

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

RESOLUTION NO. 2001-45

A RESOLUTION ESTABLISHING THE REMEDIATION AGREEMENT (FOUNDED
ON THE POLANCO REDEVELOPMENT ACT, H&SC §33459, et seq)
FOR
CAMPBELL SHIPYARD
SAN DIEGO COUNTY

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

1. Cleanup and Abatement Order No. 95-21 was issued by the Executive Officer on May 24, 1995 and was adopted by the Regional Board on June 8, 1995. CAO No. 95-21 names Campbell Industries and Marine Construction and Design Company (MARCO) as responsible parties for compliance with the order. CAO No. 95-21 establishes soil, groundwater, and marine sediment cleanup levels for the Campbell Shipyard site.
2. On February 29, 1996, and November 12, 1997 the Executive Officer issued Addenda Nos. 1 and 2 to CAO No. 95-21, respectively, to modify compliance dates.
3. By letter from the Port of San Diego to Campbell Industries dated August 8, 2000, the Port of San Diego elected to perform all remaining cleanup and abatement activities and demolition actions required under the terms of the Lease Termination Agreement between the Port of San Diego and Campbell Industries.
4. To date, Campbell Industries and MARCO have not begun cleanup activities at the site. On August 24, 2000, the Executive Officer issued Notice of Violation No. 2000-137 for violation of CAO No. 95-21. The Notice of Violation asserts that Campbell Industries and MARCO have violated directives in CAO No. 95-21 that require complete cleanup of soil containing wastes, polluted groundwater, and bay sediment containing wastes at the Campbell Shipyard site by June 1, 2000.
5. On October 27, 2000, the Executive Officer issued Addendum No. 3 to CAO 95-21 naming the Port of San Diego as a responsible party. At the November 8, 2000 Regional Board meeting, the Regional Board agreed to hold Addendum No. 3 in abeyance, as requested by the Port of San Diego, until the February 2001 Regional Board meeting. Addendum No. 3 was held in abeyance in order to allow the Port of San Diego the opportunity to enter into the necessary agreements for use of the Polanco Redevelopment Act.

6. The RDA, a duly formed redevelopment agency of the City of San Diego, has approved a Joint Powers Agreement with the Port on January 23, 2001. The Board of Commissioners for the Port approved the same Joint Powers Agreement on January 30, 2001. By this means, as provided in the Government Code, the Port has been authorized to take action in the name of and using the powers of the RDA for the City of San Diego for the purpose of utilizing the Act's powers to effect cleanup and abatement of the Campbell Shipyard site.
7. On December 6, 2000 the Port submitted a work plan to the Regional Board for soil and groundwater cleanup at the site. Regional Board staff is currently reviewing this work plan. A work plan for marine sediment cleanup will be submitted to the Regional Board at a later date.
8. On January 24, 2001 the Port submitted a proposed Remediation Agreement founded on the Polanco Redevelopment Act between the Port, the Redevelopment Agency, and the Regional Board. The Remediation Agreement has gone through numerous revisions and has been finalized and approved by all parties causing the agreement to be executed.
9. The Port holds title to the Campbell Shipyard site, as trustee for the people of the state, and leased the site to Campbell Industries for use as an industrial shipyard. The Port is ultimately responsible for the reasonably foreseeable consequences of its action in leasing the Campbell Shipyard site to Campbell Industries and MARCO, including the obligation to clean up waste and abate conditions of pollution or threatened pollution associated with discharges or deposition of waste from ship construction, modification, repair, and maintenance activities at sites for which it is the trustee. The Port thereby may be deemed to have permitted the deposition of waste from Campbell's shipyard operations in soil and bay sediments from which the waste is likely to be, and has been, discharged to both surface water and ground water of the state, causing and threatening to cause conditions of pollution and nuisance.
10. The Regional Board, in a public meeting, heard and considered all comments pertaining to the proposed action.

