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7

8 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

9 SAN DIEGO REGION

10
11 In re Tentative Cleanup and Abatement
Order No. R9-2010-0002

**BAE SYSTEMS' OPPOSITION TO
ENVIRONMENTAL GROUPS' MOTION
FOR PROTECTIVE ORDER TO QUASH
DISCOVERY BY NASSCO AND BAE**

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15 Presiding Officer: David A. King
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DLA PIPER LLP (US)
SAN DIEGO

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BAE SYSTEMS' OPPOSITION TO ENVIRONMENTAL GROUPS' MOTION FOR
PROTECTIVE ORDER TO QUASH DISCOVERY BY NASSCO AND BAE

1 Designated Party BAE Systems San Diego Ship Repair, Inc. ("BAE Systems") submits
2 this opposition to San Diego Coastkeeper ("Coastkeeper") and Environmental Health Coalition's
3 ("EHC") (collectively, "Environmental Groups") Motion for Protective Order to Quash
4 Discovery by NASSCO and BAE (the "Motion"), filed electronically July 30, 2010, with an
5 effective service date of August 2, 2010.

6 **I. Introduction**

7 Eight days after receipt of the discovery at issue, counsel for the Environmental Groups
8 called counsel for BAE (and NASSCO) to *announce* a motion to quash was to be filed *within the*
9 *hour*, not to meet and confer in any respect, much less in good faith on all issues to be presented
10 by the Motion. No request of BAE was made to withdraw or narrow the scope of any discovery.
11 Because the Environmental Groups failed entirely to meet and confer as required by law, the
12 Presiding Officer should deny the Motion in its entirety.

13 Every Designated Party is laboring under the short discovery timeframe left after the
14 request for a discovery extension was denied. BAE (and NASSCO) hoped to avoid discovery
15 entirely, but were left with few options. Now, all parties, especially the shipyards, are working
16 diligently to complete discovery by August 23, 2010, four days prior to the issuance of a revised
17 TCAO and DTR, but nonetheless the close of discovery.

18 The Environmental Groups claim they are being harassed, punished, abused, slammed,
19 oppressed, and buried for objecting to the discovery extension. To the contrary, responding to
20 discovery is a duty willingly assumed by the Environmental Groups when they affirmatively
21 sought and obtained Designated Party status in 2005. Of Designated Parties to receive discovery
22 requests, only the Environmental Groups object.¹ Despite the broad-brush complaints in the
23 Motion regarding number and scope of requests, all of the discovery propounded by BAE (and
24 NASSCO) was timely, relevant and within the scope of discovery authorized in these
25 proceedings.

26 Nonetheless, BAE (and NASSCO) have offered and renew their offer to review in detail
27 the discovery propounded, withdraw duplicative requests, and agree on reasonable reductions in

28 ¹ To BAE's knowledge neither the Port District nor the Cleanup Team have objected to discovery.
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1 the number and scope of discovery. But there is no legitimate legal or factual basis to quash *all*
2 discovery, as the Environmental Groups have expressly requested, particularly when a short
3 extension of the discovery period would resolve most of the issues raised by the Motion, and even
4 the Environmental Groups themselves now request, in the alternative, such an extension as to
5 expert discovery.

6 **II. Environmental Groups Failed to Meet and Confer Prior to Filing the Motion**

7 The Final Discovery Plan for Cleanup Levels and Liability Issues (“Final Discovery
8 Plan”) issued by the Presiding Officer on February 18, 2010 provides that “[p]rocedures for
9 written discovery and expert witness disclosures shall generally be governed by the applicable
10 Code of Civil Procedure (“CCP”) section, as modified herein....” (*See* Final Discovery Plan, at
11 § I.) The Final Discovery Plan does not modify the “meet and confer” provisions of the CCP,
12 thus those requirements apply to the Motion.

13 The CCP requires that prior to filing a motion for protective order, the moving party make
14 a reasonable and good faith attempt at informal resolution of all issues to be the subject of the
15 motion. CCP §§ 2030.090(a) (interrogatories); 2033.080(a) (admissions); 2031.060(a)
16 (documents). Moreover, a motion for protective order *must* be accompanied by a meet and confer
17 *declaration* stating “facts showing a reasonable and good faith attempt at an informal resolution
18 of each issue presented in the motion.” *Id.*; CCP § 2016.040. The burden is on the
19 Environmental Groups to provide that evidence, but the Motion failed to provide any such
20 declaration. Moreover, as stated below, the lack of a declaration is not a mere format deficiency,
21 but rather, the underlying required “reasonable and good faith attempt” to resolve the issues is
22 entirely lacking.

23 Counsel for Environmental Groups, Ms. Solmer, and counsel for BAE, Mr. Dart, did
24 speak by telephone prior to the filing of the Motion. But it was at 4:30 *p.m.* on *Friday*, July 30,
25 just after Ms. Solmer had spoken separately to Mr. Richardson, counsel for NASSCO. Those
26 calls took place eight days after the discovery at issue was served by electronic mail.

27 Mr. Dart confirmed he was familiar with the discovery and available to discuss. However,
28 Ms. Solmer proceeded to announce that the Motion would be filed that day, and in general stated

1 as reasons the volume of requests and the scheduled release of a revised TCAO/DTR *after*
2 discovery responses were due. No request was made to withdraw *any* discovery, neither by type,
3 subject matter, or deponent, nor was any specific request identified for discussion. While
4 Mr. Dart did agree with Ms. Solmer's statement regarding the difficult situation the parties are in
5 given the discovery cut-off date and the prospective release of a revised TCAO/DTR shortly
6 thereafter, and further agreed those dates are out of these parties' control, he did not express a
7 lack of optimism that any substantive discovery issue could be resolved without the Presiding
8 Officer's intervention. In fact, after the imminent filing of the Motion was announced, counsel
9 for BAE nonetheless offered to discuss and review the discovery anytime next week. Contrary to
10 Ms. Solmer's statements, BAE is of the firm belief that given sufficient time to discuss the
11 specifics of the Environmental Groups' concerns, BAE believes an agreement could be struck.
12 As stated, BAE is prepared to reasonably reduce the number of discovery requests.

13 In any event, speaking telephonically thirty minutes before filing a motion is not a
14 reasonable and good faith effort to resolve all issues that were to be included in the Motion.
15 Thus, the Presiding Officer should deny the Motion based on the Environmental Groups' failure
16 to reasonably "meet and confer" prior to filing the Motion. CCP § 2016.040; *See Clement v.*
17 *Alegre*, 177 Cal. App. 4th 1277, 1294 (2009) ("the law requires that counsel attempt to talk the
18 matter over, compare their views, consult and deliberate.")

