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File No. 61022.00004

April 29, 2016

VIA E-MAIL [PHILIP.WYELES@WATERBOARDS.CA.GOV]

Philip Wyeles
Assistant Chief Counsel
Office of Chief Counsel
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Re: SWRCB/OCC File A-2456(a) - (l); SWRCB/OCC File A-2254(a)

Dear Mr. Wyeles:

Best Best & Krieger represents the San Diego County Regional Airport Authority (“Airport Authority”) in connection with petition SWRCB/OCC File A-2254(a). The Airport Authority’s petition challenges the San Diego Regional Water Quality Control Board’s May 8, 2013 adoption of Order No. R9-2013-0001, commonly known as the San Diego Regional Permit. For purposes of this letter, the Airport Authority’s petition will be referred to as the “2013 Airport Authority Petition.” The 2013 Airport Authority Petition was placed in abeyance on December 10, 2015.

On March 15, 2016, the State Board accepted for review twelve petitions (SWRCB/OCC File A-2456(a) – (l))¹ challenging the San Diego Regional Board’s adoption of Order No. R9-2015-0100, which amended the San Diego Regional Permit. In accepting these petitions for review, the State Board removed certain petitions from abeyance, activated them, and consolidated all of the twelve petitions for review because they were deemed to be legally and factually related. However, the State Board’s action did not address other petitions challenging the San Diego Regional Permit, including the 2013 Airport Authority Petition.

The 2013 Airport Authority Petition raises an issue regarding the San Diego Regional Permit that is unique. Specifically, the 2013 Airport Authority Petition asserts that certain requirements of the San Diego Regional Permit are invalid as applied to the Airport Authority because they require expenditures that violate the unique federal laws applicable to “revenue diversions” of airport revenue.

¹ Because this letter concerns issues raised in both SWRCB/OCC File A-2456(a) – (l) and SWRCB/OCC File A-2254(a) – (p), I have copied this letter to the service lists for both matters.
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It may be that the State Board could use the twelve petitions in SWRCB/OCC File No. A-2456(a) – (l) as a vehicle to resolve and/or dismiss issues raised in other petitions challenging the San Diego Regional Permit, including the 2013 Airport Authority Petition. Please be advised that the Airport Authority objects to such an approach as applied to its petition. The State Board should either formally take up the “revenue diversion” issue raised by the Airport Authority in connection with the pending twelve petitions or confirm that the 2013 Airport Authority Petition will remain in abeyance and will not be addressed in the pending action.

We would appreciate a response from the Office of Chief Counsel on this issue.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'SHAWN HAGERTY'.

Shawn Hagerty
of BEST BEST & KRIEGER LLP

cc: Bret Lobner (via email)
Lee Kaminetz (via email)