TENTATIVE

POLANCO REDEVELOPMENT ACT

REMEDICATION AGREEMENT

This Remediation Agreement ("Agreement") is entered into between the California Regional Water Quality Control Board, San Diego Region ("Regional Board") and the San Diego Unified Port District ("Port"), as a result of the following facts and circumstances:

1.1 Wastes at the Campbell Shipyard site have been deposited in soil, groundwater, and San Diego Bay sediments from which they have been, are, and probably will be, discharged to groundwater and waters of San Diego Bay in violation of water quality objectives causing or contributing to conditions of pollution and nuisance. The Regional Board has issued Order No. 95-21 requiring Campbell Industries and Marine Construction and Design Company (MARCO) to cleanup wastes and abate existing and threatened pollution and nuisance. The Port, as trustee for the people of the state for the property which comprises the Campbell Shipyard site, leased the site to Campbell Industries for use as an industrial shipyard.

1.2 On October 27, 2000 the Regional Board issued Addendum No. 3 to CAO 95-21, adding the Port to the list of persons required to undertake cleanup and abatement at the Campbell Shipyard site. At the Regional Board's regularly noticed meeting on November 8, 2000, the Regional Board stayed the effect of Addendum No. 3 to CAO 95-21 to permit consideration of an alternative approach to cleanup and abatement by the Port using the redevelopment authority of the City of San Diego's Redevelopment Agency ("RDA") through a Joint Powers Agreement.

1.3 The Polanco Redevelopment Act ("Act" H&SC §33459, et seq), provides that a duly formed redevelopment agency authorized to use the Act "may take any actions that the agency determines are necessary and that are consistent with other state and federal laws to remedy or remove a release of hazardous substances on, under, or from property within a project area. . . ." [Health and Safety Code §33459.1(a)(1)].

1.4 The RDA, a duly formed redevelopment agency of the City of San Diego, has approved a Joint Powers Agreement with the Port on January 23, 2001. The Board of Commissioners for the Port approved the same Joint Powers Agreement on January 30, 2001. By this means, as provided in the Government Code, the Port has been authorized to take action in the name of and using the powers of the RDA for the City of San Diego for the purpose of utilizing the Act's powers to effect cleanup and abatement of the Campbell Shipyard site.

1.5 On December 6, 2000, the Port provided the Regional Board with a work plan for the Campbell Shipyard site that details an approach to cleanup of wastes deposited in soil and groundwater. The Port will submit a work plan detailing the proposed cleanup of wastes in marine sediments at a later date.

NOW THEREFORE BE IT RESOLVED THAT,

1. Addendum No. 3 to CAO 95-21 naming the Port of San Diego as a responsible party is rescinded.
2. The attached Remediation Agreement (founded on the Polanco Redevelopment Act, Health & Safety Code §33459, et seq.) between the Regional Board, the City of San Diego's Redevelopment Agency, and the Port of San Diego is applicable to the cleanup and abatement of waste in soil, groundwater, and marine sediment at the Campbell Shipyard site. The Regional Board authorizes the Executive Officer to sign the attached agreement.

I, John H. Robertus, 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 February 21, 2001.

TENTATIVE

JOHN H. ROBERTUS
Executive Officer

Attachment: Polanco Redevelopment Act – Remediation Agreement

TENTATIVE

NOW, THEREFORE, the Port and the Regional Board hereby agree as follows:

2.1 The Port shall prepare and submit to the Regional Board plans for cleanup of waste from industrial activity at the Campbell Shipyard site in upland soil, marine sediments, and groundwater, and for abatement of pollution or threatened pollution of San Diego Bay and groundwater affected by waste from industrial activities at the Campbell Shipyard site, as provided for in §33459.1 of the H&SC. Such plans shall include a schedule for initiation and completion of all cleanup or abatement action, and shall be modified to include any additional information that may be required from time to time by the Regional Board. The Port intends to rely on the work plans described in Section 1.5 of this agreement, as amended or modified by, or at the direction of, the Regional Board, to satisfy this requirement

2.2 The Regional Board will review the plans submitted pursuant to paragraph 2.1 for compliance with state and regional plans and policies for water quality control, including State Water Resources Control Board (SWRCB) Resolution No. 92-49, Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code §13304. Given the time-sensitive nature for cleanup and abatement at the Campbell Shipyard site, the Regional Board will approve the plans or notify the Port of necessary modifications as soon as reasonably possible, but not to exceed 60 days of the submittal date.