19 **III. The Environmental Groups are Designated Parties and Accordingly are Subject to**
20 **the Final Discovery Plan**

21 The Motion emphasizes that the Environmental Groups are not potentially responsible
22 parties, and have only a "limited role in these proceedings," and thus "[j]ustice requires a
23 protective order that quashes all discovery requests NASSCO and BAE" propounded on them.
24 (See Motion, at pp. 1, 9.) Among other defects, that argument omits the Environmental Groups'
25 status in these proceedings as "Designated Parties," and ironically, how that status was attained.

26 In September of 2005, the Environmental Groups *moved for* and were granted the right to
27 be Designated Parties in these proceedings. (See Environmental Groups' Motion for "Designated
28 Party" Status and Opposition to Objections of City of San Diego and NASSCO, attached hereto
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1 as Ex. 1.) Other Bay Council members including the Sierra Club, Surfrider Foundation, and
2 Audubon Society, instead chose to be mere “interested persons.” (*Id.* at p. 2.)

3 As Designated Parties the Environmental Groups enjoyed the right to participate in
4 mediation sessions (until they decided to extricate themselves from those proceedings), seek
5 discovery from other Designated Parties, submit lay and expert evidence, and participate in the
6 development of the TCAO and DTR in advance of the public, among other rights. (*See* Second
7 Amended Order of Proceedings; Final Discovery Plan.)

8 Along with those and other rights, however, come obligations, including discovery. The
9 Final Discovery Plan “governs discovery to be conducted by *all* designated parties to the
10 proceeding, whether or not they continue to be participants in the mediation.” (Final Discovery
11 Plan, at p. 2) (emphasis added.) The discovery propounded by BAE on the Environmental
12 Groups is authorized by the Final Discovery Plan and timely served within the timeframes
13 ordered therein.

14 Now, by their Motion the Environmental Groups seek to have and exercise the rights of a
15 Designated Party, but without any of the corresponding obligations. The Motion asks the
16 Presiding Officer to relieve them of *all* discovery obligations. Because, *inter alia*, the Final
17 Discovery Plan expressly provides that “all designated parties” are subject to discovery, that
18 request must be rejected. No legitimate reason exists to exempt them from participation in
19 discovery.

20 **IV. The Environmental Groups Have No Basis to Object to the Timing of Discovery**

21 As the Presiding Officer is well aware, with the exception of the Environmental Groups,
22 every other Designated Party, including the Cleanup Team, supported an extension of the
23 August 23, 2010 discovery cut-off date to provide additional time to conduct necessary discovery.
24 BAE’s two primary reasons for supporting the Cleanup Team’s motion were (1) the requirements
25 and timeline of CEQA², and (2) the prospective release of a revised TCAO/DTR just days after
26 the current discovery cut-off. BAE sought to avoid precisely the situation complained of in the

27 _____
28 ² The Presiding Officer has taken up the issue of whether CEQA applies, and has requested briefing and set the
schedule for that motion.

1 Motion – substantial discovery, some of which may potentially become moot, over the final
2 month of the discovery period. The Environmental Groups opposed the extension motion, and
3 that motion was denied. BAE did not propound discovery on the Environmental Groups to
4 “punish” them for that opposition, but rather because it was necessary under the limited
5 remaining discovery period following the Presiding Officer’s ruling on the extension motion.
6 Accordingly, the Environmental Groups’ complaints regarding the remaining discovery schedule
7 amounting to a burden on their resources should fall on deaf ears.

8 The Motion also argues for quashing all discovery because “given that the Cleanup Team
9 plans to submit a revised [TCAO/DTR] on August 27, 2010 – after discovery responses are due –
10 the discovery questions and responses may become moot.” (Motion, at pp. 1-2.) BAE agrees it is
11 less than an ideal situation. However, the dates for discovery cut-off and the release of the
12 revised TCAO/DTR are not within these parties’ control. Designated Parties have a fundamental
13 right to conduct discovery, and it necessarily will be as to the current version of the TCAO/DTR.
14 The fact that another version will be released shortly after the close of discovery does not obviate
15 the parties’ discovery rights in any respect.

16 **V. BAE Agrees with the Environmental Groups’ Argument for a Reasonable Discovery**
17 **Extension**

18 The scheduled timing of the release of a revised TCAO/DTR after close of discovery is a
19 primary reason BAE supported a reasonable extension of the discovery period. The
20 Environmental Groups opposed that request at the time, but now support it, at least partially, as
21 evidenced by their request to extend expert deadlines out beyond the current deadline and
22 prospective release date of the revised TCAO/DTR. (Motion, at pp. 9-10.) With respect to that
23 request for relief, it would be fundamentally inequitable to deny all designated parties’ (except the
24 Environmental Groups) request for a reasonable discovery extension, grant a motion to quash all
25 discovery propounded by BAE and NASSCO, while also granting the Environmental Groups’
26 request for an extension as to experts only.

27 To resolve all parties concerns regarding discovery, including the Environmental Groups’
28 request for an extension as stated above, BAE continues to support a reasonable extension of the
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1 cut-off date for all discovery. Providing a few additional months for the discovery period to
2 allow for the release of a revised TCAO/DTR would not impact the timing of when an ultimate
3 decision on a final CAO/DTR will be made, because either the CEQA process will be ongoing for
4 approximately the next ten months (after it commences), or if the presiding officer finds CEQA
5 does not apply, the public comment period and review of those comments would still ensure the
6 final CAO/DTR decision would not be at hand until *after* the completion of a reasonable
7 extension of the current discovery deadline. Such an extension would assist *all* Designated
8 Parties and, given the CEQA and/or public comment period, would not prejudice the Regional
9 Board's desire to reach resolution on a final order. Moreover, as discussed in section VII, *infra*,
10 BAE again offers to work with the Environmental Groups to substantially pare down and further
11 focus existing discovery requests.

12 **VI. The Environmental Groups' General Objections to the Number and Scope of**
13 **Requests Lack Merit**

14 **A. Number of Requests**

15 With respect to the Motion's assertion of mass duplication and unnecessary discovery
16 propounded by the shipyards on the Environmental Groups, several points undermine that
17 argument. First, BAE and NASSCO are separate and distinct parties who each have a
18 fundamental right to discovery as provided by the Final Discovery Plan, and California and
19 federal law. They cannot simply be lumped together, and all discovery requests combined (and
20 miscounted and misrepresented), by a party asserting the total number of requests is unduly
21 burdensome on its face. Second, the discovery sets propounded on the Environmental Groups
22 were created separately. Any duplication is not the product of a nefarious plan as suggested by
23 the Motion, although given the issues in these proceedings and the similar positions occupied by
24 BAE and NASSCO, some duplication of requests would be expected. As detailed in sections II
25 and VII herein, while no request was made during the purported "meet and confer" to withdraw
26 duplicative requests, BAE (and NASSCO) have offered to withdraw duplicative discovery
27 requests. Third, while the Environmental Groups are one "party" for these proceedings, they are
28 in fact two distinct entities. Thus BAE was well within its right to propound substantially the

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1 same discovery on each entity, even if the result may be that a limited number of identical
2 documents are produced by each.

