

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

>>> "Nichols, Sandi" <snichols@allenmatkins.com> 10/25/2010 4:03 PM >>>

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@bvm.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, it is my priority to ensure consistent and reasonable deadlines for discovery, including filing of expert reports. I understand that, under the previously agreed upon stipulation for discovery schedule, expert reports are due tomorrow, October 26, 2010. However, I also understand that at least two competing proposals for discovery schedules are currently being considered – a motion filed by the Port District to the Regional Board members and a second proposal prepared by the Cleanup Team, both of which would, inter alia, extend the deadline for expert reports for a number of months. Therefore, to provide sufficient time for consideration of those proposals, expert reports will now be due on November 19, 2010, unless and until those proposals are ruled upon or another schedule is agreed to by stipulation of the parties. I find that modifying the deadline for expert reports in this manner will not result in a change to the hearing schedule and is in the best interests of the parties.

Please email me promptly with any concerns.

Thank you, Tim Gallagher 310-709-0855.

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