



California Regional Water Quality Control Board San Diego Region



Linda S. Adams
Secretary for
Environmental Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties
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Arnold Schwarzenegger
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4353
(858) 467-2952 • Fax (858) 571-6972
<http://www.waterboards.ca.gov/sandiego>

June 27, 2008

CERTIFIED-RETURN RECEIPT REQUESTED
7007 3020 0001 0040 7256

Mr. Tom Rosales
General Manager
South Orange County Wastewater Authority
34156 Del Obispo Street
Dana Point, California 92629

Dear Mr. Rosales:

COMPLAINT NO. R9-2008-0064 FOR ADMINISTRATIVE CIVIL LIABILITY FOR MANDATORY MINIMUM PENALTIES UNDER WATER CODE SECTION 13385, VIOLATION OF ORDER NO. R9-2006-0054, NPDES NO. CA0107417

Enclosed is Complaint No. R9-2008-0064, Administrative Civil Liability with Mandatory Minimum Penalties (MMPs) to South Orange County Wastewater Authority (SOCWA). The Complaint recommends the California Regional Water Quality Control Board, San Diego Region (Regional Board), impose a civil liability of \$111,000 for violations of effluent limitations established by Order No. R9-2006-0054, NPDES No. CA0107417, *Waste Discharge Requirements and NPDES Permit for the South Orange County Wastewater Authority Discharge to the Pacific Ocean via San Juan Creek Ocean Outfall*. Violations included: total suspended solids (TSS), settleable solids (SS), carbonaceous biochemical oxygen demand (CBOD), chlorine residual, and turbidity effluent limitations reported to the Regional Board in monitoring reports submitted by SOCWA to comply with Order No. 2006-0054. These violations are subject to \$3,000 Mandatory Minimum Penalty per violation pursuant to the Water Code Section 13385(h) and (i).

If you intend to waive your right to a hearing before the Regional Board, you must sign and return the enclosed waiver form with a \$111,000 cashier's check made out to the "State Water Resources Control Board," by 5:00 p.m. **Monday July 28, 2008**. Waiver of the hearing constitutes admission of the validity of the allegation of violations in the Complaint and acceptance of the assessment of civil liability in the amount of \$111,000. In addition, you must publish the enclosed public notice in the Orange County Register newspaper no later than **August 4, 2008**. Verification that the notice has been published must be submitted to the Regional Board no later than **August 11, 2008**.

California Environmental Protection Agency

Mr. Tom Rosales
SOCWA
Complaint for MMPs No. R9-2008-0064

- 2 -

June 27, 2008

Public Hearing

If you do not elect to waive your right to a public hearing, a hearing is tentatively scheduled to be held at the Regional Board meeting on **September 10, 2008**. In order for the Regional Board to fully consider any argument on your behalf, you should submit twenty copies of all documents, including exhibits you intend to provide the Regional Board by 5:00 p.m. **Friday, August 22, 2008**. Copies of material submitted will be forwarded to the Regional Board Members. An agenda for the hearing will be mailed to you not less than ten days before the hearing date.

Please contact Joann Cofrancesco at (858) 637-5589 or via e-mail at jcofrancesco@waterboards.ca.gov if you have any questions concerning this matter.

Respectfully,



Michael P. McCann
Assistant Executive Officer

MPM:bdk:mja:jlc

Enclosures: 1. Complaint No. R9-2008-0064
2. Waiver of Public Hearing Form
3. Public Hearing Notice

Copies with enclosures [via email only]:

1. Ken Greenberg, U.S. EPA, Region 9, greenberg.ken@epa.gov

Regulatory Measure ID: 345160

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

IN THE MATTER OF:

SOUTH ORANGE COUNTY)	
WASTEWATER AUTHORITY)	
SAN JUAN CREEK OCEAN OUTFALL)	
)	
VIOLATIONS OF EFFLUENT LIMITATIONS)	COMPLAINT NO. R9-2008-0064
IN ORDER NO. R9-2006-00054, NPDES NO)	FOR
CA0107417, WASTE DISCHARGE)	ADMINISTRATIVE CIVIL LIABILITY
REQUIREMENTS AND NPDES PERMIT)	
FOR THE SOUTH ORANGE COUNTY)	WITH
WASTEWATER AUTHORITY DISCHARGE)	
TO THE PACIFIC OCEAN VIA SAN JUAN)	MANDATORY MINIMUM PENALTIES
CREEK OCEAN OUTFALL ORANGE)	
COUNTY, CALIFORNIA)	
)	
)	June 6, 2008
)	
Place ID (facility name):)	
257518 (Chiquita WRP))	
255218(San Clemente WRP))	
650609 (RO Water Treatment Plant))	
704670 (SCWD GW Recovery Facility))	
<u>WDID NO. 9 000000175</u>)	

SOUTH ORANGE COUNTY WASTEWATER AUTHORITY, SAN JUAN CREEK OCEAN OUTFALL IS HEREBY GIVEN NOTICE THAT:

1. South Orange County Wastewater Authority (SOCWA) owns and holds the NPDES permit for the San Juan Creek Ocean Outfall (Order No. R9-2006-0054, NPDES No. CA0107417) on behalf of all its member agencies. The Chiquita Water Reclamation Plant (WRP), City of San Clemente WRP, City of San Juan Capistrano Reverse Osmosis (RO) Water Treatment Plant, and South Coast Water District (SCWD) Groundwater Recovery Facility discharged to the San Juan Creek Ocean Outfall under Order No. R9-2006-0054.
2. SOCWA is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (Regional Board) may impose civil liability pursuant to §13385 of the California Water Code (CWC). The violations alleged herein include violations of effluent limitations in waste discharge requirements for discharges of pollutants from point sources to water of the United States. The Regional Board must impose mandatory minimum penalties (MMP) for the violations alleged in this complaint.

3. Treated effluent is discharged into the Pacific Ocean, from the Chiquita WRP, City of San Clemente WRP, City of San Juan Capistrano RO Water Treatment Plant, and SCWD Groundwater Recovery Facility, that is subject to numeric effluent limitations, contained in Order No. R9-2006-0054, NPDES Permit No. CA0107417, *Waste Discharge Requirement for the South Orange County Wastewater Authority, Discharge to the Pacific Ocean Via the San Juan Creek Ocean Outfall, Orange County.*
4. Water Code Section 13385 requires that a MMP of \$3,000 be imposed for each serious violation. Water Code Section 13385 subdivision (h)(2) defines a 'serious' violation, as any waste discharge that violates an effluent limitation contained in waste discharge requirements (applying to surface water discharges) for a Group I pollutant by 40 percent or more or for a Group II pollutant by 20 percent or more.
5. Water Code Section 13385 subdivision (i) also requires that a MMP of \$3,000 be imposed for each violation (i.e. incomplete reports and any waste discharge that violates an effluent limitation contained in waste discharge requirements and applies to surface water discharges) beginning with the fourth violations in any six-month period.
6. The Regional Board has discretionary authority to impose liability for every violation of an NPDES permit (CWC Section 13385(a)(2)). While CWC Sections 13385(h) and (i) require certain minimum penalties, CWC Section 13385(c) gives the Regional Board authority to impose liability as high as \$10,000 per day for those violations and \$10 per gallon per gallon.¹ CWC Section 13385(e) provides factors to be considered by the Regional Board when determining the amount of any liability imposed under CWC Sections 13385(a) and 13385(c).²

¹ CWC Section 13385(c) states: Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following: (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs. (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

² Pursuant to CWC Section 13385(e): In determining the amount of any liability imposed under CWC Sections 13385(a) and (c), the Regional Board must take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

ALLEGATIONS

7. SOCWA reported effluent sampling results to the Regional Board pursuant to the Order No. R9-2006-0054's Monitoring and Reporting schedule. Between December 2006 and February 2008, SOCWA reported violations of effluent limitations for total suspended solids (TSS), turbidity, settleable solids (SS), chlorine residual, and carbonaceous biochemical oxygen demand (CBOD₅) (as described in Table 1 below).

