. Following the open house, DTSC's technical staff gave presentations on the hydrogeology and environmental chemistry of the contamination plume, and on the risks the plume poses to human health and wildlife. The DTSC also provided a fact sheet detailing the chemicals detected in Felicita Creek and their associated risks to the public in the park.<sup>6</sup>

Based on the risk assessments, DTSC staff explained that the VOCs in Felicita Creek in Felicita Park are not a health risk for park visitors, including children who play in the creek, and that the creek water is safe for aquatic life that live in the creek, and for wildlife that use the creek for drinking water. DTSC staff explained that vapor intrusion from the plume into homes overlying the plume is again being evaluated, however, soil vapor levels measured south of the Chatham brother's property are very low and human health risks are below thresholds. DTSC Staff reiterated that water supply wells with VOCs above drinking water standards have been offered well-head treatment by the PRP Group.

Public comment followed the presentations with many residents expressing concern for their health, their property values, and that more needed to be done to ensure that the plume will not migrate further south. Many residents wanted assurances that their uncontaminated wells would be protected from the plume. Others questioned the risk scenario for visitors to Felicita Park described by DTSC staff and wanted more action to address the contamination in the creek. The DTSC was also criticized for its lack of public outreach to area residents, which the DTSC promised to correct. Several residents, as well as Councilperson Morasco praised the DTSC for its work over the decades to clean up the site.

<sup>6</sup> DTSC, Community Notice, Update on Chatham Brothers Barrel Yard, Escondido, September 2014.



## **Path Forward**

Staff continues to work with the DTSC to ensure an open and transparent public process to address the public's concerns regarding the groundwater cleanup, impacts to domestic water supply wells, and the risks from contaminants in Felicita Creek. Staff is working with the DTSC and PRP Group to address our main concern that the natural attenuation remedy will not restore groundwater quality within a reasonable time frame, rendering this local water supply unusable due to the Well Limitation Area imposed by the County. This concern is magnified by the current devastating drought in the State.

San Diego Water Board staff and DTSC staff requested that the PRP Group design and conduct a groundwater investigation near Felicita Creek to evaluate the hydrogeology and groundwater flow paths to the creek, and develop an alternatives analysis to evaluate remedies other than natural attenuation to stop the discharge to Felicita Creek.

Finally, San Diego Water Board staff is working with the DTSC and the County to find a mechanism to allow additional domestic water supply wells to be installed in and around the plume. If new wells are permitted by the County, the PRP Group will need to provide water-quality monitoring and, if needed, install well-head treatment systems on any future domestic water supply wells.

## **Conclusions**

Concentrations of site-related contaminants in Felicita Creek at Felicita Park violate water quality objectives for municipal and domestic use, a designated beneficial use of the creek. Concentrations, however, are below levels that might be expected to have health effects on people, including children, and wildlife that might come into contact with creek water. An alternatives analysis to evaluate cleanup options for the creek other than natural attenuation is being prepared by the PRP Group.

Concentrations of site-related contaminants in well water affected by the plume are above safe drinking water levels in some wells. Although the San Diego Water Board is not aware of anyone using VOC-contaminated well water for drinking, cooking, or showering, well-head treatment systems have been, or will be installed to remove site-related contaminants from the well water. The regulatory agencies are working together to find a mechanism to allow new domestic water supply wells to be installed in the Well Limitation Area so this local water supply can be put to beneficial use.

The San Diego Water Board staff will continue to work with DTSC, the County of San Diego, and the PRP Group to ensure progress under the Consent Decree towards compliance with all applicable regulations, plans, and policies; and towards addressing public concerns. These include:

- Tracking remedial progress and evaluating options to increase the overall remediation effectiveness;
- Evaluating alternatives to prevent the discharge of VOCs to Felicita Creek;
- Increasing communication with the public to share information and identify and address concerns;

- Ensuring that the potential human health and ecological risk from site-related constituents are evaluated utilizing the latest data and conservative assumptions; and
- Evaluating options to allow additional domestic water supply wells to be installed in the Well Limitation Area.

### **Additional Information**

Additional information can be found on the State Water Board's Geotracker website: [http://geotracker.waterboards.ca.gov/profile\\_report.asp?global\\_id=SL209094184](http://geotracker.waterboards.ca.gov/profile_report.asp?global_id=SL209094184) and on the Department of Toxic Substances Control's Envirostor Website: [http://www.envirostor.dtsc.ca.gov/public/profile\\_report.asp?global\\_id=37490029](http://www.envirostor.dtsc.ca.gov/public/profile_report.asp?global_id=37490029)

In addition, Escondido residents post opinions and other information related to the former Chatham Barrel Yard on their website: <http://escondidoneighborsunited.wordpress.com/>

## **2. State Water Board Order WQ-2014-XXXX in the Matter of the Petition of Foothill/Eastern Transportation Corridor Agency (Attachment B-2)**

*Staff Contacts: Kelly Dorsey and Darren Bradford*

On September 23, 2014, the State Water Board adopted an order resolving a petition submitted by Foothill Eastern Transportation Agency (F/ETCA) challenging the San Diego Water Board's denial of Waste Discharge Requirements, Revised Tentative Order No. R9-2013-0007, for the Tesoro Extension (SR 241) Project (Tesoro Extension). The San Diego Water Board had declined to adopt Waste Discharge Requirements for F/ETCAs Tesoro Extension Project on June 19, 2013, after accepting extensive public comment and holding two public hearings on the Project. F/ETCA appealed the decision to the State Water Board alleging among other things, that the San Diego Water Board had exceeded its legal authority in denying issuance of Waste Discharge Requirements for the Project and the board had not provided adequate factual support for its decision.

On December 10, 2013, the San Diego Water Board responded to F/ETCAs petition outlining the reasons for its decision and the evidence in the administrative record supporting the decision. The State Water Board issued a draft Order on August 23, 2014. The draft Order proposed remanding the matter to the San Diego Water Board and provided direction to further explain the basis for its denial. The San Diego Water Board commented on the draft Order largely expressing support for the Order while proposing several clarifying changes. The State Water Board considered adoption of the draft Order at its September 23, 2014 meeting.

San Diego Water Board Executive Officer David Gibson, staff Kelly Dorsey and Darren Bradford, and staff counsel Nathan Jacobsen attended the September 23 board meeting. After hearing comments from the San Diego Water Board, F/ETCA, the Save San Onofre Coalition (Coalition), and interested members of the public, the State Water Board adopted the Order with several revisions requested by the San Diego Water Board and supported by the Coalition. Significantly, the Order clarifies that regional water boards need not "put blinders on" when considering future impacts of phased projects and it is appropriate for regional water boards to consider whether a project will lead to additional, future discharges of waste or other related impacts to water quality. So long as a regional water board adopts detailed findings that show

the factual and legal basis of its decision, the State Water Board clarified that it does not intend to restrict the ability of a regional water board to exercise its full legal authority provided by the Porter-Cologne Water Quality Control Act.

In remanding the matter to the San Diego Water Board, the State Water Board declined to adopt F/ETCAs request to vacate the San Diego Water Board's decision, and left it to the San Diego Water Board's discretion as to whether it would hold additional hearings prior to taking further action consistent with the State Water Board's Order. To comply with the State Water Board's Order, at a future board meeting the San Diego Water Board will consider a resolution adopting findings that more fully explain the factual and legal bases for its June 19, 2013 decision to deny Waste Discharge Requirements for the Tesoro Extension Project.

### **3. Southern California Wetlands Recovery Project Annual Meeting**

*Staff Contact: Bruce Posthumus*

The Southern California Wetlands Recovery Project (WRP) was the subject of the presentation by Mary Small of the California Coastal Conservancy that was included in the wetlands protection and restoration agenda item at the September 10, 2014 San Diego Water Board meeting. The San Diego Water Board is one of a number of state and federal agencies that are part of WRP.

The San Diego Water Board Practical Vision recognizes the WRP as a model for collaboration (Chapter 2, Recovery of Stream, Wetland, and Riparian Areas). In order for recovery efforts to be effective and efficient, there is a need for coordination of the regulatory activities of different agencies and for coordination of regulatory activities with non-regulatory activities. WRP provides a useful model and starting point for such coordination.