3 With respect to the Motion's contention that the sheer number of discovery requests
4 mandates a finding of undue burden and ulterior motives, again the facts and rules applicable to
5 these proceedings refute that charge. The Final Discovery Plan *explicitly removes* the limits
6 found in the CCP on the number of interrogatories and requests for admissions. Because of the
7 complexity and quantity of existing and potential issues in these proceedings, the number "of
8 interrogatories is not limited at this time" and "[r]equests for Admissions should not be limited."³
9 (Final Discovery Plan, at §§ I-B-2, I-D-2.) There are no express limits on the number of requests
10 for production of documents. (*Id.* at § C.) The Presiding Officer's removal of these limitations
11 was for good cause – these proceedings involve numerous complex issues. Given the foregoing,
12 it should not be unexpected that the number of discovery requests propounded on a party exceeds
13 the normal limits provided in the CCP. More importantly, it certainly cannot be construed alone
14 as evidence of undue burden or improper motives.

15 BAE noticed seven party-affiliated witnesses for deposition, all of whom are identified on
16 Environmental Groups' Expert and Non-Expert Witness Designation.⁴ Seeking to depose only
17 the individuals identified by the Environmental Groups themselves as experts or non-expert
18 witnesses, and who have or are likely to submit evidence or opinion into the administrative
19 record, cannot constitute harassment or unduly burdensome discovery. And the document
20 requests included with the deposition notices were necessary because under the current schedule
21 Environmental Groups' responses to BAE's requests for production of documents would not
22 come until after all depositions have been concluded.

23 The same twenty-two document requests are attached to each deposition notice from
24 BAE. Contrary to Environmental Group's stated misunderstanding as expressed in their Motion
25 (at p. 6), consistent with standard discovery protocol BAE does not expect or require that either
26

27 ³ BAE did not propound requests for admission on the Environmental Groups.

28 ⁴ For all of the accusations of delay and dilatory behavior on the part of the shipyards, it is notable that the
Environmental Groups themselves did not serve their witness designations until the last possible day, which included
the five additional days provided by the Presiding Officer's July 16, 2010 ruling.

1 Coastkeeper or EHC would produce the same document at more than one deposition. That
2 clarification alone cuts down on the claimed total requests propounded by BAE on the
3 Environmental Groups by more than 100.

4 BAE disagrees, however, with Environmental Groups' contention that because BAE
5 asked the Cleanup Team to produce communications with the Environmental Groups regarding
6 the TCAO/DTR, that separately asking the Environmental Groups to produce such documents is
7 "duplicative." (Motion, at § III-B.) BAE has the right to separately seek documents from each
8 party to the communication. (*See Irvington-Moore, Inc. v. Superior Court*, 14 Cal. App. 4th 733,
9 739 (1993) ("a party is permitted to use multiple methods of obtaining discovery and the fact that
10 information was disclosed under one method is not, standing alone, a proper basis for refusing to
11 provide discovery under another method"). More fundamentally, BAE selects its preferred
12 methods of discovery, not the responding party. (*Id.*) And finally, the Cleanup Team has not
13 produced any such documents, nor does BAE have any verifiable assurance all responsive
14 documents will be produced when due.

15 Furthermore, as raised by counsel for BAE with counsel for Environmental Groups during
16 the supposed "meet and confer" call, the Environmental Groups' witness designation is deficient
17 in a multitude of ways, including but not limited to failing to identify which witnesses were
18 experts and which were non-experts, and failing to include declarations of counsel for each expert
19 either retained by a party or employed by a party. CCP § 2034.210(b). Without that required
20 information, BAE's deposition document requests for Environmental Groups' witnesses were
21 necessarily broader than if Environmental Groups had provided the required information. In any
22 event, counsel for Environmental Groups informed counsel for BAE that most of the witnesses on
23 their designation would be withdrawn within the week, thus potentially further reducing the total
24 number of requests by twenty-two per witness not deposed.

25 **B. Scope of Requests**

26 The Motion also takes aim at the scope of the discovery requests, asserting generalized
27 conclusions that the discovery at issue is "irrelevant," "overbroad" and "not focused."⁵ On the

28 ⁵ E.g., "Taken as a whole..." (Motion, p. 2); "as a whole, the document requests are..." (Motion, p. 6).
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1 contrary, the discovery at issue is well within the scope of discovery in this proceeding, which is
2 governed by the CCP as modified by the Final Discovery Plan. (Final Discovery Plan, at § I.)
3 The Final Discovery Plan authorizes “requests for documents pertaining to [the TCAO/DTR] and
4 these proceedings...” and “[d]iscovery regarding cleanup levels shall include any issues upon
5 which the [TCAO/DTR] are based.” (*Id.* at §§ I-C, III-A.) The CCP provides that

6 “any party may obtain discovery regarding any matter, not
7 privileged, that is relevant to the subject matter involved in the
8 pending action or to the determination of any motion made in that
9 action, if the matter itself is either admissible in evidence or
10 reasonably calculated to lead to the discovery of admissible
11 evidence. Discovery may relate to the claim or defense of the party
12 seeking discovery or of any other party to the action. Discovery
13 may be obtained of the identity and location of persons having
14 knowledge of any discoverable matter, as well as the existence,
15 description, nature, custody, condition and location of any
16 document, tangible thing, or land or other property.”

17 CCP § 2017.010.

18 Taken together the Final Discovery Plan and CCP provide for a broad scope of discovery,
19 consistent with parties’ fundamental due process rights. The discovery at issue is entirely
20 directed at issues related to the TCAO/DTR and these proceedings, including the details of
21 witnesses, communications, and documents related to the same.

22 Finally, discovery was propounded on the Environmental Groups, and not other
23 Designated Parties, because the former are the only known parties opposing the current proposed
24 remedial footprint and alternative cleanup levels. The Environmental Groups’ primary expert,
25 Don MacDonald, in his 2008 report supports a remedial footprint significantly broader than that
26 seen by BAE (and NASSCO) as scientifically justified.⁶

27 Discovery as to the Environmental Groups is necessary as it appears that the
28 Environmental Groups will submit testimony/comment seeking to institute alternative cleanup
levels to what the mediating parties believe is scientifically justified and to substantially increase

⁶ The Motion is unclear as to whether Environmental Groups seek to quash all noticed depositions, or rather seek to quash the document requests attached to those notices, along with all other written discovery requests. The Motion asks for a “protective order that quashes all discovery requests” propounded by the shipyards on the Environmental Groups. The shipyards absolutely should have the right to depose designated experts, including but not limited to Don MacDonald. Mr. MacDonald provides the scientific foundation for the Environmental Groups’ contention that the selected alternative remedial measure is improper, and a larger remedial footprint should be ordered.

