

**From:** Catherine Hagan  
**To:** Designated Parties Only Contact List  
**CC:** James Smith; Melbourn, Frank  
**Date:** 11/5/2011 1:36 PM  
**Subject:** San Diego Bay Shipyard Sediment Matter, TCAO R9-2011-0001, Chair Communication

November 5, 2011

To the Designated Parties in TCAO R9-2011-0001:

On behalf of Chair Destache, please see the following communications resolving requests to combine time and for telephonic participation.

Sincerely,

Catherine George Hagan

### Combining Time

On November 3, 2011, the San Diego Water Board received two requests to combine time from the Designated Parties.

1. National Steel and Shipbuilding Company (NASSCO), BAE Systems San Diego Ship Repair, Inc. (BAE), Star and Crescent Boat Company (Star and Crescent) and Campbell Industries (Campbell) (joint parties) request permission to make a joint presentation collectively using 6.75 hours of the 8 total hours allotted to these parties. BAE and Star & Crescent would each reserve 30 minutes and Campbell 15 minutes of their respective two hour allotments to address individual issues. These joint parties also request that any time remaining after their joint presentation revert in *equal shares* to the four joint parties. As I understand the joint parties' proposal, if the joint parties have completed their presentation in 5.75 hours, for example, NASSCO, BAE, Star and Crescent and Campbell will each receive 15 minutes of reverted time. I will allow the joint presentation because I expect that it will help joint parties with overlapping issues to present their issues in a more orderly fashion and will minimize repetition. Reversion of remaining time in equal shares simplifies time-keeping associated with a joint presentation, but the parties are reminded to avoid repetition during their individual presentations to the extent possible. The joint parties are also reminded that cross-examination of adverse witnesses counts against the cross-examining party's time. Thus, unless one of the joint parties clearly states that cross-examination of a particular adverse witness counts against that party's reserved individual time, the cross-examination will count against the 6.75 hours of joint time.

2. I will also grant the Cleanup Team's request to use one hour out of the City of San Diego's two-hour time block. This is a reasonable request because it appears that the Cleanup Team and the City share some overlapping issue and as with the joint parties' request, I expect that this will result in a more orderly presentation and will minimize overall repetition. Cross-examination by the Cleanup Team of adverse witnesses will be counted against the Cleanup Team's time. As I understand the proposal, the City will limit its presentation time for individual issues, including cross-examination of adverse witnesses, to one hour.

Permission to combine presentations does not affect the additional 15 minutes each party has

for closing argument.

### Telephonic Appearance

The San Diego Water Board received requests for telephonic appearance by unavailable witnesses from San Diego Gas & Electric (SDG&E), NASSCO and BAE. SDG&E's witness Jason Conder and NASSCO's witness Dr. Herbert Allen wish to appear by telephone instead of personally to affirm their testimony and be subject to cross-examination. BAE requests that Philip Spadaro appear by telephone to affirm the report he jointly wrote with Poh Boon Ung, Matthew Butcher, Paul Doody and Derek Edge, each of whom is also unavailable to appear in person to affirm his testimony. The applicable regulations require that witnesses submitting written testimony personally appear to affirm their testimony is true and correct. (Cal. Code Regs, tit. 23, sec. 648.4(d).) Since the report was jointly written, all witnesses must appear to affirm their written testimony and be available for cross-examination. No party objected to telephonic participation by any of these witnesses. Therefore, each of these witnesses will be permitted to appear telephonically. The San Diego Water Board's phone line can accommodate SDG&E's and NASSCO's witnesses appearing at different times. Because BAE has multiple witnesses appearing telephonically, BAE must provide a call-in number for its witnesses and the San Diego Water Board to use during the hearing.

The procedures in the September 19, 2011, Notice of Public Hearing is modified accordingly.

Grant E. Destache  
Chair  
San Diego Water Board