The WRP Board of Governors is scheduled to hold its annual meeting on November 5, 2014, in San Diego. The Board of Governors, which is made up of high level representatives of the agencies that are part of WRP, is the decision-making body of WRP. Chair Henry Abarbanel and Executive Officer David Gibson represent the San Diego Water Board on the Board of Governors. The WRP Science Advisory Panel, which is made up of scientists with wetlands expertise, and the WRP Wetlands Managers Group, which is made up of staff from the agencies that are part of WRP, advise the Board of Governors. California Coastal Conservancy provides staffing for WRP.

WRP uses a non-regulatory approach to work collaboratively with local governments, businesses, non-profit organizations, scientists, and other stakeholders to protect and restore coastal, riparian, and other wetlands in coastal watersheds of southern California, from Point Conception to the Mexican border. This is accomplished largely through the WRP Work Plan, which is a vetted list of projects in three categories:

- Acquisition for wetlands preservation and restoration;
- Planning for wetlands restoration; and
- On-the-the ground wetlands restoration.

Agencies that are part of WRP work to obtain funding and provide other support for development and implementation of projects on the Work Plan.

More information about WRP is available at <http://scwrp.org/>.

#### **4. Fiscal Year 2014-15 Annual Fee Invoices**

*Staff Contact: Kimberly McMurray-Cathcart*

Water Code Section 13260 requires the State Water Board to adopt, by emergency regulations, an annual schedule of fees that conforms to the revenue levels in the Budget Act that is applicable to all persons discharging waste to the waters of the State. On September 23, 2014 the State Water Board adopted the annual schedule of fees for Fiscal Year (FY) 2014-15. Annual fees are deposited into the Waste Discharge Permit Fund (WDPF).

There are a number of changes to the fee regulations for FY 2014-15 that affect entities in the San Diego Region. Annual fees will be reduced as a one-time measure this fiscal year for some permittees and will be increased for others. The details of the reductions and increases, and other highlights are:

- Annual fees for certain programs will rise from 7.9 to 31.6 percent, based on projected shortfalls in program revenue compared to projected budget expenditures approved by the legislature. Annual fee increases affecting entities in the San Diego Region include the following programs: Clean Water Act section 401 Water Quality Certification and Dredge and Fill; Confined Animal Facilities; Waste Discharge Requirements; and Land Disposal.
- Significant changes are proposed for fees involving Clean Water Act section 401 Water Quality Certification and dredge and fill permitting in wetlands, including addition of requirements to pay annual fees for discharges during the project and during post-discharge monitoring until any compensatory habitat mitigation is deemed complete.
- Storm water permittees, including industrial and construction enrollees, are scheduled to receive an 8.9 percent reduction in their total fee this FY. Other NPDES permitted discharges are scheduled to receive a 3.2 percent reduction in fees this FY.
- Water Purveyors enrolled in the San Diego Hydrostatic Discharge permit R9-2010-0003 will be required to enroll in the statewide General NPDES Permit for Drinking Water System Discharges and the applicable fees will change from a base formula, to a four-tier schedule of fees based on the number of service connections. The new fee tier is applicable to water purveyors whose development and maintenance operations entail planned or emergency discharges of raw, potable, and treated drinking water from water systems.
- Surcharges for ambient monitoring will be included in the base program fees where appropriate; previously, they were separately itemized on invoices as a percentage of the base fee.

Statewide revenue that would be generated under the new fee regulations is anticipated to be \$118.3 million in FY 2014-15, of which approximately \$10.3 million is attributed to revenue from program fees in the San Diego Region.

Total budget expenditures from the WDPF are expected to be \$121.6 million. To meet budget expenditures approved by the legislature for FY 2014-15 and create a prudent fund reserve, the State Water Board will utilize the positive WDPF balance anticipated from FY 2013-14 to supplement the fund in FY 2014-15. The new fee schedule combined with carry-over of the positive fund balance should produce a 4.6 percent fund reserve at the end of FY 2014-15.

Water Code Section 13260 requires each person who discharges waste or proposes to discharge waste that could affect the quality of the waters of the State to file a report of waste discharge with the appropriate regional Water Board and to pay an annual fee set by the State Water Board. Dischargers send annual fee payments directly to the State Water Board Division of Administrative Services (DAS). DAS generates invoices based on information entered by San Diego Water Board staff into the California Integrated Water Quality System (CIWQS) database ([http://www.waterboards.ca.gov/water\\_issues/programs/ciwqs/](http://www.waterboards.ca.gov/water_issues/programs/ciwqs/)) and State Water Board staff in the Storm Water Management and Tracking System (SMARTS) database (<https://smarts.waterboards.ca.gov/smarts/faces/SwSmartsLogin.jsp>).

The State Water Board is expected to mail approximately 400 annual fee invoices in late October 2014. Approximately 1400 additional invoices will be mailed later in FY 2014-15, the staggered timing being associated with specific programs. Typically about five to ten percent of invoiced parties contact the San Diego Water Board with questions about the invoices. Most inquiries are handled by the San Diego Water Board fee coordinator. Some inquiries, such as requests to terminate or transfer permit coverage, involve follow-up actions facilitated by program staff.

Information on State Water Board fees is available at:

<http://www.waterboards.ca.gov/resources/fees/>.

The staff report on the revised fee regulations is available at:

[http://www.waterboards.ca.gov/resources/fees/docs/fy1415\\_wqfeespro\\_staffrpt.pdf](http://www.waterboards.ca.gov/resources/fees/docs/fy1415_wqfeespro_staffrpt.pdf).

The revised FY 2014-15 fee schedule is available at:

[http://www.waterboards.ca.gov/resources/fees/docs/fy1415\\_wqfees\\_agenda\\_item.pdf](http://www.waterboards.ca.gov/resources/fees/docs/fy1415_wqfees_agenda_item.pdf).

## **5. Sanitary Sewer Overflows (SSOs) – July 2014 (Attachment B-5)**

*Staff Contact: Vicente Rodriguez*

State agencies, municipalities, counties, districts, and other public entities (collectively referred to as public entities) within the San Diego Region that own or operate sewage collection systems greater than one mile in length, submit sanitary sewer overflow (SSO or spill) reports through an on-line spill reporting system, the *California Integrated Water Quality System (CIWQS)*. These spill reports are required under a [Statewide General SSO Order](#)<sup>7</sup> and a [San Diego Region-wide](#)

<sup>7</sup> State Water Board Order No. 2006-0003-DWQ, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems* as amended by Order No. WQ 2013-0058-EXEC, *Amending Monitoring and Reporting Program for Statewide General Waste Discharge Requirements for Sanitary Sewer Systems*.

[SSO Order](#)<sup>8</sup>. The public entities subject to these SSO Orders are also required to report known private lateral sewage spills pursuant to the San Diego Region-wide SSO Order. Federal agencies and other federal entities (collectively referred to as federal entities) submit spill reports as required by an individual NPDES permit or voluntarily depending on the specific federal entity involved<sup>9</sup>.

The information below summarizes the public, federal, and private sanitary sewer overflows, or “spills” that occurred in the San Diego Region during the month of July 2014.

**Reported Public Sewage Collection System Spills:** For July 2014, public entities reported 17 spills from publicly-owned sewage collection systems, totaling 4,147 gallons of sewage. These included one spill of 1,000 gallons or more, and one spill totaling 10 gallons of sewage that reached surface waters, including storm drains.

**Reported Federal Sewage Collection System Spills:** For July 2014, the U.S. Marine Corps Recruit Depot and the Marine Corps Base, Camp Pendleton reported no spills and submitted “SSO No Spill Certificates.”

**Reported Private Lateral Spills:** For July 2014, public entities reported 13 private lateral spills totaling 1,704 gallons of sewage. These included zero spills of 1,000 gallons or more, and four spills totaling 279 gallons that reached surface waters, including storm drains.