1 the size of the remedial footprint. The Environmental Groups' decision to cease attending the
2 mediation sessions precluded informal discovery and discussion of the supporting data for the
3 Environmental Groups' proposals on those elements of the TCAO/DTR. Certainly the
4 propounded discovery was not "punishment" for the Environmental Groups' participation in and
5 positions taken in these proceedings, but rather was necessary under the foregoing circumstances.

6 **VII. The Presiding Officer Should Allow the Parties to Jointly Agree on Reductions in the**
7 **Discovery Propounded**

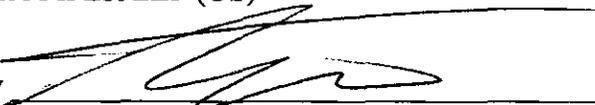
8 In addition to the clarifications described above, and the Environmental Groups'
9 prospective withdrawal of several designated witnesses, both of which substantially reduce the
10 number and scope of requests on the Environmental Groups, BAE remains ready and willing to
11 confer with Environmental Groups and agree on a substantial reduction in the number of requests,
12 while preserving BAE's rights to discovery on relevant issues. BAE was simply not provided
13 that opportunity prior to the filing of this Motion. BAE reiterates it is ready and willing to
14 discuss any and all discovery requests the Environmental Groups believe to be duplicative,
15 unduly burdensome, irrelevant or otherwise objectionable. While it is unlikely the parties will
16 agree on all issues, BAE firmly believes the parties should be provided the opportunity to discuss
17 and agree on reductions, rather than the Presiding Officer quashing any or all discovery.

18 Alternatively, or in conjunction with further meet and confer efforts, BAE would support
19 a reasonable extension of the discovery cut-off for all the reasons previously and herein
20 expressed.

21 Dated: August 2, 2010

DLA PIPER LLP (US)

22
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16 **CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD**
17 **REGION 9 - SAN DIEGO**

18 IN THE MATTER OF:) ORDER NO. R9-2005-0126
19)
20 CLEANUP AND ABATEMENT ORDER NO.) ENVIRONMENTAL GROUPS' MOTION FOR
21 R9-2005-0126; SAN DIEGO BAY SHIPYARD) "DESIGNATED PARTY" STATUS AND
22 SEDIMENT REMEDIATION) OPPOSITION TO OBJECTIONS OF CITY OF
23) SAN DIEGO AND NASSCO
24)
25)
26) Pre-Hearing Conference:
27) 9:00 a.m.
28) September 26, 2005
RWQCB Meeting Room

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I. INTRODUCTION

At its pre-hearing conference set for September 26, 2005, the Regional Water Quality Control Board ("Regional Board") will consider which entities deserve to be granted "designated party" status for purposes of administrative hearings regarding Tentative Cleanup and Abatement Order R9-2005-0126. In its Proposed Procedures for Issuance of the Cleanup and Abatement Order, the Regional Board's Advisory Team recommended the entire San Diego Bay Council be considered a "designated party." Currently, only San Diego Baykeeper and Environmental Health Coalition desire such status. The Sierra Club, Surfrider Foundation, and Audubon Society have chosen to participate as "interested persons."

In their objections to any of the Bay Council being designated a party to the action, NASSCO's attorneys go to great lengths to liken the groups' environmental interests to an infinite number of industry groups and private entities that might possess a "generalized interest" in the outcome of proceedings. Simply put, opposing counsel misses the point. San Diego Baykeeper and Environmental Health Coalition ("Environmental Groups") represent members who use the bay in very direct and substantial ways. They fish in the bay and eat the fish that are caught. They boat, and even swim, in the bay. They study the ecosystems in the bay, and teach students why strong protection measures are needed. Because the groups' memberships are so directly affected by the health of San Diego Bay, EHC and Baykeeper have participated in virtually every step of the Regional Board's consideration of shipyard cleanup levels for more than six years. Both San Diego Baykeeper and Environmental Health Coalition have expended significant amounts of time and money to produce relevant evidence regarding appropriate cleanup levels for bay sediments. This evidence has been presented to both the Regional Board and its staff. These groups deserve to participate fully as "designated parties" in this matter. Indeed, the integrity of the final Board decision demands it.

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II. ARGUMENT

A. Standard Of Review

California Code of Regulations (“CCR”), Title 23, section 648.1(a) provides the Regional Board substantial latitude to grant “party” status to “any other person whom the Board determines should be designated as a party.” Contrary to NASSCO’s assertion, the Board can simply designate any party it believes should be a party, so long as it applies a credible rationale. But, should the Board feel more comfortable relying on designated standards for administrative intervention, California Government Code (“GC”) section 11440.50 prescribes a four part test for the Regional Board to decide whether the Environmental Groups should be designated parties.

First, there must be a motion, in writing, with copies served on all named parties.

Second, the motion must be made as early as practicable, and if possible, before any scheduled pre-hearing conference.

Third, the motion must state facts demonstrating that the proposed party’s legal rights, duties, privileges, or immunities will be substantially affected, or that the applicant otherwise qualifies as an intervenor under state law.

Fourth, the presiding officer must determine that the interests of justice and the orderly and prompt conduct of the proceeding will not be impaired by allowing the intervention. Gov’t Code § 11440.50 (b)(1-4).

Clearly, with the filing and serving of this motion, the first two parts of the administrative intervention test have been met. Applying the third and fourth parts, the Environmental Groups unquestionably qualify as “designated parties.”

///

///

1 1. Environmental Health Coalition and San Diego Baykeeper are Appropriate Parties
2 in this Matter Because Their Members' Interests Will Be Affected By the Decision.

3 Taken together, the administrative standard for Regional Water Board hearing intervention stated
4 in CCR 648.1 and GC 1440.50 is more liberal than that for traditional intervention in Superior Court
5 actions under Code of Civil Procedure section 387. Nonetheless, because the Environmental Groups
6 would qualify as intervenors even under the Code of Civil Procedure, they are appropriate parties in the
7 current matter.

8
9 California Code of Civil Procedure § 387(a) describes the circumstances under which courts *may*
10 permit intervention. In relevant part, that section provides:

11 Upon timely application, any person, who has an interest in the matter in
12 litigation, or in the success of either of the parties, or an interest against
13 both, may intervene in the action or proceeding.” Cal. Code of Civil
 Procedure §387(a).

14 Whether to permit intervention should further be guided by the principle that “section 387 should be
15 liberally construed in favor of intervention.” *Simpson Redwood Company v. State of California* (1987)
16 196 Cal.App.3d 1192, 1200.