Month of Violation	Facility	Constituents Exceeding Effluent Limits
December 2006	Chiquita WRP	TSS, SS
January 2007	Chiquita WRP	SS, CBOD ₅ , TSS, chlorine residual
March 2007	RO Water Treatment Plant	TSS
April 2007	San Clemente WRP	SS
July 2007	RO Water Treatment Plant	TSS
August 2007	SCWD Groundwater Recovery Facility	TSS, turbidity
September 2007	SCWD Groundwater Recovery Facility	Turbidity, SS
October 2007	SCWD Groundwater Recovery Facility	TSS
November 2007	San Clemente WRP	SS
November 2007	SCWD Groundwater Recovery Facility	TSS, turbidity
December 2007	SCWD Groundwater Recovery Facility	TSS, turbidity
March 2008	SCWD Groundwater Recovery Facility	TSS, turbidity

PROPOSED CIVIL LIABILITY

8. Maximum Potential Liability. The maximum liability for violations cited in this complaint, pursuant to CWC Section 13385(c)(1), can be calculated based on:
 - a. CWC Section 13385(c)(1): Liability can be assessed for ten thousand dollars (\$10,000) per day of violation, resulting in the maximum liability of four million one hundred ninety thousand dollars (\$4,190,000) for effluent violations that occurred on 419 days (summarized in Table 2); and/or
 - b. CWC Section 13385(c)(2): Liability can be assessed for ten dollars per gallon discharged, resulting in the maximum liability of three billion seven hundred seventy one million six hundred thirty thousand dollars (\$3,771,630,000), for three hundred seventy seven million one hundred sixty three thousand (377,163,000) gallons of wastewater discharged to the Pacific Ocean during the period of violation (summarized in Table 3).
9. Pursuant to CWC Sections 13385 (h) and (i) of the CWC, mandatory minimum penalty in the amount of one hundred eleven thousand (\$111,000) is recommended for 37 serious and non-serious violations of effluent limitations. (\$3000 for each 37 violations, summarized in Table 4). Discretionary civil liability above the mandatory minimum for the violations alleged in this Complaint is not recommended.

Dated this 27 day of June 2008

BY THE EXECUTIVE OFFICER



MICHAEL McCANN
Assistant Executive Officer

Signed pursuant to the authority
delegated by the Executive
Officer to the Assistant Executive
Officer

Attachment: Table 2 Summary of Days Subject to Liability
Table 3 Summary of Volume of Wastewater Subject to Liability
Table 4. Summary of Violations Subject to Mandatory Minimum Penalties

CIWQS Entries

Regulatory Measure ID: 309059 (Order No. R9-2006-0054) and 345160 (ACL):
Party ID: 41388 (SOCWA)

Chiquita WRP

Place ID: 257518

Violation IDs: 494046, 494048, 494049, 494060, 494063, 494067, 494057, 494073, and
494074

San Clemente WRP

Place ID: 255218

Violation IDs: 596262, 596263, 712817, 712818; 715220, 715228, and 715243

RO Water Treatment Plant

Place ID: 650609

Violation IDs: 541867 and 689414

SCWD GW Recovery Facility

Place ID: 704670

Violation IDs: 689715, 689220, 689237, 689267, 689282, 689307, 689310, 698165, 715281,
715317, 715322, 754137, 724195, 724233, 724234, 724241, 755310, 755317,
and 755198

Table 2 - Summary of Days Subject to Liability
 Complaint No. R9-2008-0064
 San Juan Creek Ocean Outfall

Violation Date/Period	Number of Days
12/1/06-12/31/06	31
1/1/06-1/15/07 1/24/07 1/26/07-1/31/06	22
3/1/07-3/5/07 3/9/07-3/31/07	28
4/1/07-4/7/07	7
7/1/07 - 7/31/07	31
8/1/07-8/31/07	31
9/1/07-9/13/07 9/17/07-9/30/07	27
10/1/07-10/2/07 10/4/07-10/6/07 10/8/07 10/10/08 10/12/07 10/25/07-10/26/07 10/29/07-10/31/07	13
11/1/07-11/30/07	30
12/3/07-12/7/07 12/10/07-12/11/07 12/14/07 12/17/07-12/21/07 12/26/07-12/28/07	16
3/3/08-3/7/08 3/21/08-3/31/08	16
Total Days of Violation	419
\$10,000 per day of Violation	\$4,190,000