2.3 During the implementation phase of the approved work plans, the Port will submit quarterly progress reports to the Regional Board as directed in Order No. 95-21. The quarterly progress reports will be submitted in accordance with the following reporting schedule:

<u>Reporting Period</u>	<u>Report Due</u>
January, February, March	April 30
April, May, June	July 30
July, August, September	October 30
October, November, December	January 30

2.4 The Port shall reimburse the Regional Board for actual costs incurred by the Regional Board for regulatory oversight of cleanup and abatement at the Campbell Shipyard site; cost recovery shall be administered in accordance with the State Water Resources Control Board Cost Recovery Program for Spills, Leaks, Investigations, and Cleanups (SLIC).

2.5 The Port will use its authority to compel other potentially responsible parties who have liability for wastes discharged or deposited at the site to participate in the cleanup and abatement activity, either by the payment of money or performance of work, which shall be determined at the discretion of the Port. The Port will ensure that any work performed at the site will be consistent with, and in adherence to, the plans approved by the Regional Board.

TENTATIVE

2.6 The Port will submit a Remedial Action Completion Report to the Regional Board once the Port has undertaken and completed action as described in the approved plans for the site. The Regional Board shall provide the Port and the RDA with a certificate of completion pursuant to §33459.3 of the H&SC if the Port has successfully executed the approved plans, as it may be amended during the implementation phase. Any immunity for redevelopment agencies and subsequent purchasers provided in §33459.3 of the H&SC shall be applicable to wastes cleaned up or to pollution abated pursuant to the plans approved under this agreement (i.e., as described in Order No. 95-21).

2.7 This Agreement shall be effective as of the date of the later of the signatories below, and shall remain in effect until remediation is completed as per the approved plans.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed.

David Merk
Manager, Environmental Services
San Diego Unified Port District

By: _____ Tentative _____

Date: _____

John Robertus
Executive Officer
California Regional Water Quality Control Board, San Diego Region

By: _____ Tentative _____

Date: _____

State of California
Regional Water Quality Control Board
San Diego Region

SUPPLEMENTAL MAILING
EXECUTIVE OFFICER SUMMARY REPORT
February 21, 2001

ITEM: 15

SUBJECT: The Regional Board will consider affirmation or rescission of Addendum No. 3 to Cleanup and Abatement Order (CAO) No. 95-21 naming the San Diego Unified Port District (Port) as a responsible party for compliance with the CAO; rescission would be based upon a proposal by the Port to undertake cleanup and abatement pursuant to an agreement founded on the Polanco Redevelopment Act (Health & Safety Code Section 33459, et seq.). (Tom Alo)

PURPOSE: The purpose of today's hearing is for the Regional Board to receive testimony and consider whether to affirm or rescind the addition of the Port as a person responsible for cleanup or abatement under Section 13304 of the Water Code in CAO No. 95-21. The responsible parties named in CAO No. 95-21, as amended, now include the following: Campbell Industries, Marine Construction and Design Company (MARCO), and the Port.

DISCUSSION: A copy of the Joint Powers Agreement between the City of San Diego and the Port is attached. Regional Board staff is currently revising the Polanco Redevelopment Agreement proposed by the Port. Upon acceptance of the revised agreement by the Port and Regional Board staff, a tentative resolution will be issued by the Executive Officer for consideration by the Regional Board. Staff will provide the revised Polanco Redevelopment Agreement and tentative resolution at the Board Meeting.

LEGAL CONCERNS: None

SUPPORTING DOCUMENTS: 8. Joint Powers Agreement

RECOMMENDATION: Staff will provide a recommendation on this matter at the Regional Board meeting.

TEM 15-8

McKenna & Cuneo, LLP

Attorneys at Law

Washington, D.C.