17 The sufficiency of a proposed intervenor’s interest under § 387(a) was discussed in *The People*
18 *ex rel. Richard E. Rominger v. County of Trinity* (1983) 147 Cal.App.3d 655, 662. (Hereinafter *County*
19 *of Trinity*). *County of Trinity* involved a County ordinance prohibiting the use of phenoxy herbicides.
20 The same herbicides were regulated, though more leniently, by the State of California. The State
21 consequently sued to invalidate the County ordinance on grounds that it was preempted by state law.
22 Sierra Club sought to intervene in support of the County ordinance. Toward that end Sierra Club argued
23 it had a sufficient interest in the litigation because its members might be harmed while recreating in
24 forests that, if the State were to succeed in its lawsuit, could be sprayed with the herbicide. *Id* at 661.
25 The State countered that Sierra Club could not establish with a sufficient degree of certainty that its
26 members would be physically harmed if the County ordinance were invalidated. *Id* at 663. The court
27 rejected the State’s argument, and in doing so re-affirmed the rule that “to sustain intervention, ‘it is not
28 necessary that (the intervenor’s) interest in the action be such that he will *inevitably* be affected by the

1 judgment. It is enough that there be a substantial *probability* that his interests will be so affected.’
2 (Citations).” *Id* at 662. The court consequently determined that, “(i)n alleging that its members would
3 be harmed if spraying of phenoxy herbicides resumes in Trinity County in the absence of the ordinances,
4 the Sierra Club does allege specific harm... .” *Id*. Thus, the court held that Sierra Club had an interest in
5 the litigation sufficient to justify intervention because, if the State were to succeed in the lawsuit, there
6 was a substantial probability that Sierra Club members would be exposed to a potentially harmful
7 pollutant.

8 The interests of Environmental Health Coalition (“EHC”) in this instance are similar to those of
9 Sierra Club described above. EHC carries out its mission via campaigns, including its *Clean Bay*
10 *Campaign*, espousing the following beliefs and values:

- 11 • All people have the right to live, play and work in a safe and healthy environment.
- 12 • All people have the right and responsibility to act to correct environmental damage and
13 prevent future degradation.
- 14 • EHC represents the public interest and takes direction from the communities it represents.
- 15 • Communities of color and poor communities are disproportionately affected by toxic
16 materials used in the workplace and discharged into the air, land and water.
- 17 • Pollution prevention is the most effective approach to addressing the toxics crisis.
- 18 • EHC supports the integrity of ecosystems and recognizes human dependence on them.
- 19 • It is the government's duty to enact and enforce laws to safeguard the environment,
20 worker and public health.
- 21

22 Each of EHC’s core values are implicated in the shipyard sediment remediation. Further, EHC undertook
23 a “Survey of Fishers on Piers in San Diego Bay” earlier this year to determine who would be most likely
24 impacted by bioaccumulating pollutants in the bay. See EHC Press Release, attached hereto as Exhibit 1.
25 The results of the survey showed that those people EHC represents, specifically communities of color
26 and poor communities, would be affected most. Hence, like in *County of Trinity*, there is a substantial
27 probability the very people EHC represents will be affected by the ultimate cleanup level adopted for the
28

1 polluted shipyard sediments.

2 Similarly, San Diego Baykeeper strives to protect regional water bodies for a membership that,
3 along with the general public, specifically consists of fishermen, scientists, educators, and boaters. The
4 “Baykeeper” name alone is telling. Baykeeper’s members fish in the bay, swim and otherwise recreate in
5 the bay, study the bay, and utilize bay resources to teach students about natural ecosystems. Continued
6 degradation of bay water quality, as occurs via pollution of the shipyard sediments, negatively impacts
7 the health, welfare, and quality of life for Baykeeper’s members. Hence, like EHC, Baykeeper’s interests
8 in setting an appropriate shipyard sediment cleanup level are sufficient to warrant intervention.
9

10 Counsel for NASSCO will surely attack these asserted member interests and impacts at the pre-
11 hearing conference. By their signatures below, Laura Hunter and Bruce Reznik declare, under penalty of
12 perjury, that these statements accurately reflect the potential impacts to members of EHC and Baykeeper
13 respectively.
14

15 A. The Environmental Groups’ Reputations Depend on Their Abilities to Advocate
16 for a Clean Bay and, therefore, Financial and Other Contributions Could Decrease
17 If They Are Precluded From Actively Participating In these Proceedings.

18 The case *Simpson Redwood Company v. State of California*, 196 Cal.App.3d 1192, 1200-1201 .
19 established as a relevant factor to the decision whether to allow an environmental group to intervene the
20 issue of whether the group’s reputation would suffer as a result of non-participation. When the explicit
21 purpose of the group is at issue, the denial of right to participate could compromise the public’s view of
22 the group’s effectiveness. The attendant impact to the group’s reputation could then result in decreased
23 membership, contributions, and ultimately, viability.
24

25 As noted above, EHC has a “Clean Bay Campaign.” If not allowed to participate as a party, the
26 effectiveness of the campaign may be called into question. Similarly, how can the group be called
27 “Baykeeper” if it is not allowed to directly participate in keeping the bay clean? State law allows the
28

1 Board to consider the potentially negative impacts to the Environmental Groups' reputation when
2 deciding to grant them "designated party" status.

3 2. Intervention by the Environmental Groups Will Not Impair the Interests of Justice Nor
4 the Orderly and Prompt Conduct of the Proceedings.

5 The State Water Resources Control Board has a history of allowing interested environmental
6 groups to participate as "parties" in adjudicative public hearings, even without the submission of formal
7 written motions. Attached hereto as Exhibit 2 is a Notice of Public Hearing dated March 2, 2002. On
8 page 2 of the Notice, three Los Angeles based environmental groups – Natural Resources Defense
9 Council, Santa Monica BayKeeper, and Heal the Bay – are designated as parties, and all others wishing
10 to participate are required to formally request party status. The State Water Board recognized the
11 longstanding involvement of these entities in the process of stormwater permit development at issue in
12 the hearing, and therefore granted them party status outright. Clearly their participation in that formal
13 adjudicative hearing was not considered overly burdensome by the State Board.
14

15
16 In the current matter, though EHC and San Diego Baykeeper seek party status individually, the
17 groups' interests will be singularly represented. The Bay Council is not a formal entity, and thus is not
18 an appropriate party. Also, because EHC and Baykeeper have different Boards of Directors, decision-
19 making structures, budgets, and litigation propensities, they cannot be considered a single party.
20 Nonetheless, both of the Environmental Groups agree to jointly produce expert witnesses and
21 documentary evidence.¹ Essentially, they will function as a single entity, with both groups represented by
22

23
24 _____
25 ¹ The evidence to be supplied by the Environmental Groups can generally be described as expert
26 assessment of NASSCO's "Exponent Report," including written and oral testimony as to the scientific
27 validity of the reference pool chosen by Board staff and the likelihood that the proposed cleanup levels
28 will protect beneficial uses as required by law. Further, the Environmental Groups intend to produce
evidence regarding the Board's proposed application of environmental cost-benefit assessment theories
to the "economic feasibility" considerations under State Water Resources Control Board Resolution 92-
49.

