

California Regional Water Quality Control Board

Los Angeles Region



Linda S. Adams
Secretary for
Environmental Protection

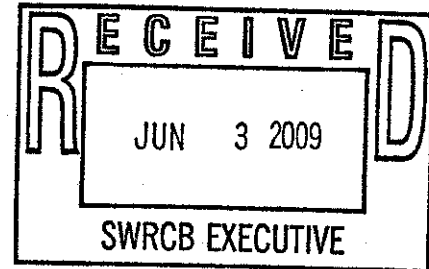
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Arnold Schwarzenegger
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June 3, 2009

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor [95814]
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Dear Ms. Townsend:

PETITION OF COUNTY OF LOS ANGELES AND LOS ANGELES COUNTY FLOOD CONTROL DISTRICT (WASTE DISCHARGE REQUIREMENTS ORDER NO. R4-2006-0074, AMENDING ORDER NO. 01-182 [NPDES CAS004001], FOR MUNICIPAL STORM WATER AND URBAN RUNOFF DISCHARGES IN LOS ANGELES COUNTY, EXCEPT FOR LONG BEACH), LOS ANGELES WATER BOARD: COMMENTS TO A-1780-JUNE 16, 2009 BOARD MEETING
SWRCB/OCC FILE A-1780

The Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) supports and appreciates the conclusions in the proposed order in this matter.

The Los Angeles Water Board, however, respectfully requests one addition to the proposed order. Specifically, we would request that a footnote be added to the proposed order concluding that Petitioners' claim that the Los Angeles Water Board's attorney inappropriately served in two capacities during the hearing, was untimely under Water Code section 13320, as it was raised for the first time in the Supplemental Statement of Points and Authorities. The Supplemental Statement was not filed until September 12, 2008, two years after the petition was filed, and we submit, the claim relating to separation of functions cannot fairly be said to have been included in the petition as filed on October 16, 2006.

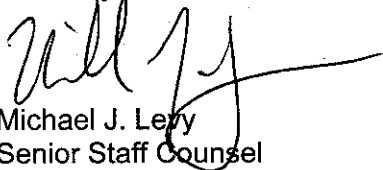
The Los Angeles Water Board submits that the issue of whether a party exhausted its administrative remedies in front of the State Water Resources Control Board (State Water Board) should be ruled upon in the first instance by the State Water Board, and that a Superior Court judge not be left to guess whether the standard *People v. Barry* footnote dismissing insubstantial claims implies that the State Water Board believed the Petitioners' claim was timely and insubstantial (and therefore preserved for judicial review), or untimely and therefore



insubstantial (and therefore not preserved for judicial review). Given the significance of the issue in light of recent Supreme Court jurisprudence, we believe it behooves the State Water Board to clarify its position for the Superior Court. Attached please find a proposed footnote for your consideration.

Thank you very much for your attention to this matter.

Sincerely,



Michael J. Levy
Senior Staff Counsel

Enclosure

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Interested Persons

Lyris List



PROPOSED MODIFICATION TO DRAFT ORDER

Insert new footnote 1, on the top of page two of the draft order, after the first two words: "...the petition.¹"

¹ On September 12, 2008, with their request to activate their petition from abeyance status, Petitioners submitted a Supplemental Statement of Points and Authorities, purportedly in support of their original petition, which was filed on October 16, 2006. The Supplemental Statement of Points and Authorities, however, is devoted to raising and arguing a new claim, that was not included in the original petition, that the attorney for the Los Angeles Water Board allegedly acted in dual capacities as both an advisor and advocate in the proceeding. The new claim is untimely, and is therefore dismissed. The Los Angeles Water Board's motion to strike is granted, and the Supplemental Statement is hereby stricken from the record. (Wat. C. § 13320; California Code of Regulations, tit. 23, section 2050.)