Los Angeles

San Francisco

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Denver

Dallas

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February 15, 2001

VIA FACSIMILE
AND U. S. MAIL

Richard G. Opper

619-595-5439

richard_opper@mckennacuneo.com

Mr. Tom Alo
Regional Water Quality Control Board
9771 Clairemont Mesa Boulevard, Suite A
San Diego, CA 92124-1324

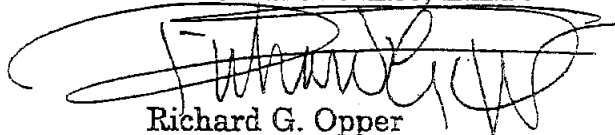
Re: Joint Powers Agreement

Dear Tom:

As promised, here is a copy of the Joint Powers Agreement that shows execution by the City of San Diego. I am informed that Mr. Chapman is securing signatures on behalf of the Board of Port Commissioners, and a fully executed copy should be ready shortly. In the interim, I hope this facsimile copy serves your needs.

Sincerely,

McKenna & Cuneo, L.L.P.



Richard G. Opper

RG0/dk

Enclosure

cc: Les Girard (w/o encl.)
David Chapman (w/o encl.)

BLIE E. DEVANEY
NITA M. NOONE
LESLIE J. GIRARD
SUSAN M. HEATH
GAEL B. STRACK
ASSISTANT CITY ATTORNEYS

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

CIVIL DIVISION
1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4198
TELEPHONE (619) 236-6220
FAX (619) 236-7215

Casey Gwinn
CITY ATTORNEY

February 14, 2001

Mr. David Chapman, Esq.
General Counsel
San Diego Unified Port District
3165 Pacific Highway
San Diego, CA 92101


Dear Dave:

JPA Agreement - Polanco Act

Enclosed, please find three originals of the Joint Powers Agreement between the City and the Unified Port District regarding the exercise of Polanco Act powers. The City has executed all three originals. Please have the originals executed by the Port where appropriate and return two of the originals to me, keeping one for the Port's files. Thank you for your cooperation on this matter.

Sincerely yours,

CASEY GWINN, City Attorney

By 
Leslie J. Girard
Assistant City Attorney

LJG:ljj
enclosures (3)
cc: Richard Opper, Esq. (via facsimile)

AGREEMENT FOR THE JOINT EXERCISE OF POWERS

WHEREAS, the San Diego Unified Port District ("Port") and the Redevelopment Agency for the City of San Diego ("RDA") (collectively "Agencies") have jointly determined that it is in their best interest to cooperate for the purpose of effecting remediation of that tidelands property known as the "Campbell Shipyard" ("Site") and more particularly described in Exhibit A, attached hereto; and

WHEREAS, both the RDA and the Port anticipate redevelopment of the Site; and

WHEREAS, the Site is on tidelands owned by the people of the State of California and held in trust on their behalf by the Port; and

WHEREAS, redevelopment of the Site is complicated by the potential for significant contamination found on, under, or in the land and marine sediments that comprise the Site; and

WHEREAS, because of its location within both the Centre City Redevelopment Area of the City and the tidelands, the Site is under the jurisdiction of both the Port and the RDA; and

WHEREAS, state law makes available to redevelopment agencies, such as the RDA, certain tools for the purpose of effecting remediation of contamination, including the Polanco Redevelopment Act (Health & Safety Code § 33549.1, et seq.) (the "Act"); and

WHEREAS, the Act provides authority to the RDA for the purposes set forth in this Agreement; and

WHEREAS, California Government Code provides that public agencies may enter into agreements, such as this, for the joint exercise powers that one or both of the public agencies possess (Gov. Code § 6500, et seq.); and

WHEREAS, it is the purpose of this Agreement to authorize the RDA and the Port to cooperate by using the power and authority vested in each to prosecute an action to recover costs related to the remediation of the Campbell Shipyard or to compel others to assume those liabilities, or to achieve some combination of the two strategies in order that remediation is effected as required by the appropriate environmental regulatory agencies with jurisdiction over the Site; and

WHEREAS, the Port and the RDA have each determined that it is in their best interests to enter into this Agreement, and that this Agreement furthers the purposes for which they each exist;

NOW, THEREFORE, the Agencies agree as follows:

1. The Agencies agree to retain common counsel to advise and represent both agencies for the purposes set forth in this Agreement. Such counsel shall be authorized to make appropriate

demands and give statutory Notice as provided in the Act or otherwise, and authorized to file suit in the name of both agencies to achieve the purpose of this Agreement. Such common counsel shall be selected upon the concurrence of the General Counsel for the RDA and the General Counsel of the Port.