1 single counsel – Coast Law Group LLP – for purposes of these proceedings.

2 Further, where an environmental group seeking to intervene will raise issues distinct from other
3 parties in the litigation, but the issues center around essentially the same set of facts, there is no undue
4 complication of proceedings. *Simpson Redwood Company v. State of California*, 169 Cal.App.3d 1192,
5 1202 (1987); *See also, County of Trinity*, 147 Cal.App.3d 655, 664 (1983) (Environmental group’s
6 intervention does not enlarge scope because no new legal or factual issues presented).
7

8 The Regional Board should follow the example of the State Board noted above and list both
9 groups as parties, but limit them to the same procedural and presentation time limits as if they were a
10 single entity.
11

12 3. The Environmental Groups’ Interests are Not Adequately Represented
13 By The Regional Board Advisory Team

14 NASSCO, in its objections to the Advisory Team’s proposed designation of the Bay Council as a
15 party, makes the claim that Regional Board staff “is statutorily authorized and fully capable of
16 representing any interests Bay Council may have in the water quality of San Diego Bay.”² This statement
17 ignores the substantial past disagreements the Environmental Groups have had with Board staff on a
18 number of issues and decisions related to cleanup of the shipyards’ polluted sediments. Just because the
19 agency is ordered by statute to pursue the goal of clean water, there is no guarantee staff will interpret
20 this obligation in the same manner as the Environmental Groups. By its own reasoning, NASSCO can
21 similarly rest assured that Southwest Marine will advocate for the least expensive cleanup, and therefore
22 it need not participate in the proceedings either.
23

24 The court in *County of Trinity* addressed the issue of agency representation of environmental
25

26
27 ² This exact same argument failed when NASSCO’s counsel unsuccessfully sought to preclude
28 San Diego Baykeeper and two other environmental groups from intervening in the Building Industry
Association’s challenge to this Board’s adoption of the San Diego Municipal Stormwater Permit.

1 interests:

2 "We are not dealing here with two private parties litigating a private matter but rather
3 with two public bodies litigating the fate of ordinances designed to protect the public's
4 health and security. Any argument that the parties should be permitted to litigate
5 without the "interference" of the very people those ordinances were designed to
6 protect is an unacceptable assertion of bureaucratic dominion and control to the
7 exclusion of the citizenry." 147 Cal.App.3d 655,665.

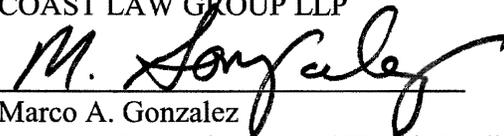
8 The same rationale applies here. The interests of EHC's and Baykeeper's members cannot conceivably
9 be represented in their entirety by the Regional Board staff.

10 **III. CONCLUSION**

11 For the foregoing reasons, the Regional Board should designate both Environmental Health
12 Coalition and San Diego Baykeeper as parties in this matter. In the interests of orderly and prompt
13 conduct of proceedings, procedures or orders should be adopted requiring the two parties to coordinate
14 their presentations of witnesses, evidence, and arguments such that they effectively function as one
15 party.

16 Dated: September 20, 2005

COAST LAW GROUP LLP

17 

18 Marco A. Gonzalez
19 Attorney for Environmental Health Coalition
20 and San Diego Baykeeper

21 Dated: September 20, 2005

ENVIRONMENTAL HEALTH COALITION

22 _____
23 Laura Hunter
24 Director, Clean Bay Campaign

25 Dated: September 20, 2005

SAN DIEGO BAYKEEPER

26 _____
27 Bruce Reznik
28 Executive Director

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16 Dated: September 20, 2005

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20 Attorney for Environmental Health Coalition
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ENVIRONMENTAL HEALTH COALITION

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20 Attorney for Environmental Health Coalition
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ENVIRONMENTAL HEALTH COALITION

23 
24 _____
25 Laura Hunter
26 Director, Clean Bay Campaign

27 Dated: September 20, 2005

SAN DIEGO BAYKEEPER

28 _____
Bruce Reznik
Executive Director



Media Release

**For Immediate Release:
March 4, 2005**

Contacts:

Laura Hunter: (619) 474-0220 ext. 102
Mobile: (619) 997-9983
Gabriel Fabila: (619) 474-0220 ext.105
Mobile: (619) 952-3358

Contaminated Catch - A Risk for Bay Fisher Families

State Leaders Ortiz and Saldaña join EHC in urging Regional Water Board action

(National City)- Today at a press conference in Pepper Park in National City, Environmental Health Coalition (EHC) released its landmark report **'Survey of Fishers on Piers in San Diego Bay.'** The first survey of San Diego Bay pier fishers and their fish consumption patterns, it documents that people are consuming fish in quantities that can damage their health. EHC is urging the San Diego Regional Water Quality Control Board (Regional Board) to direct the shipyards responsible for significant contamination of the Bay to remove more than one million tons of toxic sediments to protect the health of fish consumers and the San Diego Bay ecosystem.

Contamination of fish and sediments from San Diego Bay is well documented. In 1990, a study by the National Oceanic and Atmospheric Administration (NOAA) rated San Diego Bay as one of the most contaminated urbanized coastal areas in the nation. A second study in 1996 by the State Water Resources Control Board, again, documented widespread contamination. Human health risk studies done in 1990, 1991, 1995, 1998, and 2004 have estimated significant health risks when people consume bay fish at higher rates of consumption than the average recreational fisher. What has been missing is evidence that people are consuming fish at those higher rates that can damage their health. This report presents that missing evidence.

EHC will use this data to support a specific set of recommendations to the Regional Board later this year, once the board sets a hearing date for the issue of sediment clean-up levels. Laura Hunter, Director of EHC's Clean Bay Campaign summarized the organization's demands: "EHC is calling on the State to act to remove dangerous chemicals from the Bay known to bioaccumulate and threaten the health of families that rely on the Bay for a food source." She said "By taking these specific actions, the Regional Board will help protect the communities most affected by the contamination of the Bay and human health and the environment in general," she concluded.

EXHIBIT 1

Members of the San Diego Bay Council and local fishermen were at hand today, in support of the findings of this groundbreaking report. Also present were elected officials Assemblymember Lori Saldaña from the 76th Assembly District, and State Senator Deborah Ortiz, D-Sacramento.

"I agree with the EHC report: it's time to move forward and safeguard our bay, improve water quality, and protect the health of everyone who lives and visits there" said Saldaña, a long time clean water advocate for the San Diego region; "Together, we will create programs that mitigate the harm done to the bay, and protect everyone who uses it for recreation and sustenance" she added.