**Year-to-Year Comparison:** The following table shows the number of spills and the amount of rain that occurred in July in both the current year (2014) and the previous year (2013) for comparison purposes.

Month	Rainfall Total (Inches)	Public and Federal Sewage Collection System Spills	Private Lateral Spills
July 2013	0.05	9	14
July 2014	Trace	17	13

**Additional Information:** Details on the reported public and federal sanitary sewer overflows and private lateral sewage spills are provided in two attached tables titled:

1. July 2014 Summary of Public and Federal Sanitary Sewer Overflows in the San Diego Region

<sup>8</sup> San Diego Water Board Order No. R9-2007-0005, *Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region*.

<sup>9</sup> Marine Corp Base Camp Pendleton reports sewage spills to CIWQS as required by its individual NPDES permit, Order No. R9-2013-0112, NPDES Permit No. CA0109347, *Waste Discharge Requirements for the Marine Corps Base, Camp Pendleton, Southern Regional Tertiary Treatment Plant and Advanced Water Treatment Plant, Discharge to the Pacific Ocean via the Oceanside Ocean Outfall*. The U.S. Marine Corps Recruit Depot is not required to report sewage spills but does so voluntarily. The U.S. Navy also is not required to report sewage spills but does voluntarily fax in its sewage spill reports. The U.S. Navy, however, does not report sewage spills through CIWQS. Thus, this report does not include sewage spills from the U.S. Navy.

## 2. July 2014 Summary of Private Lateral Sewage Spills in the San Diego Region

Reports on sewage spills are available to the public on a real-time basis on the State Water Board's webpage at:

[https://ciwqs.waterboards.ca.gov/ciwqs/readOnly/PublicReportSSOServlet?reportAction=criteria&reportId=sso\\_main](https://ciwqs.waterboards.ca.gov/ciwqs/readOnly/PublicReportSSOServlet?reportAction=criteria&reportId=sso_main).

Additional information about the San Diego Water Board sewage overflow regulatory program is available at [http://www.waterboards.ca.gov/sandiego/water\\_issues/programs/sso/index.shtml](http://www.waterboards.ca.gov/sandiego/water_issues/programs/sso/index.shtml).

## **Part C – Statewide Issues of Importance to the San Diego Region**

### **1. Underground Storage Tank Cleanup Fund Extended to January 2026**

*Staff Contact: Julie Chan*

Last week, the Governor signed Senate Bill 445 which extends the sunset date of the Underground Storage Tank Cleanup Fund to January 1, 2026, and makes significant changes pertaining to the cleanup of underground storage tanks (USTs) and other contaminants. State Water Board staff was heavily involved in the negotiations on this bill.

The new law has many provisions affecting underground storage tank owners in the San Diego Region. Highlights of the new law are listed below.

1. Requires owners of single-walled USTs to permanently close their tanks by December 31, 2025.
2. Provides the State Water Board with authority to help prevent fraud in the Cleanup Fund and recover monetary losses due to fraud and misrepresentation.
3. Reduces the maximum reimbursement amount from \$1.5 million to \$1 million for claims submitted on or after January 1, 2015.
4. Increases the fee assessed on petroleum stored in underground storage tanks from \$.014 per gallon to \$0.02 per gallon, and dedicates 3 mils (\$0.003) of the assessed fee for the State Water Board to use for the following special purposes:
  - for deposit into the Site Cleanup Subaccount for the investigation and remediation of contaminated sites, regardless of the source of contamination;
  - providing additional funding, as needed, to the School District Account to reimburse school districts for their costs associated with cleaning up leaking USTs; and
  - providing additional funding for loans and grants through the Replacing, Removing, or Upgrading Underground Storage Tanks Program to assist small business UST owners and operators in complying with UST regulatory requirements (including complying with the phase out of single-walled tanks).

This bill is an urgency measure and takes effect immediately. For more information go to [http://leginfo.ca.gov/pub/13-14/bill/sen/sb\\_0401-0450/sb\\_445\\_bill\\_20140925\\_chaptered.pdf](http://leginfo.ca.gov/pub/13-14/bill/sen/sb_0401-0450/sb_445_bill_20140925_chaptered.pdf)

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION

Significant NPDES Permits,  
WDRs, and Actions of the  
San Diego Water Board

October 8, 2014

APPENDED TO EXECUTIVE OFFICER'S REPORT



TENTATIVE SCHEDULE  
SIGNIFICANT NPDES PERMITS, WDRS, AND ACTIONS  
OF THE SAN DIEGO WATER BOARD

Action Agenda Item	Action Type	Draft Complete	Written Comments Due	Consent Item
<b>October 15, 2014</b> *** Executive Officer Enforcement Hearing *** <i>San Diego Water Board</i>				
Administrative Civil Liability Complaint for failure to enroll in the Statewide Industrial Storm Water Permit against A&L Tile, San Diego, CA ( <i>Outwin-Beals</i> )	ACL Hearing	100%	TBD	No
<b>November 12, 2014</b> <i>Temecula</i>				
Amendment of an NPDES Permit for the City of San Diego South Bay Water Reclamation Facility to incorporate revised Monitoring Requirements ( <i>Lim</i> )	NPDES Permit Updates	100%	13-Oct-2014	Yes
Amendment of an NPDES Permit for the U.S. International Boundary and Water Commission International Wastewater Treatment Plant to incorporate revised Monitoring Requirements ( <i>Lim</i> )	NPDES Permit Updates	100%	13-Oct-2014	Yes
Resolution Approving Amendment of a Water Quality Restoration Plan for Impacts associated with the Poseidon Desalination Plant ( <i>Dorsey</i> )	Tentative Resolution	50%	Verbal comments only at the Board Meeting	No
Rescission of Waste Discharge Requirements: Onsite Wastewater Treatment System Order R9-2009-147, Anza Commercial Center, Anza, Riverside County (Tentative Order R9-2014-001) ( <i>Cali</i> )	WDR Rescission	100%	9-Oct-2014	No
<b>December 10, 2014</b> *** Executive Officer Enforcement Hearing *** <i>San Diego Water Board</i>				
Administrative Civil Liability Complaint for failure to enroll in the Statewide Industrial Storm Water Permit against Scrap Depot, San Diego, CA ( <i>Outwin-Beals</i> )	ACL Hearing	100%	TBD	No
Administrative Civil Liability Complaint for failure to enroll in the Statewide Industrial Storm Water Permit against San Diego CRV, San Diego, CA ( <i>Outwin-Beals</i> )	ACL Hearing	100%	TBD	No
<b>December 11, 2014</b> <i>San Diego Water Board</i>				
Amendment of Waste Discharge Requirements: Teledyne Ryan Aeronautical, Closure and Post-Closure Maintenance of the Convair Lagoon Sand Cap, San Diego Bay (Tentative Addendum 1 to Order 98-21) ( <i>Alo</i> )	WDR Amendment	50%	TBD	Yes
Amendment of the NPDES Permit for Stone Brewery ( <i>Rodriguez</i> )	NPDES Permit Updates	90%	3-Nov-14	Yes
Amendment of the NPDES Permit for Sweetwater Authority ( <i>Seto and Neill</i> )	NPDES Permit Updates	90%	3-Nov-14	Yes
Amendment of the NPDES Permit for the Oceanside Waste Water Treatment Plant ( <i>Schwall and Lim</i> )	NPDES Permit Updates	90%	3-Nov-14	Yes
Introduction of the Division of Drinking Water ( <i>Gibson</i> )	Information Item	NA	NA	NA
Updates on Meeting Recycled Water Goals by 2020 in the San Diego Region. ( <i>Osibodu and Outwin-Beals</i> )	Information Item	NA	NA	NA
Updates to the South Orange County Wastewater Authority Ocean Outfall Permits to Incorporated Revised Near-shore Bacterial-indicator Monitoring ( <i>Posthumus and Lim</i> )	NPDES Permit Updates	90%	3-Nov-14	No
<b>January 2015</b> <i>No Meeting Scheduled</i>				
<b>February 11, 2015</b> <i>Mission Viejo</i>				
Update on Implementation of the Practical Vision ( <i>Gibson</i> )	Information Item	NA	NA	NA
Hearing on Enrollment of Orange County into the Regional MS4 Permit and other Permit Amendments ( <i>Walsh</i> )	NPDES Permit Updates	90%	19-Nov-2014	No
Basin Plan Amendment to Incorporate Requirements of the State Water Board's Policy for Onsite Wastewater Treatment Systems and to Update the Nitrogen Ground Water Quality Objective ( <i>Osibodu and Ebsen</i> )	Basin Plan Amendment	80%	TBD	No



