CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

ORDER NO. R9-2009-0090

AN ORDER RESCINDING
ORDER NO. R9-2001-0237, NPDES NO. CA0109355,
WASTE DISCHARGE REQUIREMENTS
FOR HUBBS-SEAWORLD RESEARCH INSTITUTE
LEON RAYMOND HUBBARD, JR., MARINE FISH HATCHERY
AGUA HEDIONDA LAGOON
SAN DIEGO COUNTY

The California Regional Water Quality Control Board, San Diego Region, (hereinafter Regional Water Board), finds that:

1. On October 10, 2001, the Regional Board adopted Order No. 2001-237, NPDES No. CA0109355, *Waste Discharge Requirements for Hubbs-SeaWorld Research Institute, Leon Hubbard, Jr. Marine Fish Hatchery, Agua Hedionda Lagoon, San Diego County*. Order No. 2001-237 established National Pollutant Discharge Elimination System (NPDES) permit regulations for a discharge of up to 1.73 million gallons per day (MGD) of seawater from the Hubbs-SeaWorld Marine Fish Hatchery (Facility) to Agua Hedionda Lagoon. The Facility produces native marine species including white sea bass, California halibut, and giant sea bass.

2. The Discharger filed a report of waste discharge in application for reissuance of the Order and NPDES permit on April 13, 2006, which was deemed complete on September 26, 2006. Order No. 2001-237 expired on October 10, 2006 but was administratively extended to remain in effect upon its expiration in accordance with applicable state and federal regulations.

3. Title 40 Code of Federal Regulations (CFR), Part 122.24 and Appendix C of 40 CFR 122 contain the definition and criteria for determining whether an aquatic animal production facility is a point source discharge subject to the NPDES permit program. Federal courts have recently issued rulings that aquatic facilities, which do not meet the definition of a CAAP facility in 40 CFR 122.24, are not point source discharges and therefore are not required to obtain NPDES permit coverage. Most recently, on October 19, 2009, the United States District Court for the Western District of Washington issued a decision upholding the position that where a concentrated aquatic animal production facility falls below certain thresholds, they will not be considered "point sources" subject to NPDES permit requirements.

4. A hatchery, fish farm, or other facility is a concentrated aquatic animal production (CAAP) facility if it contains, grows, or holds aquatic animals in either of two categories, cold water species or warm water species, as specified in 40 CFR 122 Appendix C, Sections (a) and (b). The warm water species category includes facilities where animals are produced in ponds, raceways, or other similar structures that discharge at least 30 days per year, but does not include facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year [40 CFR 122 Appendix C, Section (b) (2)].

5. According to the April 13, 2006 NPDES permit reissuance application submitted by Hubbs-SeaWorld Research Institute, the Facility produces up to 26,510 pounds of warm water species and uses a maximum of 2,488 total pounds of food during the month of maximum feeding (summer). Thus, the Facility falls below the aquatic animal production and feeding thresholds described in 40 CFR 122.24 and Appendix C of 40 CFR 122 for point sources. Furthermore, the Regional Water Board has determined that the Hubbs Marine Fish Hatchery facility is not a significant contributor of pollution to waters of the U.S. and does not warrant a case-by-case designation as a CAAP point source discharge pursuant to 40 CFR 122.24(c). Based on these considerations the Facility does not meet the definition of a CAAP facility, and is not required to obtain NPDES permit coverage.

6. The Regional Water Board has notified all known interested parties of its intent to rescind Order No. R9-2001-0237.

7. This action to rescind an NPDES permit is exempt from the provisions of CEQA, Public Resources Code sections 2110-21177 pursuant to California Water Code section 13389.

IT IS HEREBY ORDERED that Order No. R9-2001-0237 is rescinded.

I, David W. Gibson, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Diego Region, on December 16, 2009.

DAVID W. GIBSON
Executive Officer