The survey was completed during the winter and spring months of 2004, and it reveals that a significant population of fishers frequently fish near contaminated areas of the Bay and feed their families with the fish they catch. More than 100 fishers were surveyed at the Chula Vista Pier, Pepper Park Pier in National City and the Convention Center Pier in San Diego. Some of the key results of the survey are:

- 96% of the fishers were Filipino or Latino
- 83% were residents of west Chula Vista, National City or Barrio Logan
- 63% of the fishers, their families or friends consumed the fish they caught
- 35% fed the fish to their children
- 31% fished at least weekly and 25% fished 4 to 7 times a week
- Over half of the Filipino fishers fished at least 4 times a week

This survey report confirms cultural differences among populations that have not been taken into account in other reports of fish consumption. For example, one of the results is that people are eating parts of the fish other than the fillets (which is the part of the fish typically analyzed for fish consumption studies) and in some cases the fish is prepared in a manner that uses the whole fish. This is of particular importance because contaminants can concentrate in the skin, fat, and internal organs. Additionally, the cooking methods that were most mentioned in the survey were frying and stewing, methods that remove less contaminants from the fish than baking or broiling.

The key actions that EHC is recommending the Regional Board to take are as follows:

1. Require commercial shipyards and naval facilities to clean up to protective background levels for remediation of toxic sediments in San Diego Bay and to support protective sediment quality objectives for the State.
2. Consider the environmental justice impacts in decision-making and implement precaution in all permitting and regulatory decisions.
3. Revise the fish consumption warning for San Diego Bay based on higher consumption levels.
4. Update and replace fish warning signs to include Tagalog
5. Work with the Department of Toxic Substances Control and the Office of Environmental Health Hazard Assessment to initiate an outreach and education program to educate fishers of the Bay of the risks of consuming Bay fish and some means to reduce the risks.

“Protecting the health of Californians, and especially our children, is one of the highest

priorities and responsibilities government has,” said Senator Deborah Ortiz, chair of the Senate Health Committee. “The dedicated efforts by organizations like the Environmental Health Coalition are critical to ensuring the safety of those who live in our community. With the continuing, grassroots level commitment of EHC, we will win the fight and ensure we have clean air and water, and our children are free of exposure to dangerous chemicals.”

The contamination of the fish in San Diego Bay is the direct result of sediment and water contamination. A key pollution source are the San Diego shipyards like Southwest Marine and NASSCO, who for more than 20 years have been illegally dumping wastes into San Diego Bay and have contaminated the sediments in the Bay. In 2001, the Regional Board ordered the shipyards to perform sediment sampling in order to establish cleanup levels. Now, consultants for the shipyards have developed a plan that proposes leaving all of the contaminated sediments in the Bay and performing no cleanup at all. If this happens, it would put the people who fish from the Bay and the wildlife in jeopardy for years to come.

####

Environmental Health Coalition is dedicated to environmental and social justice. We believe that justice is achieved when empowered communities act together to make social change. We organize and advocate to protect public health and the environment threatened by toxic pollution. EHC supports efforts that create a just society and that foster a healthy and sustainable quality of life.

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Winston H. Hickox
*Secretary for
Environmental
Protection*

State Water Resources Control Board

1001 I Street, Sacramento, California 95814
P.O. Box 100, Sacramento, California 95812-0100
(916) 341-5175 ♦ FAX (916) 341-5199 ♦ www.swrcb.ca.gov



Gray Davis
Governor

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.swrcb.ca.gov.

NOTICE OF PUBLIC HEARING ON STAY REQUESTS

The State Water Resources Control Board will hold a hearing to consider issuance of a stay on

Petitions of
County of Los Angeles and Los Angeles County Flood Control District et al.;
City of Artesia et al.; City of Arcadia et al.;
Los Angeles County Economic Development Corporation et al.;
Playa Capital Company; and Western States Petroleum Association
(Waste Discharge Requirements Order No. 01-182 for Municipal Storm Water
and Urban Runoff Discharges [NPDES No. CAS004001]
within Los Angeles County, except for Long Beach):
Los Angeles Region.
SWRCB/OCC File No. A-1448

Monday, March 25, 2002, 10:00 a.m.

**Metropolitan Water District of Los Angeles
700 North Alameda Street
Board Room, First Floor
Los Angeles, California**

PURPOSE OF HEARING

The State Water Resources Control Board (State Board) has received requests from the City of Los Angeles and the Cities of Arcadia et al. to stay the effect of the municipal storm water permit for Los Angeles County pending resolution of the consolidated petitions on the merits. The State Board will hold a hearing to consider issuance of a stay.

The purpose of this hearing is to receive any relevant testimony or evidence and to hear policy statements on whether to issue a stay in this matter. The hearing will be limited to this purpose. The bases for a stay will be limited to the submissions by the City of Los Angeles and the Cities of Arcadia et al. A stay of the effect of the permit may be granted only if petitioners produce proof of (1) substantial harm to them or to the public interest if a stay is not granted, (2) a lack of substantial harm to other interested persons and to the public interest if a stay is granted, and (3) substantial questions of fact or law regarding the permit. The hearing will be limited to this purpose.

The hearing will be held on *Monday, March 25, 2002, at 10:00 a.m.* The hearing may be conducted by one State Board Member. At the hearing, the State Board will receive oral and written testimony and policy statements on the issue described above. All persons who wish to provide information relating to whether to stay the effect of the permit pending resolution of the petitions on the merits may submit policy statements.

HEARING PARTICIPATION

Participants at the hearing are either “parties” or “interested persons.” Parties to the hearing may present evidence and are subject to cross-examination. Parties may also cross-examine other parties’ witnesses. Cross-examination is limited to testimony and evidence.

Parties and interested persons may present non-evidentiary policy statements. Interested persons are not subject to cross-examination and may not cross-examine other parties. Parties may be cross-examined only regarding evidence they submit and not policy statements. Parties must clearly identify any portions of their presentations that are policy statements. Policy statements may refer to evidence in the record and must be limited to **five pages, double-spaced, with a font no smaller than 12.**

The following participants are hereby designated as parties at the hearing:

1. All petitioners in SWRCB/OCC Files A-1448 et al.;
2. Natural Resources Defense Council, Santa Monica BayKeeper, and Heal the Bay;
3. Los Angeles Regional Water Quality Control Board.

All other persons who wish to participate in the hearing as parties must request party status. Requests must be submitted no later than **5:00 p.m. on March 13, 2002.** The submissions shall explain the basis for party status and why the existing parties do not adequately represent the person’s interests. Persons or entities with similar interests are requested to select one representative to serve as a party on behalf of the group. All designated parties must submit the following no later than **5:00 p.m. on March 20, 2002:** the evidence and exhibits that will be presented, a list of witnesses and their full testimony to be presented, and references to evidence

in the administrative record that should be considered by the State Board. All submissions shall be made to:

Elizabeth M. Jennings, Esq.
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100
Email: bjennings@exec.swrcb.ca.gov

The State Board will strictly enforce the deadlines, page limits, and limits on oral presentations and written submissions described herein.