**Figure 1. Aerial Photo of the Chatham Brothers Barrel Yard Property taken in June 1984.**



**Figure 2. Photo taken in April 1982 of the well head cover over the 65-foot well showing chemical staining on the cover and on the ground.**



CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

# NEWS RELEASE

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 Department of Toxic Substances Control
 

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T-03-99  
 February 5, 1999  
 For Immediate Release

CONTACT: Ron Baker  
 (916) 324-3142  
 Frank S. Simpson  
 (510) 540-3732

## **Court Approves Two Consent Decrees for Chatham Site Cleanup**

SACRAMENTO---The California Environmental Protection Agency's Department of Toxic Substances Control (DTSC) today announced that the United States District Court in San Diego has approved two Consent Decrees which requires 56 "generators" to complete the hazardous waste cleanup of extensive soil and groundwater contamination at the Chatham Brothers Barrel Yard, and settles the state's claim against the owners and operators of the former recycling facility. (Generators are individuals or corporations who sent hazardous materials to the state.) The Chatham Brothers Barrel Yard is located at 2257 Bernardo Avenue in the City of Escondido.

The court's action enables DTSC to recover approximately \$1.1 million for past response costs. Total cleanup costs at the site are estimated to be \$30 million.

The Consent Decrees are the culmination of extensive negotiations between DTSC, the Barrel Yard owners, former operators and the 56 generators. The first Consent Decree requires the generators to complete the cleanup process started in 1992 as a result of an interim settlement with DTSC.

Under the 1992 interim settlement, the generators conducted a Remedial Investigation / Feasibility Study and Risk Assessment and prepared a draft Remedial Action Plan (cleanup plan) for the site, paid \$4 million toward DTSC's past costs, and installed a groundwater pump and treatment system at the old Barrel Yard. The groundwater system has been operating since 1994 and has treated over 12 million gallons of contaminated groundwater.

Under one Consent Decree approved by the Court, the generators must implement a cleanup plan, developed under the interim settlement, by taking the following steps:

- excavate contaminated soils in certain areas of the site and dispose of them off site;
- install a soil cover over the old Barrel Yard and record deed restrictions;
- install a soil vapor extraction system to remove volatile organic contaminants from soils at the Barrel Yard;

- - M O R E - -

February 5, 1999

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- continue the operation and maintenance of the groundwater pump and treat system installed under the 1992 interim settlement; and,
- conduct remedial evaluation, remedial monitoring and the implementation of preselected contingency responses, if needed.

A second Consent Decree settles DTSC's claims against the owners and former operators of the recycling facility. Under the Decree, the owners are required to relinquish their ownership interest in the site property. Title of the site will be transferred to an entity controlled by the 56 generators who are performing the hazardous waste cleanup.

The Chatham Brother recycling and bulk petroleum facility was in operation from 1940 to 1981. In 1981, the facility was closed by the State. In 1982, federal, State and local agencies initiated an investigation of environmental pollution. After owners failed to comply with a State order to clean up the site, DTSC removed approximately 11,430 tons of soil contaminated with solvents, metals and polychlorinated biphenyl (PCBs).

List of generators parties that signed the first Consent Decree.

AAA Plating and Inspection, Inc.  
 Aerojet-General Corporation  
 Ametek Inc.  
 Ara Chem, Inc.  
 Archive Corporation  
 Astro Aluminum Treating Co.  
 A to Z Enterprises, Inc.  
 Beagle Manufacturing  
 Bernardo Avenue Development, LLC  
 Blair's Metal Polishing  
 City of Escondido  
 Coors Porcelain Co.  
 Crown Chemical  
 CSI Technologies, Inc.  
 Cubic Corporation  
 Cubic Automatic Revenue Collection Group  
 Cubic Communications, Inc.  
 Deposition Technologies, Inc.  
 Deutsch E.C.D.  
 Einer Brothers, Inc.  
 Frawley Corporation  
 The Gadget Manufacturing Co.

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GEC-Marconi Electronic Systems Corporation  
General Dynamics  
The Gillette Company

The Goodyear Tire & Rubber Company  
Hallmark Circuits, Inc.  
Heller Ford  
Huck Manufacturing Company  
Hughes Aircraft Company  
Illinois Tool Works  
Interstate Electronics Corporation  
Kyocera International, Inc.  
Maxwell Laboratories, Inc.  
McDonnell Douglas Helicopter Company  
Maaco Auto Body and Paint  
Minnesota Mining & Manufacturing  
Monitor Products Company, Inc.  
Navistar International Transportation Corp.  
North American Philips Corporation  
Northern Automotive Corporation  
Power Plus Corporation  
Quality Chevrolet  
Robertshaw Controls Company  
Rockwell International  
Rogers Corporation  
San Diego County Water Authority  
Sears Roebuck and Co.  
Shur-Lok Corporation  
Solar Turbines Incorporated  
Textron Inc.  
Union Carbide  
Unitrode Corporation  
Valley Center Municipal Water District  
Whittaker Corporation  
Zero Corporation

***DTSC is one of six boards and Departments within the California Environmental Protection Agency. DTSC's mission is to protect and enhance public health and the environment by regulating the management of hazardous waste and promoting reduction.***

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STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD  
**ORDER WQ 2014-**

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In the Matter of the Petition of

**FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY**

For Review of the Denial of Waste Discharge Requirements, Revised Tentative Order  
No. R9-2013-0007 for the Tesoro Extension (SR 241) Project, Orange County  
by the  
California Regional Water Quality Control Board,  
San Diego Region

***SWRCB/OCC FILE A-2259***

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BY THE BOARD:

In this Order, the State Water Resources Control Board (State Water Board) reviews the San Diego Regional Water Quality Control Board's (San Diego Water Board) denial of Waste Discharge Requirements (WDRs) Revised Tentative Order R9-2013-0007 (Revised Tentative Order) for the Tesoro Extension of State Route 241 in southern Orange County (Tesoro Extension). The Foothill/Eastern Transportation Corridor Agency (Petitioner) alleges that the San Diego Water Board violated the California Environmental Quality Act (CEQA) because it failed to presume that the Petitioner's environmental documents were adequate. Because the basis for the San Diego Water Board's decision to deny WDRs for the Tesoro Extension is not clear from the administrative record, the State Water Board remands the matter to the San Diego Water Board with direction to provide the factual and legal basis for its decision.

**BACKGROUND**

Formed in 1986, the Petitioner is a joint powers authority composed of a number of local public entities that manages the financing, construction and operations of several toll roads in Orange County. As part of its ongoing planning and construction efforts, the Petitioner is generally the lead agency for purposes of compliance with CEQA.<sup>1</sup> In 1981, Orange County certified an environmental impact report (EIR) which analyzed the establishment of a

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<sup>1</sup> Pub. Resources Code, § 21000 et seq.

transportation corridor in southeastern Orange County (now designated State Route 241) in the *County Master Plan of Arterial Highways*. In 1991, the Petitioner certified an EIR analyzing various alternatives for an extension of State Route 241.<sup>2</sup> In February 2006, the Petitioner certified the South Orange County Transportation Infrastructure Improvement Project (SOCTIIP) Final Subsequent Environmental Impact Report (FSEIR). The FSEIR identified a preferred alternative that consisted of a sixteen mile extension of State Route 241 from its southern terminus at Oso Parkway to connect to Interstate 5 just south of the Orange County and San Diego County border.<sup>3</sup> On February 23, 2006, the Petitioner adopted CEQA findings for the preferred alternative and approved construction of the sixteen mile extension of State Route 241.<sup>4</sup> On March 23, 2006, the California State Parks Commission and a number of environmental groups sued the Petitioner, challenging the adequacy of the FSEIR.<sup>5</sup> That litigation was eventually dismissed without prejudice.