Table 3 - Summary of Volume of Wastewater Subject to Liability
 Complaint No. R9-2008-0064
 San Juan Creek Ocean Outfall

Violation Date/Period	Monthly Average Flow (gallons per day)	Number of Days	Total flow (gallons)	\$10 per gallon of violation
Chiquita WRP				
12/1/06-12/31/06	2,810,000	31	87,110,000	\$871,100,000
1/1/06-1/15/07 1/24/07 1/26/07-1/31/06	1,770,000	22	38,940,000	\$389,400,000
San Clemente WRP				
4/1/07-4/7/07	3,530,000	7	24,710,000	\$247,100,000
11/1/07-11/30/07	3,650,000	30	109,500,000	\$1,095,000,000
RO Water Treatment Plant				
3/1/07-3/5/07 3/9/07-3/31/07	752,000	28	21,056,000	\$210,560,000
7/1/07 - 7/31/07	481,000	31	14,911,000	\$149,110,000
Groundwater Recovery Facility				
8/1/07-8/31/07	1,140,000	31	35,340,000	\$353,400,000
9/1/07-9/13/07 9/17/07-9/30/07	920,000	27	24,840,000	\$248,400,000
10/1/07-10/2/07 10/4/07-10/6/07 10/8/07 10/10/08 10/12/07 10/25/07-10/26/07 10/29/07-10/31/07	270,000	13	3,510,000	\$35,100,000
11/1/07-11/2/07 11/5/07-11/9/07 11/13/07-11/16/07 11/19/07 11/21/07 11/26/07 11/28/07	690,000	15	10,350,000	\$103,500,000
12/3/07-12/7/07 12/10/07-12/11/07 12/14/07 12/17/07-12/21/07 12/26/07-12/28/07	210,000	16	3,360,000	\$33,600,000
3/3/08-3/7/08 3/21/08-3/31/08	221,000	16	3,536,000	\$35,360,000
Total			377,163,000	\$3,771,630,000

Table 4 - Summary of Effluent Violations Subject to Mandatory Minimum Penalties
 Complaint No. R9-2008-0064
 San Juan Creek Ocean Outfall

