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August 26, 2008

Frank T. Melbourn, P.E.
Water Resource Control Engineer
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123

VIA ELECTRONIC MAIL

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Item No. 9 Doc. No. 18

**Re: Buena Vista Lagoon Sewage Spill ACL Complaint Against Vista and Carlsbad
Agenda Item No. 9, September 10, 2007
Comments of San Diego Coastkeeper and Surfrider Foundation, SD Chapter**

Dear Mr. Melbourn:

On behalf of San Diego Coastkeeper and the Surfrider Foundation (collectively, "environmental groups"), San Diego Chapter, Coast Law Group LLP submits this letter **in opposition** to the proposed settlement of the Regional Water Quality Control Board's Administrative Civil Liability Complaint for the 7.3 million gallon sewage spill into the Buena Vista Lagoon between March 31 and April 3, 2007.

To be perfectly clear, the environmental groups believe the total fine of \$1,095,000 is a sufficient penalty given the factual circumstances surrounding the spill. Our opposition stems from the State Board staff's reallocation of a portion of these funds to the State despite that they were intended for an important Supplemental Environmental Project (SEP) negotiated between the Cities, environmental groups, and resource agencies.

You will recall, when this matter was first brought to the Board for approval of an ACL settlement, the environmental groups objected on grounds that the facts surrounding the spill deserved greater attention by the Board, and that the matter was more appropriately heard in a full public hearing. This would enable the Board member to become better educated regarding the facts that are relevant to assessment of culpability in a large natural resource disaster such as this, which would benefit them in future ACL considerations. The Board agreed with the environmental groups and expressly requested the matter return for a public hearing. We continue to believe the Board should hear the matter in significantly more detail than was presented previously.

The environmental groups further objected to the original settlement on grounds that the proposed ACL funds were to be spent for (1) penalty, (2) capital infrastructure in the area of the spill, and (3) Buena Vista Lagoon enhancement engineering studies, but that none of these allocations would have a direct, "on the ground" benefit to the Lagoon. Numerous Board members endorsed this position as they agreed to deny the proposed settlement.

Subsequently, Coast Law Group had in-person and telephonic meetings with representatives from the local environmental community, the Cities of Vista and Carlsbad, and the resource agencies (USFWS, CDFG). Over a number of weeks, all parties agreed to support an approximately \$395,000 Supplemental Environmental Project at the Buena Vista Ecological Reserve (also known as “the Sherman Property”), upstream and within the watershed of the affected Buena Vista Lagoon. See attached letter from Resource Agencies.

In exchange for this additional expenditure for the benefit of the impacted resource, the environmental groups agreed to withdraw opposition to the settlement, and to support continued allocation of \$500,000 to the Buena Vista Lagoon Enhancement engineering study SEP. We continue to believe this is an appropriate expenditure of ACL funds, **but only if the Buena Vista Ecological Reserve SEP is reinstated as part of the approval.**

Unfortunately, it appears State Water Board enforcement staff has taken it upon themselves to expropriate the negotiated additional SEP funds, though the rationale for doing so has not as of yet been made clear. To the extent an informal “SEP Policy” is identified as the rationale for such reallocation, the public deserves both to be informed as part of the proposed settlement why we are being denied our negotiated SEP, as well as to have the opportunity to convince the Board to appropriately reallocate the funds as we negotiated.

As such, we respectfully request that the settlement be denied as presented, and that the Buena Vista Ecological Reserve SEP be funded as part of any approval of the Cities’ liability for the spill.

Sincerely,

A handwritten signature in black ink that reads "Marco Gonzalez". The signature is written in a cursive, flowing style.

COAST LAW GROUP LLLP
Marco A. Gonzalez