Because the sixteen mile extension of State Route 241 required a Clean Water Act section 404 permit from the Army Corps of Engineers, the Petitioner submitted an application for a Clean Water Act section 401 water quality certification to the San Diego Water Board on June 13, 2006. The application was deemed complete by the San Diego Water Board on September 13, 2006.<sup>6</sup> Despite the submission of supplemental documentation, the Petitioner's request for a water quality certification was denied without prejudice on February 6, 2008. The San Diego Water Board noted that the Petitioner's application remained insufficient to address outstanding concerns regarding the Petitioner's runoff management plan, water quality mitigation measures, proposed habitat mitigation and monitoring plan, baseline water quality monitoring, and antidegradation.<sup>7</sup> The Petitioner subsequently withdrew its application

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<sup>2</sup> Petitioner's Petition for Review of Waste Discharge Requirements Order No. R9-2013-0007 (SWRCB/OCC File A-2259), p. 4.

<sup>3</sup> *Ibid.* State Clearinghouse Number 2001061046.

<sup>4</sup> Foothill/Eastern Transportation Corridor Agency Resolution No. F2006-02.

<sup>5</sup> *Cal. State Parks Foundation, et al. v. Foothill/Eastern Transportation Corridor Agency* (Super. Ct. San Diego County, Case Nos. GIN51194 and GIN 051371).

<sup>6</sup> Letter from Senior Environmental Scientist James Smith, San Diego Water Board, to Richard Beck (Sept. 13, 2006). Note that, in this case, the application being deemed complete only means that the application has fulfilled the minimum requirements of the State Water Board certification regulations. (See Cal. Code Regs., tit. 23, § 3856.) Fulfillment of this requirement by an applicant does not mean, and should not be construed to mean, that the applicable regional water quality control board or the State Water Board has received sufficient information to make its determination that a proposed project or activity is reasonably assured to comply with water quality standards or other applicable requirements of state law.

<sup>7</sup> Letter from Executive Officer John Robertus, San Diego Water Board, to Richard Beck (Feb. 6, 2008).



for water quality certification.<sup>8</sup> Also on February 6, 2008, the California Coastal Commission voted not to approve the Petitioner's request for a consistency determination pursuant to the Coastal Zone Management Act.<sup>9</sup> The Petitioner appealed the California Coastal Commission's determination to the United States Secretary of Commerce who, in turn, rejected the Petitioner's appeal.<sup>10</sup>

After these rejections, the Petitioner authorized its staff to pursue a shorter extension of State Route 241. This shorter extension, the Tesoro Extension, would extend State Route 241 from its existing southern terminus at Oso Parkway approximately 5.5 miles south to Cow Camp Road. Cow Camp Road is immediately north of San Juan Creek in Orange County, so the Tesoro Extension would avoid the Coastal Zone and all waters subject to federal jurisdiction, thereby obviating the need for a consistency determination from the California Coastal Commission or a Clean Water Act section 404 permit from the Army Corps of Engineers. The Petitioner filed a report of waste discharge for the Tesoro Extension with the San Diego Water Board on August 10, 2012.

After analyzing the Petitioner's documentation and repeated meetings with the Petitioner, San Diego Water Board staff drafted WDRs Tentative Order No. R9-2013-0007 (Tentative Order) for the Tesoro Extension. On January 17, 2013, San Diego Water Board staff issued a public notice announcing the availability of the Tentative Order and setting a March 13, 2013 public hearing for the San Diego Water Board to consider adoption of the Tentative Order. The public notice established a February 18, 2013 deadline for written comments on the Tentative Order.

On February 15, 2013, the Petitioner's staff finalized a CEQA addendum to the 2006 FSEIR for the Tesoro Extension (Addendum) and submitted it to San Diego Water Board. The Addendum stated that the Petitioner proposed to construct the Tesoro Extension, and identified the Tesoro Extension as the project for the purposes of CEQA analysis. The Addendum concluded that, since the Tesoro Extension generally followed the same alignment

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<sup>8</sup> Letter from Thomas Margro, Transportation Corridor Agencies, to Chad Loflin (Feb. 9, 2009).

<sup>9</sup> Petitioner's Petition for Review of Waste Discharge Requirements Order No. R9-2013-0007 (SWRCB/OCC File A-2259), p. 4; Letter from Manager Mark Delaplaine, California Coastal Commission to James Herink (Dec. 6, 2013), p. 2. The California Coastal Commission is the agency responsible for determining consistency with the federal Coastal Zone Management Act. (16 U.S.C. § 1451 et seq.)

<sup>10</sup> See *Decisions and Findings by the U.S. Secretary of Commerce in the Consistency Appeal of the Foothill/Eastern Transportation Corridor Agency from the Objection by the California Coastal Commission* (Dec. 18, 2008). After the rejection of the Petitioner's appeal, the plaintiffs challenging the FSEIR voluntarily dismissed their writ petition on January 12, 2011. (Petitioner's Petition for Review of Waste Discharge Requirements Order No. R9-2013-0007 (SWRCB/OCC File A-2259), Exhibit 8.)

as the first 5.5 miles of the sixteen mile extension preferred alternative that had been analyzed in the 2006 FSEIR, the Tesoro Extension would not result in any significant environmental effects that were not already discussed in the 2006 FSEIR.<sup>11</sup> The Addendum also concluded that there was no need to prepare a Subsequent or Supplemental EIR, and that the 2006 FSEIR, coupled with the Addendum, satisfied the Petitioner's CEQA obligations for the Tesoro Extension.<sup>12</sup>

Due to the last-minute submission of the Addendum by the Petitioner and the extensive written comments that related to the San Diego Water Board's CEQA obligations if it were to approve the Tentative Order, the San Diego Water Board decided that its staff needed additional time to evaluate and respond to CEQA-related issues. The San Diego Water Board stated that it would proceed with the scheduled March 13, 2013 public hearing, but that it would not take any final action on the Tentative Order on that date.

During the hearing on March 13, 2013, the Chair of the San Diego Water Board announced that a second hearing would be scheduled for the purpose of receiving comments related to CEQA, and that San Diego Water Board staff would circulate specific CEQA-related questions prior to the second hearing.<sup>13</sup> A coalition of environmental groups called the Save San Onofre Coalition (Coalition)<sup>14</sup> and a large number of individuals argued against adoption of the Tentative Order, voicing a number of concerns related to water quality best management practices (stormwater BMPs), hydromodification, sediment generation and transport, and compensatory mitigation implementation and monitoring, as well as CEQA.

On March 15, 2013, counsel to the San Diego Water Board circulated a memorandum with CEQA-related questions to the Petitioner, the Coalition, and the public.<sup>15</sup> The memorandum inquired as to how the Petitioner defined the project for which WDRs were being requested, and whether it was the same as the Petitioner's CEQA definition of the project. Additionally, the memorandum asked about the CEQA consequences of the Addendum, given

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<sup>11</sup> *Addendum to the South Orange County Transportation Infrastructure Improvement Project Final Subsequent Environmental Impact Report – Tesoro Extension Project* (Feb. 2013), p. 3-22.

<sup>12</sup> *Ibid.*

<sup>13</sup> San Diego Water Board Hearing Transcript (March 13, 2013), pp. 36-37, 70-71.

<sup>14</sup> The "Save San Onofre Coalition" consists of a dozen non-governmental entities, including the California State Parks Foundation, the Natural Resources Defense Council, Sierra Club California, Surfrider Foundation, and Orange County Coastkeeper.