Oral testimony that goes beyond the scope of written testimony will be excluded. Parties who propose to offer expert testimony must include a statement of qualifications of the expert witness. Parties must submit all documents to the State Board and must send one copy to each person at the address listed on attached pages to this notice. Parties may make electronic submissions. Interested persons may submit one copy of policy statements in advance to the State Board only.

HEARING PROCEDURES

To ensure that all participants have an opportunity to participate in the hearing, the following time limits will apply. Each of the three parties listed above, and any other parties that are designated, will have a total of 30 minutes to present their testimony and policy statements. Interested persons will have 3 minutes to present a policy statement. Interested persons with similar concerns should participate in a joint presentation, and the State Board may limit such statements if they are repetitive. Participants are requested to avoid redundant comments. Additional time may be provided upon a showing that additional time is necessary.

The State Board will conduct the hearing in accordance with the State Board's regulations governing adjudicative proceedings and the Administrative Procedure Act (APA). The State Board's regulations are in the California Code of Regulations, title 23, section 648 et seq. (<http://www.calregs.com>) or upon request. The APA provisions are at California Government Code section 11400 et seq. The hearing will not be conducted as a formal hearing under Chapter 5 of the Administrative Procedure Act (commencing at Government Code section 11500).

CLOSED SESSION

The State Water Board may meet in closed session to deliberate on a decision to be made based on evidence taken at the hearing, either immediately following the hearing or at a subsequent time. The closed session is authorized under Government Code section 11126, subdivision (c)(3).

FURTHER ACTION ON THE STAY REQUEST

The State Board may act on the stay requests at a subsequent meeting, whose time and place will be publicized. A draft decision will be circulated to the public, and the public will have an opportunity to comment on the draft decision prior to final State Board action. The State Board will not allow the introduction of evidence or exhibits following the close of the hearing.

LOCATION AND ACCESSIBILITY

The Metropolitan Water District of Los Angeles is accessible to people with disabilities. Public parking is available across the street from the building. A map of the exact location is attached to this notice.

Individuals who require special accommodations are requested to contact Adrian Perez at (916) 341-5880 at least five (5) working days prior to the hearing.

IF YOU HAVE ANY QUESTIONS

Questions concerning the hearing may be addressed to Elizabeth Miller Jennings, Senior Staff Counsel IV at (916) 341-5175 or at bjennings@exec.swrcb.ca.gov.

/s/
Maureen Marché
Clerk to the Board

Dated: March 7, 2002

Enclosures



COAST LAW GROUP LLP

169 Saxony Road, Suite 201 Encinitas, CA 92024
Ph: 760.942.8505 Fx: 760.942.8515
www.coastlawgroup.com

FAX COVER SHEET

FAX NUMBER TRANSMITTED TO: 858-571-6972

To: Frank McIbourn

From: Marco Gonzalez

Client/Matter: Shipyard Sediment Cleanup and Abatement Order

Date: September 20, 2005

DOCUMENTS	NUMBER OF PAGES*
Declaration of Service by Mail	1

COMMENTS:

The information contained in this facsimile message is information protected by attorney-client and/or the attorney/work product privilege. It is intended only for the use of the individual named above and the privileges are not waived by virtue of this having been sent by facsimile. If the person actually receiving this facsimile or any other reader of the facsimile is not the named recipient or the employee or agent responsible to deliver it to the named recipient, any use, dissemination, distribution, or copying of the communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via U.S. Postal Service.

* NOT COUNTING COVER SHEET. IF YOU DO NOT RECEIVE ALL PAGES, PLEASE TELEPHONE US IMMEDIATELY AT (760) 942-8505.

DECLARATION OF SERVICE BY MAIL

*In the Matter of Tentative Cleanup and Abatement Order
No. R9-2005-0126; Shipyard Sediment Remediation*

I, **MARCO A. GONZALEZ**, declare that: I am over the age of eighteen years and not a party to the above action; I am employed in, or am a resident of, the County of San Diego, California, where the mailing occurs; and my business address is **169 Saxony Road, Suite 201, Encinitas, CA 92024**.

I further declare that I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business.

I served the following document(s): **ENVIRONMENTAL GROUPS' MOTION FOR "DESIGNATED PARTY" STATUS AND OPPOSITION TO OBJECTIONS OF CITY OF SAN DIEGO AND NASSCO**

by placing a true copy of each document in a separate envelope addressed to each addressee, respectively, as follows:

Frank Melbourn RWQCB 9174 Sky Park Court San Diego, CA 92123	Michael Chee NASSCO PO Box 85278 San Diego, CA 92186
Sandor Halvax BAE Systems San Diego Ship Repair Inc. PO Box 13308 San Diego, CA 92170	David Merk Director of Environmental Services Port of San Diego PO Box 120488 San Diego, CA 92112
Brian Gordon Department of the Navy Environmental Department N45 Commander Navy Region Southwest 33000 Nixie Way, Bldg. 50, Ste. 326 San Diego, CA 92147	Scott Tulloch City of San Diego Metropolitan Wastewater Department 9192 Topaz Way San Diego, CA 92123
Vincent Gonzales SDG&E Sempra Energy 555 West Fifth Street, Ste. 1400 San Diego, CA 92123	H. Allen Fernstrom Marine Construction and Design Company 2300 West Commodore Way Seattle, WA 98199
Christopher J. McNevin Attorney for Chevron USA Inc. Pillsbury Winthrop Shaw Pittman, LLC 10250 Constellation Blvd., 21 st Floor Los Angeles, CA 90067	Roy Than BP West Coast Products LLC 6 Centerpointe Drive La Palma, CA 90623

I then sealed each envelope and, with the postage thereon fully prepaid, I placed each for deposit in the United States Postal Service, this same day, at my business address shown above, following ordinary business practices.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Dated: September 20, 2005


MARCO A. GONZALEZ

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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is DLA Piper LLP (US), 401 B Street, Suite 1700, San Diego, California 92101-4297. On August 2, 2010, I served the within documents:

BAE SYSTEMS' OPPOSITION TO ENVIRONMENTAL GROUPS' MOTION FOR PROTECTIVE ORDER TO QUASH DISCOVERY BY NASSCO AND BAE SYSTEMS

by transmitting via e-mail the document(s) listed above to the recipient(s) set forth below on this date

SEE ATTACHED SERVICE LIST

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 2, 2010, at San Diego, California.



NATHINE NELSON

Service List

*In re Shipyard Sediment Site Cleanup Project and
Tentative Cleanup & Abatement Order No. R9-2010-0002*

Catherine Hagan, Esq.
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