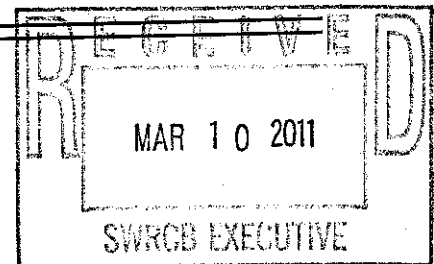


SOUTH COAST



WATER DISTRICT



March 10, 2011

VIA EMAIL (commentletters@waterboards.ca.gov)

Chairman Hoppin and
Members of the State Water Resources Control Board
c/o Clerk of the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95812

Re: Ocean Plan Amendments/Dismissal of SWRCB/OCC File A-2072

Dear Chairman Hoppin and Members of the Board:

On or about March 4, 2011, South Coast Water District ("SCWD") and South Orange County Wastewater Authority ("SOCWA") received the dismissal of their Petition for Review of the San Diego Regional Water Quality Control Board's ("Regional Board") denial of SCWD and SOCWA's request to modify their NPDES permit. SCWD and SOCWA had requested the modification to allow SCWD groundwater recovery facility ("GRF"), which extracts and treats brackish groundwater for potable use, to discharge its brine effluent to the San Juan Creek Ocean Outfall (the "Outfall"). After SCWD had designed and began constructing the GRF, the Regional Board amended the NPDES permit to require Ocean Plan compliance at the GRF rather than at the Outfall as the permit had previously required. Due to elevated levels of iron and magnesium, naturally occurring constituents in the groundwater, the brine effluent from the GRF was unable to meet the Table A Ocean Plan standards. However, the brine effluent did not impair the Outfall's ability to meet the standards. Nevertheless, the Regional Board found that SCWD to be in violation of the NPDES permit and imposed mandatory minimum penalties in the amount of \$204,000.

To avoid incurring additional penalties, SCWD imposed a temporary fix, i.e., it rerouted the brine effluent to the sewer system. However, SCWD and SOCWA have since learned that the increased load of total dissolved solids ("TDS") will impact SOCWA's recycled water program. As such, SCWD must find an alternative solution, particularly since SCWD plans to

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expand and increase production at the GRF (to meet 20% of the demand for potable water) by installing additional wells.

In denying SCWD and SOCWA's request for permit modification, the Regional Board indicated that it had no choice but to impose the Ocean Plan Table A standards on the GRF in the absence of any effluent limitation guidelines issued by EPA. In recent correspondence from the Regional Board, the Regional Board expressed that it was

"concerned that the NPDES regulations may not provide sufficient flexibility for setting the point of compliance for TBELs in NPDES permits. The Board Members were particularly concerned that the lack of flexibility may lead to unnecessarily stringent requirements for the discharge of brine and other waste for projects designed to augment local water supply needs."

Memorandum from David W. Gibson to Thomas Howard dated February 3, 2011. The Regional Board further recognized:

"Waste brine discharges from desalination processes are currently regulated through a default classification as an industrial waste under both the Clean Water Act and the California Ocean Plan because they do not provide specific regulatory distinction for waste byproducts from desalination facilities. While TBELs are indeed appropriate for pollutants associated with industrial wastes, the constituents of concern in brine waste are primarily mineral salts and turbidity. These constituents present a far less significant threat to the ocean than most industrial wastes that are regulated through TBELs."

Id.

In dismissing SCWD and SOCWA's Petition, Thomas Howard indicated that

"The State Water Board's staff intends to pursue amendments to the Water Quality Control Plan for Ocean Waters in California (Ocean Plan) that would separately address issues associated with desalinization, including brine line discharges. This forum will allow the State Water Board to carefully consider the changes in regulatory approach proposed by the petition and help ensure statewide consistency on this important topic."

Letter dated March 4, 2011 from Thomas Howard to Patricia J. Chen and Steven L. Hoch re: SWRCB/OCC File A-2072.

While we are encouraged by the fact that the State Board appears to be willing to address our brine issue through the Ocean Plan amendments, we are very concerned that this process may take too long and compromise SCWD's ability to operate and expand the GRF. As such, we would like to suggest other avenues to consider in addition to the Ocean Plan amendments including the State Board's (and Regional Board's) authority to apply its best professional

judgment ("BPJ") to apply a more appropriate standard to groundwater treatment facilities like the GRF where there is no adverse impact resulting from the brine discharge.¹

Both the State Board and Department of Water Resources have taken strong policy positions in support of encouraging the development of sustainable local water supplies and maximizing beneficial uses, particularly where these local water supplies offset the use of imported water. The State Board's Recycled Water Policy encourages the development of salt management plans, which can only be implemented if reasonable brine disposal options are available. Regulatory flexibility, such as use of BPJ is an important factor to support the development and expanded use of local water supplies, and ensure implementation of salt management plans. It is further consistent with Department of Water Resources Water Desalination Task Force (the "Task Force") recommendation that desalination projects be evaluated on a case-by-case basis because of the unique features of each project considering local water supply and reliability needs, site-specific environmental conditions, project objectives, and proposed technology.²

In sum, we are prepared to work with the State and Regional Board to develop more appropriate standards for brackish groundwater treatment facilities, and we hope to find a timely solution to our dilemma so that facilities like the GRF can increase their production of potable water from local groundwater sources and decrease our dependence on imported water.

Sincerely,

Betty Burnett

Assistant General Manager/District Counsel

BB:jb

¹ Note that brine discharge standards have implications reaching far beyond these facilities. According to the United States Department of the Interior, Bureau of Reclamation, there are approximately 37 brackish groundwater treatment/cleanup facilities in Southern California, most of which are ≤ 10 MGD. The current brackish groundwater treatment capacity in the region is about 90 MGD; roughly equivalent to meeting the potable water needs of 1 million people (the region has ~ 17.5 million people). By 2025 the Bureau of Reclamation projects that there will be 255 MGD of brackish groundwater production capacity in Southern California, which will roughly meet 7.5% of potable water needs. See U.S. Department of the Interior Bureau of Reclamation, Reclamation: Managing Water in the West (Oct. 2009), Executive Summary at <http://www.usbr.gov/lc/socal/reports/brineconcentrate/1ExecSumm.pdf>.

² The Task Force also specifically recommended that, "[w]here feasible and appropriate, utilize wastewater outfalls for blending/discharging desalination brine/concentrate." See http://www.water.ca.gov/desalination/pud_pdf/Findings-Recommendations.pdf. Significantly, the Task Force's members included representatives from the Department of Water Resources, State Board, California Coastal Commission, Department of Health Services, the California Resources Agency, and the California Environmental Protection Agency, environmental groups including Surfrider and Monterey Bay National Marine Sanctuary, and local and regional water agencies.