<sup>15</sup> Letter from Senior Staff Counsel Catherine Hagan to Foothill/Eastern Transportation Corridor Agency, Save San Onofre Coalition and Interested Persons (March 15, 2013).

the lack of the Petitioner's approval of the Tesoro Extension or filing of a CEQA Notice of Determination.<sup>16</sup>

On March 29, 2013, the Petitioner and the Coalition submitted responses to the memorandum. On April 18, 2013, the Petitioner's Board of Directors approved the conceptual design for the Tesoro Extension and approved the Addendum.<sup>17</sup> On May 30, 2013, the San Diego Water Board staff issued a public notice announcing the availability of the Revised Tentative Order and setting a June 19, 2013 continued public hearing for the San Diego Water Board to receive comments limited to CEQA and the revisions to the Tentative Order, and to consider adoption of the Revised Tentative Order.

The San Diego Water Board conducted the second hearing on June 19, 2013. At the hearing, the public was asked to limit their comments to the revisions to the Tentative Order and CEQA-related issues.<sup>18</sup> San Diego Water Board staff explained that the revisions to were designed to address water quality concerns related to the Tesoro Extension that had been expressed by Board Members as well as the prior hearing. The revisions addressed sediment supply and hydromodification; the timing of the habitat mitigation monitoring plan and the runoff management plan.<sup>19</sup> The San Diego Water Board's counsel described the Petitioner's recent approval of the conceptual design for the Tesoro Extension and the Addendum, explained that, as a CEQA responsible agency, the San Diego Water Board was bound by the Petitioner's 2006 EIR and the Addendum. Counsel explained that the Revised Tentative Order did not contain any specific findings about environmental impacts related to potential future segments of the toll road.<sup>20</sup>

After reviewing the written comments and listening to the public comments at both hearings, the Board Members engaged in deliberations about whether to approve the Revised Tentative Order. Eventually, one Board Member made a motion to not approve it. The motion carried, with three Board Members voting in favor of the motion and two Board Members voting against the motion. In response, the Petitioner filed a timely petition with the State Water Board alleging, among other things, that the San Diego Water Board improperly denied the Revised Tentative Order because it believed that the Petitioner's CEQA documents, particularly

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<sup>16</sup> *Ibid.*

<sup>17</sup> Foothill/Eastern Transportation Corridor Agency Resolution No. 2013F-05.

<sup>18</sup> San Diego Water Board Hearing Transcript (June 19, 2013), pp. 2-3.

<sup>19</sup> *Id.*, p. 14.

<sup>20</sup> *Id.*, pp. 30-31, 35-36.

the description of the Tesoro Extension as the CEQA project in the Addendum, were inadequate.

### **ISSUES AND FINDINGS**

This Order addresses the general scope of San Diego Water Board's responsibilities and authorities regarding the Tesoro Extension pursuant to both CEQA and the Porter-Cologne Water Quality Control Act,<sup>21</sup> as well as the need for a regional water quality control board to provide the legal and factual basis for its adjudicative decisions. To the extent the Petitioner raised issues that are not discussed in this Order, either in whole or in part, such issues are dismissed as not raising substantial issues appropriate for our review.<sup>22</sup>

#### **The California Environmental Quality Act**

CEQA requires that all governmental agencies that regulate activities found to affect the quality of the environment, do so giving major consideration to preventing environmental damage.<sup>23</sup> As such, CEQA is to be interpreted to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.<sup>24</sup> With narrow exceptions, CEQA requires an EIR whenever a public agency proposes to approve or to carry out a project that may have a significant effect on the environment. The Legislature has made clear that an EIR is "an informational document" and that "[t]he purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project."<sup>25</sup>

The "lead agency" is the public agency that has the principal responsibility for carrying out or approving the project. The lead agency will decide whether to prepare an EIR or a negative declaration for the project and will cause the document to be prepared.<sup>26</sup> This

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<sup>21</sup> Wat. Code, § 13000 et seq.

<sup>22</sup> *People v. Barry* (1987) 194 Cal.App.3d 158, 175-177; *Johnson v. State Water Resources Control Bd.* (2004) 123 Cal.App.4th 1107, 1114; Cal. Code Regs., tit. 23, § 2052, subd. (a)(1).

<sup>23</sup> See Pub. Resources Code, § 21000, subd. (g); State Water Board Order WQ 2009-0010 (*Point Molate Naval Fuel Depot*), p.2.

<sup>24</sup> *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259.

<sup>25</sup> *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390-391. Hereinafter referred to as *Laurel Heights*.

<sup>26</sup> Pub. Resources Code, § 21067; Cal. Code Regs., tit. 14, § 15367.

decision is final and conclusive on all persons, including responsible agencies, except under limited situations involving changes to a project or its circumstances.<sup>27</sup> Under CEQA, a “project” means “the *whole of an action*, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment...” It refers to the underlying “activity” for which approval is being sought.<sup>28</sup> An EIR must contain an accurate and consistent project description.<sup>29</sup>

When describing the project and preparing the requisite environmental review, CEQA forbids ‘piecemeal’ review of the significant environmental impacts of a project. “Piecemealing” refers to chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences.<sup>30</sup> The California Supreme Court set forth a piecemealing test in *Laurel Heights* stating that:

an EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects. Under this standard, the facts of each case will determine whether and to what extent an EIR must analyze future expansion or other action.<sup>31</sup>

Courts have held there may be improper piecemealing when the purpose of the reviewed project is to be the first step toward future development,<sup>32</sup> or when the reviewed project legally compels or practically presumes completion of another action.<sup>33</sup> On the other hand, two projects may properly undergo separate environmental review (i.e., no piecemealing) when the projects have different proponents, serve different purposes, or can be implemented independently.<sup>34</sup>

Public agencies, other than the lead agency, that have responsibility for carrying out or having discretionary approval power over a project are responsible agencies.<sup>35</sup>

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<sup>27</sup> Pub. Resources Code, § 21080.1; Cal. Code Regs., tit. 14, § 15050, subd. (c).

<sup>28</sup> *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 654 (quoting Pub. Resources Code, § 21065; Cal. Code Regs., tit. 14, § 15378, subds. (a), (c)).

<sup>29</sup> See *County of Inyo v. City of Los Angeles* (1977) 71 Cal. App.3d 185, 199.

<sup>30</sup> *Bozung v. Local Agency Formation Commission* (1975) 13 Cal. 3d 263, 283-284.

<sup>31</sup> *Laurel Heights*, *supra*, 47 Cal.3d at p. 396.

<sup>32</sup> *Laurel Heights*, *supra*, 47 Cal.3d at p. 398.

<sup>33</sup> *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 272.

<sup>34</sup> *Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1223 (quoting *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 99).

<sup>35</sup> Pub. Resources Code, § 21069; Cal. Code Regs., tit. 14, § 15381.

Responsible agencies have limited authority under CEQA to conduct their own environmental review outside the processes initiated and managed by the lead agency.<sup>36</sup> A responsible agency is required to consider only the effects of those activities involved in a project which it is required by law to carry out or approve.<sup>37</sup> While a lead agency must consider all environmental impacts of the project before approving it, a responsible agency only considers those aspects of a project that are within the scope of its jurisdiction.<sup>38</sup> When mitigating or avoiding a significant effect within its jurisdiction, the responsible agency may only exercise those express or implied powers provided by laws other than CEQA.<sup>39</sup>

Once a lead agency has completed an EIR, it is presumed legally adequate and the lead agency's certification of an EIR as complying with the requirements of CEQA is presumed correct.<sup>40</sup> If an action or proceeding is commenced alleging that the EIR does not comply with CEQA and no injunctive or similar relief is granted, responsible agencies must assume that the EIR complies with CEQA and approve or disapprove the project accordingly.<sup>41</sup> If no action or proceeding is commenced as described in Public Resources Code section 21167.3, and a responsible agency believes that the final EIR is inadequate based on impacts to resources within the scope of its purview, it may take that issue to court within 30 days after the lead agency files a notice of determination, prepare a subsequent EIR if permissible under CEQA Guidelines section 15162, assume the lead agency role under the circumstances described above, or be deemed to have waived any objections.<sup>42</sup>

### **The Porter-Cologne Water Quality Control Act**

When the Legislature enacted the Porter-Cologne Water Quality Control Act (the Porter-Cologne Act),<sup>43</sup> it declared that the activities and factors which may affect the quality of the waters of the state shall be regulated to attain the highest water quality which is reasonable considering all demands being made on those waters and that the state must be prepared to

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<sup>36</sup> *Riverwatch v. Olivenhain Municipal Water Dist.* (2009) 170 Cal.App.4th 1186, 1201.

