THE CITY OF SAN DIEGO

May 9, 2012
Item No. 11
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November 30, 2011

Via Email to dgibson@waterboards.ca.gov and
Hand Delivery

Mr. Grant Destache,
Chairperson

Mr. Dave Gibson
Executive Officer,

San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123

Dear Mr.'s Destache and Gibson,

Subject: Request for Hearing on Matters Subject to Regulatory Oversight
Kinder Morgan Energy Partners, Mission Valley Terminal;
SL607392800:smcclain and CRU: 240988:bneil; WDID No: 9 000000506

As you know, the City of San Diego ("City") has taken an appeal to the State Water Resources Control Board ("SWRCB") on Decision R9-2011-0052 which set Total Dissolved Solids interim effluent limits for discharges to Murphy Canyon Creek. That appeal discusses the related and ripening issue of whether an Executive Officer can unilaterally permit the discharge of ever increasing amounts of water into the City's storm water discharge system, for which the City is a co-permittee, as a result of the treatment technology a discharger selected to remediate its historic release of petroleum products from the Mission Valley Terminal. The City recently presented a compromise proposal to allow for increased flows by way of letter to Mr. Gibson. Last week the City was copied on Kinder Morgan's response to the City's suggestions, a response which included legal briefs and technical support strongly rejecting the City's suggested approach. It is obvious from a comparison of the points raised by the City and the responses received from Kinder Morgan, its counsel at Downey Brand, and Arcadis, the consulting firm acting on their behalf, that there are significant variances in both fact and conclusion presented to the Water Board on these issues.

It is not appropriate to allow the record to stand so burdened with contradictory assertions. Some clarity needs to be applied to the charges and counter charges that are being made. The City is not merely a simple "land owner" in this dispute, but the representative of its many residents, who have direct financial and environmental interest in the discharger's activities. In light of the disparity between the factual, technical and legal assertions being made by Kinder Morgan and its representatives, the City believes it has both the legal right and obligation to request that a hearing be held before the Water Board so that these matters can be settled and resolved with finality, and the tedious and frustrating process of innuendo and half-truths, which have often clouded this significant cleanup effort, can be ended.

The City is keenly aware that the Water Board is in the last stages of a significant hearing concerning matters related to a cleanup of the sediments of the San Diego Bay, and that the matter has come to encompass a very large amount of the Water Board's resources over time. The hearing that is required as a result of the present disagreement between the City and Kinder Morgan would not be anything similar in terms of the investment of time and resources. The Water Board would not have to field a team to make scientific proposals for challenge by multiple stakeholders. In this instance, the Water Board would merely provide a forum for the interested parties to present their arguments and differing views, and then make administrative findings that can be used to guide the remaining years of remedial activity expected as a result of the Mission Valley Terminal release. If organized to focus on the areas of disagreement, the hearing could be concluded in one day.

The City understood the comments from Mr. Gibson at the hearing preceding R9-2011-0052 to mean that he intends to issue a decision on Kinder Morgan's flow increase request, but that he wished to first confer with the City. Mr. Gibson did have a preliminary meeting with City representatives on October 4, 2011; however, a follow up meeting was cancelled by Water Board staff in lieu of submission of written comments which, as stated above, are in conflict. As a precursor to a hearing, and toward possible settlement of contested issues and/or the delineation of those issues which cannot be settled, the City is still willing to meet with Mr. Gibson and Kinder Morgan. If after such a meeting the parties still had areas of disagreement, the City would continue to contend that the Water Board should hear those issues and render its own decision.

The City has often voiced the belief that there has never been (and still is not) a clear and thoughtful review of the facts and science behind the role that re-injection could play both in helping the discharger meet its regulatory requirements and avoid wasting San Diego's water. With Kinder Morgan's recent response to the Water Board, the list of issues over which neither the facts nor their interpretation is agreed upon has grown. On issues including Kinder Morgan's assertion that the Water Board has no authority to require them to supply "replacement water" for that which they are using, to issues related to the linkage between the discharge of the treated water and impacts on both the creek and adjacent developed property, there is a disconnect between the facts and that which is presented in writing. These are but several of the issues that now seem

appropriately poised for a thoughtful reexamination in a fair and deliberate hearing. This may be the only forum in which the stakeholders can have adequate opportunities to examine the assertions of each other for their factual basis and scientific strength.

The cleanup of the release from the Mission Valley Terminal is far from over, and will likely continue throughout the decade, even after the current CAO regarding the "off terminal" properties has run its course. No entity or institution benefits from avoiding a direct and thoughtful review of the present factual disputes. Whatever short term costs there are in such a hearing, they will be far overmatched in long term implications for the region and its residents.

Please advise us when you are prepared to call the stakeholders together to outline a date and process for an administrative hearing on these critically important issues.

Sincerely,

Marsi A. Steirer
Deputy Director
Public Utilities Department

Kris McFadden
Deputy Director
Transportation & Storm Water Department

cc: (via email)
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