

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

**TENTATIVE ORDER NO. R9-2009-0125
SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

**WILLIAM AND HEIDI DICKERSON
501 FIRST STREET, CORONADO
SAN DIEGO COUNTY
FILE NO. 05C-041**

**LARRY AND PENNY GUNNING
505 FIRST STREET, CORONADO
SAN DIEGO COUNTY**

PERRY AND PAPERHAUSEN, INC.

**AMENDED CLEANUP AND ABATEMENT ORDER
NOS. R9-2006-0101 AND R9-2006-0102
PETITION FOR WRIT OF MANDATE
WILLIAM G. DICKERSON, ET AL.**

V.

**THE SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD
CASE NO. 37-2007-00075848-CU-WM-CTL**

This Order is issued in reference to the filing of a petition for writ of mandate in the Superior Court of the State of California for the County of San Diego, entitled William G. Dickerson, et al. v. The San Diego Regional Water Quality Control Board, Case No. 37-2007-00075848-CU-WM-CTL (Action). The Action was filed by William and Heidi Dickerson, Larry and Penny Gunning, and Perry and Papenhausen, Inc. (Dischargers) to contest the California Regional Water Quality Control Board, San Diego Region's (Regional Board's) issuance of Amended Cleanup and Abatement Order Nos. R9-2006-0101 and R9-2006-0102 to the Dischargers.

The Regional Board has been presented with a proposed settlement of the Action developed during negotiations between Regional Board Prosecution Staff and Dischargers (Proposed Settlement) (Attachment 1). The Proposed Settlement represents a mutually agreed upon resolution of the Action whereby the Regional Board will rescind the CAOs in exchange for the Dischargers dismissing the Action with prejudice, paying the Regional Board \$67,000 in staff costs, and compliance with certain riprap replacement and eelgrass mitigation requirements pursuant to the settlement agreement between the Dischargers, the United States Army Corps of Engineers (Corps) and the San Diego Unified Port District (Port) (Federal Settlement Agreement) attached hereto and incorporated herein as Attachment 2. The Regional Board Prosecution Staff and the Dischargers recommend adoption of this Order to

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effectuate the Proposed Settlement. Having provided public notice of the Proposed Settlement and an opportunity for public comment, the Regional Board finds that:

1. William and Heidi Dickerson are, and at all relevant times have been, the owners of the real property commonly known as 501 First Street, Coronado, California. Larry and Penelope Gunning are, and at all relevant times have been, the owners of the real property commonly known as 505 First Street, Coronado, California. Perry & Papenhausen, Inc., is a corporation organized and existing under the laws of the state of California.
2. On July 28, 2005, the Regional Board issued Section 401 Water Quality Certification (File No. 05C:-041) and a Waiver of Waste Discharge Requirements (WDR) for Discharge of Dredged and/or Fill Materials to the Dickersons and Perry & Papenhausen, Inc., for proposed discharges of fill associated with the riprap removal and replacement at 501 First Street, Coronado. The project, as certified by the Regional Board, was to replace approximately 450 cubic yards of existing riprap with approximately 404 cubic yards of engineered riprap within the existing riprap footprint.
3. On or about May 1, 2006, Dischargers began removal of the existing riprap on the shoreline fronting 501 and 505 First Street using an excavator. On or about May 8, 2006, Dischargers excavated soils, natural sand and debris along the entire length of the northern property line for 501 and 505 First Street to accommodate the forms for the footing associated with the construction of an unauthorized seawall. On or about May 15, 2006, the Dischargers initiated construction of a four to five foot high stacked, mortarless, concrete block wall (seawall), and poured a concrete footing directly adjacent to the seawall within waters of the United States of America and the State of California.
4. On August 23, 2006, in response to the Dischargers' removal of riprap and construction of a seawall in front of 501 and 505 First Street, Coronado, the Regional Board issued Cleanup and Abatement Order (CAO) No. R9-2006-0101 to the Dickersons and Perry & Papenhausen, Inc., for discharges from 501 First Street, and CAO No. R9-2006-0102 to the Gunnings and Perry & Papenhausen, Inc. for discharges from 505 First Street. The Regional Board issued Addendum No. 1 to CAOs R9-2006-0101 and R9-2006-0102 on October 13, 2006.
5. On May 10, 2007, the Regional Board issued Addendum No. 2 to the CAOs to the Dischargers. The addenda were issued to clarify the appropriate jurisdictional definition for the discharge of fill associated with the removal of existing riprap and the unauthorized construction of the seawall and footing in San Diego Bay, and to update information gathered during the investigation of the matter. At the request of the Dischargers, a public hearing to contest the

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issuance of the Amended CAOs was held on June 13, 2007. At the conclusion of the public hearing, the Regional Board unanimously affirmed the issuance of the Amended CAOs and found that the Dischargers' riprap removal and construction of a seawall and footing resulted in the unauthorized discharge of waste and threatened to cause conditions of pollution in violation of the Clean Water Act and provision of the Water Quality Control Plan for the San Diego Basin (Basin Plan) adopted by the Regional Board.

6. On September 27, 2007, Dischargers filed the Action alleging that the Regional Board proceeded in excess of its jurisdiction and abused its discretion in issuing the CAOs.
7. On August 19, 2008, the Dickersons, Gunnings, the Corps and the Port filed the Federal Settlement Agreement with the United States District Court for the Southern District of California to address (1) the Dischargers' removal of riprap and erection of the seawall and (2) Discharger's allegations against federal agencies and the Port that nearby dredging of San Diego Bay is causing erosion of the Dickerson and Gunning's properties. Among other things, the Federal Settlement Agreement requires the Dickersons and Gunnings to replace riprap and mitigate eelgrass damage. Under the terms of the Federal Settlement Agreement, the Dickersons and Gunnings agreed to remove the portion of the seawall's footings that lie within both the Port and Clean Water Act jurisdiction. The Dickersons and Gunnings also agreed to replace riprap removed from the beach and to mitigate the detrimental impacts caused by their activities to the eelgrass. Mitigation will be in the form of eelgrass planting at a 1:1.2 ratio in the impacted area. Finally, the Federal Settlement Agreement requires the Dickersons and Gunnings to pay \$25,000 to the Port and a civil penalty of \$250,000 to the Corps.
8. A notice of the Proposed Settlement was published on the Regional Board's website on July 2, 2009, and distributed to known interested parties notifying the public of the review period and soliciting public comments on the terms of the Proposed Settlement. The Proposed Settlement provides for the full and final resolution of the Action.
9. Issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) pursuant to section 15321(a)(2), Chapter 3, Title 14 of the California Code of Regulations. This action is also exempt from the provisions of CEQA in accordance with section 15061(b)(3) of Chapter 3, Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

IT IS HEREBY ORDERED that:

1. The Proposed Settlement (Attachment 1) is approved.
2. The Executive Officer is authorized to refer this matter to the Office of the Attorney General for enforcement if the Dischargers fail to comply with the Proposed Settlement.

I, John H. Robertus, Executive Officer, do hereby certify that 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 August 12, 2009.

Tentative

JOHN H. ROBERTUS
Executive Officer