<sup>37</sup> *Sierra Club v. Cal. Coastal Commission* (2005) 35 Cal.4th 839, 860 (quoting Pub. Resources Code, § 21002.1, subd. (d)).

<sup>38</sup> *Riverwatch, supra*, 170 Cal.App.4th at p. 1202.

<sup>39</sup> *Sierra Club, supra*, 35 Cal.4th at p. 859; see also Pub. Resources Code, § 21004.

<sup>40</sup> *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 924-925.

<sup>41</sup> Pub. Resources Code, § 21167.3, subd. (b).

<sup>42</sup> See Cal. Code Regs., tit. 14, § 15096, subd (e).

<sup>43</sup> Wat. Code, § 13000, et seq.

exercise its full power and jurisdiction to protect water quality.<sup>44</sup> The Porter-Cologne Act sets forth many authorities and responsibilities for the regional water quality control boards (regional water boards). One such authority is the issuance of WDRs to persons discharging waste that could affect the quality of waters of the state.<sup>45</sup>

When a regional water board issues WDRs, the regional water board is obligated to ensure that the WDRs implement relevant water quality control plans, take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of Water Code section 13241.<sup>46</sup> When issuing WDRs, a regional water board is not required to utilize the full waste assimilation capacities of the receiving water. Whether or not a discharge is authorized, the discharge of waste does not create any vested rights to continue the discharge; the discharge of waste is a privilege, not a right.<sup>47</sup> It follows, then, that a regional water board has the authority to decline to issue WDRs for a specific discharge. When a regional water board declines to issue WDRs, it may also choose to give the project proponent an opportunity to revise its project and submit a revised report of waste discharge. In addition to the issuance or denial of WDRs, the Porter-Cologne Act also authorizes a regional water board to specify certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted.<sup>48</sup> This may be done in a water quality control plan or in WDRs, and is a more enduring mechanism for protecting water quality.

When issuing WDRs, regional water boards must protect the beneficial uses of the waters that are receiving both direct and indirect discharges from the project, as well as the beneficial uses of any downstream waters that could be affected by the discharges.<sup>49</sup> When a regional water board is deciding whether to issue WDRs for discharges of waste associated with a project, it is appropriate for the regional water board to consider whether that project will likely lead to additional, future discharges of waste or other related impacts to water quality. Those

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<sup>44</sup> Wat. Code, § 13000.

<sup>45</sup> Wat Code, §§ 13260, subd. (a)(1) & 13263.

<sup>46</sup> Wat. Code, § 13263, subd. (a). Water Code section 13241 contains six additional factors that must be considered when, in a project-specific context, a regional water board is establishing effluent limitations more stringent than federal law requires. (*City of Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4th 613, 618.) These factors are not in contention with this petition.

<sup>47</sup> Wat. Code, § 13263, subds. (b), (g).

<sup>48</sup> Wat. Code, § 13243.

<sup>49</sup> State Water Board Orders WQ 2012-0013 (*Sacramento Regional*), pp. 13, 35; WQ 2008-0008 (*City of Davis*), pp. 12-13.

future discharges of waste or other water quality impacts may result from future phases or segments of the same project, or from unrelated projects by other project proponents.

Linear projects (e.g., road or power line construction or maintenance) are common examples of projects that may have future phases, or segments, that will lead to future discharges of waste or other water quality impacts. Linear projects may affect many different waters and, in the case of new construction, may be implemented in sequential phases. When future phases of a linear project are likely to occur and may have water quality impacts, a regional water board may request that the project proponent provide any readily-available information on those future phases in connection with a pending report of waste discharge or application for the current phase. An example of a project that may result in future discharges of waste or other water quality impacts from unrelated projects is a development project that is adjacent to a sensitive area, such as an important wetlands area. While the project itself may not have any associated discharges of waste that directly affect the sensitive area, the new development may result in future projects and their discharges of waste, or other water quality impacts resulting from increased public access to the sensitive area.

In most cases, as long as the regional water board complies with CEQA, the regional water board may issue WDRs for the current project and defer issuance of WDRs for future discharges of waste until the point in time that those discharges are actually proposed, without compromising its responsibility to protect water quality from those future discharges. However, there are also occasional instances in which a regional water board may be asked to issue WDRs for a project that will likely lead to additional, future discharges of waste that a regional water board finds require consideration along with the current project. A regional water board is not required to put on blinders when making a decision concerning the authorization of a discharge of waste that will likely lead to additional discharges of waste or other water quality impacts in the future.<sup>50</sup> For example, if a regional water board were to determine, based on evidence in the administrative record, that likely prospective alignments for subsequent phases of a linear project, or future projects that will result from a currently proposed project, will likely

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<sup>50</sup> The Petitioner asserts that the regional water boards are limited to considering only the discharges of waste that are actually proposed by the discharger in a report of waste discharge, because Water Code section 13263, subdivision (a), only authorizes the regional water boards to “prescribe requirements as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge ... .” This is an overly cribbed interpretation of section 13263, particularly in light of the fact that subdivision (a) also requires the regional water board to consider “other waste discharges,” and subdivision (d) makes it clear that a regional water board may issue (and, as explained above, therefore also decline to issue) WDRs even if the discharger has not filed a report of waste discharge. It also would interfere with the regional water boards’ broad mandates to protect water quality, as described above.



lead to additional, future discharges of waste or other water quality impacts from which the regional water board may not be able to adequately protect waters of the state by issuing WDRs or taking other appropriate regulatory actions in the future, the regional water board would be justified in declining to issue WDRs for the project.

### **The Need for Findings**

Regional water board proceedings to consider the issuance of WDRs to an individual entity are governed by the State Water Board's regulations for adjudicative proceedings.<sup>51</sup> These regulations incorporate various statutory provisions, including Government Code section 11425.50, subdivision (a), which provides that "[t]he decision shall be in writing and shall include a statement of the factual and legal basis for the decision." This enables the parties to determine whether, and on what basis, to seek review of a regional water board's decision.<sup>52</sup> The requirement to explain the basis for the regional water board's decision also helps to encourage orderly analysis and reduce the likelihood of unfounded decisions.<sup>53</sup> Further, the factual basis must be supported by evidence in the administrative record.<sup>54</sup>

There is a heightened need for detailed findings based on evidence in the record if a regional water board declines to issue WDRs for a project because it will likely lead to additional, future discharges of waste or other water quality impacts. Those findings should describe the potential for future discharges of waste or other water quality impacts, explain why they are likely to result from the current project before the regional water board, and most importantly, explain why the regional water board would be limited in its ability to exercise its full authority in the future to prohibit, or otherwise restrict, those future discharges or other water quality impacts in such a manner as to carry out the regional water board's obligation to protect waters of the state.

It is critical that a regional water board's staff and counsel ensure that the requirement for a statement of the factual and legal basis for the decision is met when they propose draft WDRs and other adjudicatory orders for the regional water board's consideration. Of course, a regional water board is not obliged to adopt its staff's proposed orders. When a regional water board takes a final action in an adjudicative proceeding by approving an oral

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<sup>51</sup> Cal. Code Regs., tit. 23, § 648 et seq.

<sup>52</sup> See *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 514.

<sup>53</sup> *Id.* at p. 516.