Violation Date/Period	Violation ID	Constituent	Effluent Limitation	Unit	Permitted Limit	Reported Value	Serious Violation	Mandatory Minimum Penalty	Notes
Chiquita WRP									
12/24/06-12/30/06	494042	TSS	average weekly	mg/L	45.0	59.6	No	\$0	
12/1/06-12/31/06	494044	TSS	average monthly	mg/L	30.0	32.1	No	\$0	
12/26/2006	494046	SS	instantaneous max	mg/L	3.0	15.0	Yes	\$3,000	
12/24/06-12/30/06	494048	SS	average weekly	mg/L	1.5	<3.2	Yes	\$3,000	
12/1/06-12/31/06	494049	SS	average monthly	mg/L	1.0	<1.3	No	\$3,000	5th violation within 6 month period
1/1/2007	494060	SS	instantaneous max	mg/L	3.0	8.0	Yes	\$3,000	
12/31/06-1/6/07	494063	SS	average weekly	mg/L	1.5	2.1	No	\$3,000	7th violation within 6 month period
1/1/06-1/15/07, 1/24/07, 1/26/07-1/31/06	494067	SS	average monthly	mg/L	1.0	<1.1	No	\$3,000	8th violation within 6 month period
12/31/06-1/6/07	494057	CBOD ₅	average weekly	mg/L	40.0	>39	Yes	\$3,000	
12/31/06-1/6/07	494073	TSS	failed to report	n/a	n/a	n/a	No	\$3,000	10th violation within 6 month period
1/1/2007	494074	Chlorine Residual	max daily	ug/L	808.0	5500	Yes	\$3,000	
San Clemente WRP									
4/6/2007	596262	SS	instantaneous max	mg/L	3.0	11.0	Yes	\$3,000	
4/1/07-4/7/07	596263	SS	average weekly	mg/L	1.5	<2.3	Yes	\$3,000	
11/15/2007	712814	SS	instantaneous max	mg/L	3.0	3.5	No	\$0	
11/16/2007	712817	SS	instantaneous max	mg/L	3.0	6.5	Yes	\$3,000	
11/19/2007	712818	SS	instantaneous max	mg/L	3.0	12.5	Yes	\$3,000	
11/11/07-11/17/07	715220	SS	average weekly	mg/L	1.5	<2.7	Yes	\$3,000	
11/18/07-11/24/07	715228	SS	average weekly	mg/L	1.5	<3.5	Yes	\$3,000	
11/1/07-11/30/07	715243	SS	average monthly	mg/L	1.0	<1.5	Yes	\$3,000	
RO Water Treatment Plant									
3/1/07-3/5/07, 3/9/07-3/31/07	541867	TSS	average monthly	mg/L	60	98.0	Yes	\$3,000	
7/1/07 - 7/31/07	689414	TSS	average monthly	mg/L	60	98.0	Yes	\$3,000	
Groundwater Recovery Facility									
8/1/07-8/31/07	689715	TSS	average monthly	mg/L	60	98.0	Yes	\$3,000	
8/23/2007	660728	turbidity	instantaneous max	NTU	225	260	No	\$0	
8/23/2007	689220	turbidity	average weekly	NTU	100	260	Yes	\$3,000	
8/1/07-8/31/07	389237	turbidity	average monthly	NTU	75	260	Yes	\$3,000	
9/24/07-9/30/07	689267	turbidity	average weekly	NTU	100	173	Yes	\$3,000	
9/1/07-9/13/07, 9/17/07-9/30/07	689282	turbidity	average monthly	NTU	75	173	Yes	\$3,000	
9/27/2007	689307	SS	instantaneous max	mg/L	3.0	3.2	No	\$3,000	6th violation within 6 month period
9/1/07-9/13/07, 9/17/07-9/30/07	389310	SS	average monthly	mg/L	1.0	1.1	No	\$3,000	7th violation within 6 month period
10/1/07-10/2/07, 10/4/07-10/6/07, 10/8/07, 10/10/08, 10/12/07, 10/25/07-10/26/07, 10/29/07-10/31/07	698165	TSS	average monthly	mg/L	60	71.0	No	\$3,000	8th violation within 6 month period
11/1/07-11/2/07, 11/5/07-11/9/07, 11/13/07-11/16/07, 11/19/07, 11/21/07, 11/26/07, 11/28/07	715281	TSS	average monthly	mg/L	60	65.0	No	\$3,000	9th violation within 6 month period
11/21/2007	715317	turbidity	instantaneous max	NTU	225	273	No	\$3,000	10th violation within 6 month period
11/15/07-11/21/07	715322	turbidity	average weekly	NTU	100	273	Yes	\$3,000	
11/1/07-11/2/07, 11/5/07-11/9/07, 11/13/07-11/16/07, 11/19/07, 11/21/07, 11/26/07, 11/28/07	754137	turbidity	average monthly	NTU	75	120	Yes	\$3,000	
12/3/07-12/7/07, 12/10/07-12/11/07, 12/14/07, 12/17/07-12/21/07, 12/26/07-12/28/07	724195	TSS	average monthly	mg/L	60	114.0	Yes	\$3,000	
12/21/2007	724233	turbidity	instantaneous max	NTU	225	393	Yes	\$3,000	
12/17/07-12/21/07	724234	turbidity	average weekly	NTU	100	393	Yes	\$3,000	
12/3/07-12/7/07, 12/10/07-12/11/07, 12/14/07, 12/17/07-12/21/07, 12/26/07-12/28/07	724241	turbidity	average monthly	NTU	75	393	Yes	\$3,000	
3/23/08-3/29/08	755310	turbidity	average weekly	NTU	100	177.1	Yes	\$3,000	
3/3/08-3/7/08, 3/21/08-3/31/08	755317	turbidity	average monthly	NTU	75	177.1	Yes	\$3,000	
3/3/08-3/7/08, 3/21/08-3/31/08	755198	TSS	average monthly	mg/L	60	85.9	Yes	\$3,000	
TOTAL MMP								\$111,000	

