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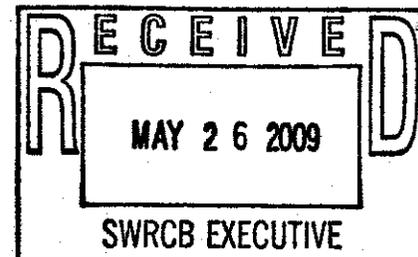
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May 26, 2009

VIA ELECTRONIC MAIL AND HAND DELIVERY

Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
Office of Enforcement  
1001 I Street  
Sacramento, CA 95814



Re: **Water Quality Enforcement Policy Workshop June 4, 2009**

Dear Ms. Townsend:

The Water Replenishment District of Southern California ("WRD") is pleased to submit its preliminary comments on the State Water Resources Control Board's ("State Board") Draft Water Quality Enforcement Policy dated May 6, 2009 ("Draft Policy"). WRD understands and expects that there will be further opportunities for public comment before the Draft Policy is presented to the State Board for adoption.

WRD became concerned last year when the State Board and Regional Water Quality Control Boards ("Regional Boards") proposed the imposition of significant mandatory minimum penalties ("MMPs") on holders of National Pollutant Discharge Elimination System ("NPDES") permits for periodic discharges for failure to submit a report documenting that no discharge had occurred during the relevant monitoring period. WRD does not believe that the language or Legislative history of Water Code section 13385.1 supports the imposition of MMPs for these types of violations. Therefore, WRD supports the State Board's efforts to clarify the scope of section 13385.1 in the Draft Policy.

Specifically, WRD supports the State Board's revisions to the Draft Policy providing that a "report that is required to be submitted to document that no discharge to surface waters occurred during the relevant monitoring period is not a 'discharge monitoring report' for the purposes of section 13385.1(a)" and is therefore not subject to MMPs. Under prior (and incorrect) interpretations of section 13385.1, a discharger who failed to submit a monitoring report for a period in which the discharger did not even discharge could accrue hundreds of thousands of dollars in MMPs for mere "paper violations" that did not cause any threat to water quality. Civil penalties of this magnitude are wholly disproportionate to the lack of harm caused by the filing of a late report. As the proposed revisions in the Draft Policy correctly acknowledge, a discharge monitoring report that merely states no discharge has occurred for the applicable reporting period is not designed to ensure compliance with effluent limitations. Such non-discharge reports, therefore, are not subject to section 13385.1.

Furthermore, the imposition of MMPs for paper violations is contrary to the legislative intent of the MMP provisions in Water Code section 13385. As indicated in the State Assembly's analysis of AB 1541, the Legislature estimated that the enactment of Section 13385.1 would result in "minor potential

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penalty revenue increases, probably less than \$100,000.00 annually." (Assembly Floor Analysis, AB 1541, Sept. 10, 2003.) However, MMPs drastically exceeding \$100,000 for individual dischargers have been proposed for late reporting violations. The Legislature clearly did not intend or anticipate that the State and Regional Boards would propose MMPs of this magnitude to dischargers pursuant to Section 13385.1 for mere paper violations that did not cause any threat to water quality.

Thank you for the opportunity to submit our comments on the draft Policy. If you have any questions or would like to discuss our comments further, please contact Gregory Newmark at (213) 626-2906.

Sincerely,



Robb Whitaker, P.E.  
General Manager

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