2. The Port and the RDA agree to waive conflicts necessarily inherent when one counsel represents two separate parties. Both the Port and the RDA are otherwise represented by independent counsel, who have advised them on the potential conflicts that such representation could entail. In the judgment of both Agencies, common representation is desirable, economic, and in the public interest.

3. Both Agencies agree that, for the purpose of this Agreement and the actions taken pursuant to it and the Act, neither agency will make a claim for contribution or indemnity against the other by reason of cleanup costs related to this Site. Such claims are expressly waived.

4. By this Agreement, the RDA specifically authorizes the use of powers granted to it pursuant to the Act for the purpose of the remediation of the Campbell Shipyard.

5. The Port agrees that funding for all fees and costs of any kind related to the actions undertaken pursuant to this Agreement and the Act will be borne by the Port, and no claim therefor shall be made against the RDA or the City of San Diego. The Port agrees to indemnify and hold harmless both the RDA and the City of San Diego for any liability, damages or costs of any kind that may be attributable to either the RDA or the City of San Diego pursuant to the Act or any other law, statute or regulation that governs liability for contamination or hazardous substances. Furthermore, the Port agrees to defend and indemnify the RDA and the City of San Diego against any claim of liability whatsoever arising out of the exercise of powers pursuant to this Agreement.

6. Common counsel shall be instructed to attempt to avoid potential contribution to clean-up costs by either of the Agencies to the extent that result can be achieved under the law or, in a settlement context, under agreement with defendants. If, however, contribution by the Agencies is required, such contribution shall be funded by the Port, and no financial contribution from the City of San Diego or the RDA will be required or requested.

7. The nature and extent of necessary remediation at the Site shall be determined by the Regional Water Quality Control Board ("RWQCB") pursuant to current RWQCB oversight, and agreements that may be reached as provided in the Act. Timing for remediation activities and decisions regarding future land use are to be governed by the Port pursuant to its jurisdiction over tidelands as provided by state law.

8. Authority to enter into settlement agreements with some or all defendants or other responsible parties related to remediation at the Site shall rest with the Port.

9. The duration of this Agreement shall be for such period of time as is necessary to fully prosecute or settle actions pursuant to the Act. Once the Port has notified the RDA that either all final judgments have been reached or all settlement agreements satisfactory to the Port have been

negotiated, this Agreement shall cease and terminate. However, if it is necessary to retain authority under the Act in order to enforce any settlement agreements, this Agreement shall continue until such time as such settlement obligations have been fully discharged.

10. This Agreement shall be effective as of the later of the dates of its approval by the Governing Board of the RDA and the Board of Port Commissioners.

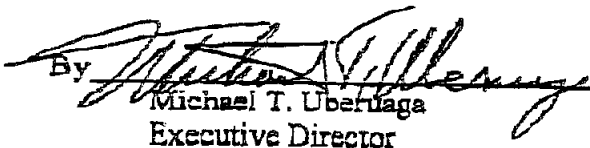
11. Notices required by this Agreement shall be given, in writing, to the General Counsel for the Port and the General Counsel for the RDA.

Dated: February 13, 2001

Dated: February __, 2001

REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO

SAN DIEGO UNIFIED PORT DISTRICT

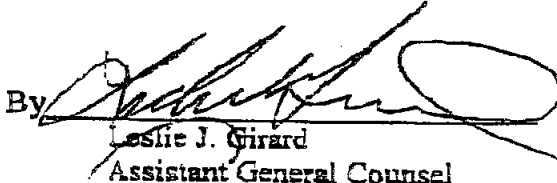
By 
Michael T. Uberdaga
Executive Director