i CWC Section 13385(h) requires that an MMP of \$3,000 be imposed for each serious violation. Serious violations are based on:
 1. Total suspended solids (TSS), turbidity, settleable solids (SS), and carbonaceous biochemical oxygen demand (CBOD₅) are Group I pollutants.
 A serious violation occurs when the discharge exceeds Group I effluent limitations by 40 percent or more; and
 2. Chlorine residual is a Group II pollutant.
 A serious violation occurs when the discharge exceeds Group II effluent limitations by 20 percent or more

ii In addition to MMPs for serious violations, the occurrence of four or more effluent limitation violations in any six-month period requires the assessment of a \$3,000 MMP for the fourth violation and each subsequent violation during any six-month period (CWC 13385(i)).



California Regional Water Quality Control Board San Diego Region



Linda S. Adams
*Secretary for Environmental
Protection*

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WAIVER OF RIGHT TO A PUBLIC HEARING

Mr. Tom Rosales
General Manager
South Orange County Wastewater
Authority
34156 Del Obispo Street
Dana Point, California 92629

Complaint No. R9-2008-0064
For
Administrative Civil Liability

\$111,000

By signing below, I agree to waive South Orange County Wastewater Authority's right to a public hearing before the California Regional Water Quality Control Board, San Diego Region with regards to the violations alleged in the above referenced Complaint and to remit payment for the civil liability imposed. I understand that I am authorized to give up South Orange County Wastewater Authority's right to be heard, and to argue against the allegations made by the Assistant Executive Officer in the Complaint, and against the imposition of, or the amount of, civil liability proposed. I have enclosed a cashier's check or money order made payable to the State Water Resources Control Board for the civil liability imposed.

Signature

Title

Date

Print your name

Send this signed form to:

California Regional Water Quality Control Board – San Diego Region
ATTN: Ms. Joann Cofrancesco, Compliance Assurance Unit
9174 Sky Park Court, Suite 100
San Diego, CA 92123

California Environmental Protection Agency

NOTICE OF WAIVER OF PUBLIC HEARING

**California Regional Water Quality Control Board, San Diego Region
Issuance of Administrative Civil Liability (ACL) Order
Against
South Orange County Wastewater Authority
San Juan Creek Ocean Outfall
Orange County, California**

On June 27, 2008, the California Regional Water Quality Control Board, San Diego Region (Regional Board) issued Complaint No. R9-2008-0064 to the South Orange County Wastewater Authority (Discharger) in the amount of \$111,000 for alleged violations of Order No. R9-2006-0054, *Waste Discharge Requirement for the South Orange County Wastewater Authority, Discharge to the Pacific Ocean Via the San Juan Creek Ocean Outfall, Orange County*. The Discharger has elected to waive their right to a public hearing in this matter. Waiver of the hearing constitutes admission of the validity of the allegation of violations in the Complaint and acceptance of the assessment of civil liability in the amount of \$111,000 as set forth in the Complaint. The Regional Board will consider accepting Discharger's waiver at its September 10, 2008 meeting.

Written comments regarding the allegations contained in Complaint No. R9-2008-0064, and/or acceptance of the waiver, will be accepted through Monday, August 25, 2008.

The Regional Board's September 10, 2008 meeting will be at the Rancho California Water District, District Board Room, 42135 Winchester Road, Temecula, California. The meeting will begin at 9:00 a.m. Oral comments for this item may be made during the meeting upon receipt of a request to speak slip. For more information regarding this matter please contact Ms. Joann Cofrancesco at (858) 637-5589, or at JCofrancesco@waterboards.ca.gov or visit the Regional Board's web site at www.waterboards.ca.gov/sandiego.

MICHAEL P. McCANN
Assistant Executive Officer