

Frank Melbourn - Fwd: Re: SAN DIEGO BAY SEDIMENT MATTER: CAO R9-2011-0001:MODIFICATION RE FILING OF EXPORT REPORTS

From: Catherine Hagan (George)
To: Frank Melbourn
Date: 11/2/2010 3:16 PM
Subject: Fwd: Re: SAN DIEGO BAY SEDIMENT MATTER: CAO R9-2011-0001:MODIFICATION RE FILING OF EXPORT REPORTS

>>> Timothy Gallagher <timg@thegallaghergroup.com> 10/25/2010 9:10 PM >>>
 Further to my quick prior response, let's make it a suggestion, does anyone disagree?

Just trying to coordinate the process and work load.

Thank you for you consideration, Tim.

Sent from my HTC on the Now Network from Sprint!

----- Reply message -----

From: "Nichols, Sandi" <snichols@allenmatkins.com>
 Date: Mon, Oct 25, 2010 4:03 PM
 Subject: SAN DIEGO BAY SEDIMENT MATTER: CAO R9-2011-0001:MODIFICATION RE FILING OF EXPORT REPORTS
 To: "Timothy Gallagher" <timg@thegallaghergroup.com>, "Catherine Hagan (George)" <CHagan@waterboards.ca.gov>, "ivhandmacher@bvmm.com" <ivhandmacher@bvmm.com>, "matthew.dart@dlapiper.com" <matthew.dart@dlapiper.com>, "Mike.Tracy@dlapiper.com" <Mike.Tracy@dlapiper.com>, "caryn.craig@doj.ca.gov" <caryn.craig@doj.ca.gov>, "daniel.fuchs@doj.ca.gov" <daniel.fuchs@doj.ca.gov>, "bledger@gordonrees.com" <bledger@gordonrees.com>, "kreyrna@gordonrees.com" <kreyrna@gordonrees.com>, "kelly.richardson@lw.com" <kelly.richardson@lw.com>, "lfitzger@portofsandiego.org" <lfitzger@portofsandiego.org>, "gabe@sdcoastkeeper.org" <gabe@sdcoastkeeper.org>, "jill@sdcoastkeeper.org" <jill@sdcoastkeeper.org>, "jtracy@semprautilities.com" <jtracy@semprautilities.com>, "sarah@sshbclaw.com" <sarah@sshbclaw.com>, "melanie.andrews@usdoj.gov" <melanie.andrews@usdoj.gov>, "thomas.stahl@usdoj.gov" <thomas.stahl@usdoj.gov>, "Cris Carrigan" <CCarrigan@waterboards.ca.gov>, "David Gibson" <DGibson@waterboards.ca.gov>, "Jessica Newman" <JMNewman@waterboards.ca.gov>, "Lori Okun" <LOkun@waterboards.ca.gov>, "Marleigh Wood" <MWood@waterboards.ca.gov>, "Philip Wyels" <PWyels@waterboards.ca.gov>, "wbrown@tmo.blackberry.net" <wbrown@tmo.blackberry.net>
 Cc: "loneal@brownandwinters.com" <loneal@brownandwinters.com>, "Wentzelee Botha" <wbotha@brownandwinters.com>

Dear Mr. Gallagher,

The San Diego Unified Port District ("Port District") was not contacted or consulted prior to the issuance of your email this afternoon, although it appears there has already been some ex parte discussion between some or all of

the other participating Designated Parties with the Discovery Referee concerning these matters.

The Port District agrees the deadline for expert reports should be extended, as proposed by the Port District in the discovery motion you reference below. However, for the reasons detailed in the Reply Brief in support of that motion, which was served this afternoon on the Designated Parties and Ms. Hagan, we do not believe the Discovery Referee has jurisdiction to set the order of these proceedings, including the discovery schedule. Such orders are within the exclusive purview of the Presiding Officer (*see* Government Code section 11445.40(b) and Paragraph 5 of the August 9, 2010, Stipulation entered into in this proceeding). Former Presiding Officer David King recently confirmed this in his August 10, 2010, ruling on NASSCO's CEQA-related motion ("The role of the Presiding Officer is to decide procedural matters.")

Consequently, while we agree the parties should not have to produce expert reports tomorrow, we respectfully disagree that the Discovery Referee has the authority to set new deadlines.

Best regards,

Sandi Nichols

Attorney for San Diego Unified Port District

From: Timothy Gallagher [mailto:timg@thegallaghergroup.com]

Sent: Monday, October 25, 2010 3:18 PM

To: Catherine Hagan (George); ivhandmacher@bvmm.com; matthew.dart@dlapiper.com; Mike.Tracy@dlapiper.com; caryn.craig@doj.ca.gov; daniel.fuchs@doj.ca.gov; bledger@gordonrees.com; kreyana@gordonrees.com; kelly.richardson@lw.com; lfitzger@portofsandiego.org; gabe@sdcoastkeeper.org; jill@sdcoastkeeper.org; jtracy@semprautilities.com; sarah@sshbclaw.com; melanie.andrews@usdoj.gov; thomas.stahl@usdoj.gov; Cris Carrigan; David Gibson; Jessica Newman; Lori Okun; Marleigh Wood; Philip Wyels; Bill Brown (wbrown@tmo.blackberry.net); Nichols, Sandi

Subject: SAN DIEGO BAY SEDIMENT MATTER: CAO R9-2011-0001:MODIFICATION RE FILING OF EXPORT REPORTS

To the Designated Parties in San Diego Regional Water Quality Control Board Tentative Cleanup and Abatement Order No. R9-2011-0001, formerly R9-2010-0002:

In my capacity as discovery referee in the matter of the San Diego Bay sediment matter, <span style="font-family:Arial&qu