<sup>54</sup> *Ibid.*; State Water Board Order WQ 2007-0010 (*Escondido Creek Conservancy*), p. 6.

motion without a written order, it is incumbent upon the regional water board to ensure that the motion contains, or specifically incorporates, sufficient detail about the factual and legal basis for the motion. Depending on the circumstances, it may be advisable to take a recess to allow staff and counsel an opportunity to carefully draft a motion for the regional water board.<sup>55</sup>

### **The San Diego Water Board's Decision**

Following several hours of public comments at the June 19, 2013 hearing, San Diego Water Board staff stated that they maintained their recommendation to adopt the Revised Tentative Order.<sup>56</sup> The San Diego Water Board then closed the hearing and the Board Members engaged in public deliberations. Following the deliberations, one Board Member made a motion to not approve the Revised Tentative Order. The motion carried, with a majority of three Board Members voting in favor of the motion and two Board Members voting against the motion. Because the decision was made by oral motion only, we look to the transcript of the deliberations to determine the factual and legal basis for the San Diego Water Board's decision, paying special attention to the statements of the Board Members who comprised the majority.

The Petitioner asserts that the San Diego Water Board declined to adopt the Revised Tentative Order on the grounds that it believed that the Tesoro Extension's Addendum, particularly the Tesoro Extension project description, were inadequate.<sup>57</sup> The San Diego Water Board asserts in its response to the petition that it determined that potential water quality impacts from a larger, more extensive project were not sufficiently evaluated for the San Diego Water Board to approve the Revised Tentative Order.<sup>58</sup> The Coalition asserts in its response to the petition for review that "the transcript clearly shows that the [San Diego Water Board] based its decision on its conclusion that the Tesoro Extension was merely the initial segment of the proposed Foothill-South previously rejected by the [San Diego Water Board], and [the Petitioner] had thus failed to propose adequate waste discharge requirements for the entire project."<sup>59</sup>

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<sup>55</sup> It is not always necessary for a regional water board to adopt a formal written order; an oral motion can be memorialized in the official minutes or transcript of the regional water board meeting.

<sup>56</sup> San Diego Water Board Hearing Transcript (June 19, 2013), p. 197.

<sup>57</sup> Petitioner's Petition for Review of Waste Discharge Requirements Order No. R9-2013-0007 (SWRCB/OCC File A-2259), p. 4.

<sup>58</sup> San Diego Water Board Response to Petition for Review of Waste Discharge Requirements Order No. R9-2013-0007 (SWRCB/OCC File A-2259), p. 2.

<sup>59</sup> Save San Onofre Coalition Response to Petition for Review of Waste Discharge Requirements Order No. R9-2013-0007 (SWRCB/OCC File A-2259), p. 24.

As a preliminary matter, it is clear from the transcript that concerns about water quality impacts resulting directly from the Tesoro Extension did not form the basis for the San Diego Water Board's decision. Two of the Board Members indicated that they were satisfied that the Revised Tentative Order adequately addressed any water quality impacts that were directly related to the Tesoro Extension.<sup>60</sup> None of the remaining three Board Members expressed any concerns about water quality impacts that were directly related to the Tesoro Extension.

The Petitioner, the San Diego Water Board, and the Coalition all appear to agree that the focus of the deliberations was on the description of the project. All five of the Board Members commented on the possibility that the Tesoro Extension may be just the first segment of a larger toll road project that connects State Route 241 to Interstate 5, as was analyzed in the 2006 FSEIR.<sup>61</sup> Four of the Board Members' comments indicated that they had concluded that the Tesoro Extension is, in fact, part of a larger project that would eventually connect to Interstate 5, while the fifth Board Member's comments did not clearly indicate whether or not he agreed.<sup>62</sup>

Three of the four Board Members who had concluded that the Tesoro Extension is part of a larger project ultimately voted to not approve the Revised Tentative Order. Two of the majority also expressed generalized concerns that future extensions to Interstate 5 may impact water quality.<sup>63</sup> One of the majority referred three times during the deliberations to a CEQA complaint that had recently been filed by the Attorney General that alleged that the Petitioner had violated CEQA by failing to adequately describe the project.<sup>64</sup> Another majority-voting Board Member also referred to CEQA and stated that he thought that there was "some ambiguity in what we are required to do and not do in terms of our analysis."<sup>65</sup> Additionally one of the majority indicated that there was another important reason that he planned to vote to not approve the Revised Tentative Order, but he never explained what it was.<sup>66</sup> Therefore, while we can conclude that all three of the Board Members who voted in the majority believed that the

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<sup>60</sup> San Diego Water Board Hearing Transcript (June 19, 2013), pp. 198, 201.

<sup>61</sup> San Diego Water Board Hearing Transcript (June 19, 2013), pp. 198-206.

<sup>62</sup> *Id.* at pp. 198-203.

<sup>63</sup> San Diego Water Board Hearing Transcript (June 19, 2013), pp. 192-205.

<sup>64</sup> See *Id.* at pp. 198-205.

<sup>65</sup> *Id.* at p. 204.

<sup>66</sup> *Id.* at p. 207.



**ORDER**

IT IS HEREBY ORDERED that, for the reasons discussed above, this matter is remanded to the San Diego Water Board to provide the factual and legal basis for its decision, consistent with this Order. This Order does not require the San Diego Water Board to conduct any further hearings regarding the issuance of WDRs for the Tesoro Extension.

**CERTIFICATION**

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on September 23, 2014.

AYE:

NO:

ABSENT:

ABSTAIN:

**DRAFT**

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Jeanine Townsend  
Clerk to the Board

## July 2014 - Summary of Public and Federal Sanitary Sewer Overflows in the San Diego Region

Responsible Agency	Collection System	Total Volume	Total Recovered (Gallons)	Total Reaching Surface Waters	Percent Recovered (%)	Percent Reaching Surface Waters	Miles of Pressure Sewer	Miles of Gravity Sewer	Population in Service Area
CARLSBAD MWD	Carlsbad MWD CS	1	1	0	100%	0%	4.8	282.0	69,420
		15	0	0	0%				
		20	20	0	100%	0%			
		2,000	2,000	0	100%	0%			
El Cajon City	City Of El Cajon CS	20	10	0	50%	0%	0.0	192.0	100,562
		25	0	10	0%	40%			
Escondido City	Harrf Disch To San Elijo Oo CS	200	200	0	100%	0%	10.7	370.0	142,000
Laguna Beach City	City Of Laguna Beach CS	100	100	0	100%	0%	9.0	86.0	18,000
Lemon Grove City	City Of Lemon Grove CS	50	50	0	100%	0%	0.1	62.4	25,800
Leucadia Wastewater District	Leucadia Wastewater District CS	500	0	0	0%	0%	16.7	200.0	60,000
Oceanside City	La Salina WWTP, Oceanside Offl CS	165	165	0	100%	0%	35.6	439.7	169,527
		500	500	0	100%	0%			
San Clemente City	City Of San Clemente CS	1	1	0	100%	0%	3.7	174.6	67,373
		1	1	0	100%	0%			
		100	100	0	100%	0%			
San Diego City	San Diego City CS (Wastewater Collection System)	89	0	0	0%	0%	145.0	3002.0	2,186,810
		360	360	0	100%	0%			
	Totals for Public Spills	4,147	3,508	10					
	Totals for Federal Spills	0	0	0					

July 2014 - Summary of Private Lateral Sewage Discharges in San Diego Region

Reporting Agency	Collection System	Total Volume Recovered		Total Reaching Surface Waters		Percent Recovered (%)		Percent Reaching Surface Waters		Population in Service Area	Lateral Connections
		(Gallons)		(Gallons)							
Laguna Beach City	City Of Laguna Beach CS	5	5	0	0	100%	0%	18,000	6,650		
		20	0	20	0	0%	100%				
		50	0	50	0	0%	100%	165,000	51,000		
		50	0	0	0	0%	0%				
Padre Dam Municipal Water District	Padre Dam CS	200	20	180	10%	10%	90%				
		32	3	29	9%	9%	91%	67,368	15,099		
Poway City	City Of Poway CS	42	42	0	0	100%	0%	42,862	12,165		
		50	49	0	0	98%	0%				
		113	113	0	0	100%	0%				
		153	153	0	0	100%	0%	2,186,810	267,237		
San Diego City	San Diego City CS (Wastewater Collection System)	369	369	0	0	100%	0%				
		500	500	0	0	100%	0%				
South Coast Water District	South Coast Water District CS	120	0	0	0	0%	0%	42,000	14,762		
Totals		1,704	1,254	279	279						