By _____
Dennis Bouey
Executive Director

APPROVED AS TO FORM AND CONTENT

CASEY GWINN, General Counsel

DAVID CHAPMAN, General Counsel

By 
Leslie J. Girard
Assistant General Counsel

By _____

TENTATIVE

POLANCO REDEVELOPMENT ACT

REMEDICATION AGREEMENT

This Remediation Agreement ("Agreement") is entered into between the California Regional Water Quality Control Board, San Diego Region ("Regional Board") and the San Diego Unified Port District ("Port"), as a result of the following facts and circumstances:

1.1 Wastes at the Campbell Shipyard site have been deposited in soil, groundwater, and San Diego Bay sediments from which they have been, are, and probably will be, discharged to groundwater and waters of San Diego Bay in violation of water quality objectives causing or contributing to conditions of pollution and nuisance. The Regional Board has issued Order No. 95-21 requiring Campbell Industries and Marine Construction and Design Company (MARCO) to cleanup wastes and abate existing and threatened pollution and nuisance. The Port, as trustee for the people of the state for the property which comprises the Campbell Shipyard site, leased the site to Campbell Industries for use as an industrial shipyard.

1.2 On October 27, 2000 the Regional Board issued Addendum No. 3 to CAO 95-21, adding the Port to the list of persons required to undertake cleanup and abatement at the Campbell Shipyard site. At the Regional Board's regularly noticed meeting on November 8, 2000, the Regional Board stayed the effect of Addendum No. 3 to CAO 95-21 to permit consideration of an alternative approach to cleanup and abatement by the Port using the redevelopment authority of the City of San Diego's Redevelopment Agency ("RDA") through a Joint Powers Agreement.

1.3 The Polanco Redevelopment Act ("Act" H&SC §33459, et seq), provides that a duly formed redevelopment agency authorized to use the Act "may take any actions that the agency determines are necessary and that are consistent with other state and federal laws to remedy or remove a release of hazardous substances on, under, or from property within a project area. . . ." [Health and Safety Code §33459.1(a)(1)].

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1.5 On December 6, 2000, the Port provided the Regional Board with a work plan for the Campbell Shipyard site that details an approach to cleanup of wastes deposited in soil and groundwater. The Port will submit a work plan detailing the proposed cleanup of wastes in marine sediments at a later date.

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NOW, THEREFORE, the Port and the Regional Board hereby agree as follows:

2.1 The Port shall prepare and submit to the Regional Board plans for cleanup of waste from industrial activity at the Campbell Shipyard site in upland soil, marine sediments, and groundwater, and for abatement of pollution or threatened pollution of San Diego Bay and groundwater affected by waste from industrial activities at the Campbell Shipyard site, as provided for in §33459.1 of the H&SC. Such plans shall include a schedule for initiation and completion of all cleanup or abatement action, and shall be modified to include any additional information that may be required from time to time by the Regional Board. The Port intends to rely on the work plans described in Section 1.5 of this agreement, as amended or modified by, or at the direction of, the Regional Board, to satisfy this requirement

2.2 The Regional Board will review the plans submitted pursuant to paragraph 2.1 for compliance with state and regional plans and policies for water quality control, including State Water Resources Control Board (SWRCB) Resolution No. 92-49, Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code §13304. Given the time-sensitive nature for cleanup and abatement at the Campbell Shipyard site, the Regional Board will approve the plans or notify the Port of necessary modifications as soon as reasonably possible, but not to exceed 60 days of the submittal date.

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2.4 The Port shall reimburse the Regional Board for actual costs incurred by the Regional Board for regulatory oversight of cleanup and abatement at the Campbell Shipyard site; cost recovery shall be administered in accordance with the State Water Resources Control Board Cost Recovery Program for Spills, Leaks, Investigations, and Cleanups (SLIC).

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2.7 This Agreement shall be effective as of the date of the later of the signatories below, and shall remain in effect until remediation is completed as per the approved plans.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed.

David Merk
Manager, Environmental Services
San Diego Unified Port District

By: _____ Tentative _____

Date: _____

John Robertus
Executive Officer
California Regional Water Quality Control Board, San Diego Region

By: _____ Tentative _____

Date: _____



