

May 25, 2006

Item No. 13  
Doc. No. 11

John Minan, Chair, and Members  
California Regional Water Quality Control Board-San Diego Region  
9174 Sky Park Drive, Suite 190  
San Diego, California 92123

Re: Item 13, Agenda of June 14, 2006, Public Hearing: Administrative Assessment of Administrative Civil Liability ("ACL") Against the City of Carlsbad for Alleged Violations of Order No. 99-08-DWQ, Statewide General Construction Storm Water Permit, at the Municipal Golf Course Project at 5800 Hidden Valley Road, Carlsbad, California, WDID No. 9 37C337203. Tentative Order No. R9-2006-0009)

Dear Chair Minan and Members of the Regional Board:

The Firm of Burke, Williams & Sorensen, LLP, is outside legal counsel to the City of Carlsbad in this matter. On the City's behalf, we ask you to consider the following in the resolution of this matter.

#### **The Iterative Process.**

The California Court of Appeal has had occasion to discuss the process for enforcement of storm water permits. In *Building Industry Ass'n of San Diego County v. State Water Resources Control Board*,<sup>1</sup> which involved the municipal separate storm water system ("MS4") permit issued by this Board, the court said:

**The Water Boards have made clear in this litigation that they envision the ongoing iterative process as the centerpiece to achieving water quality standards.<sup>2</sup>**

#### **The Iterative Process and this ACL.**

It should be quite clear from the Staff presentation that the Board Staff and the City have utilized an "ongoing iterative process" in an effort to resolve the matters addressed the

<sup>1</sup> 124 Cal.App.4<sup>th</sup> 866 (2004).

<sup>2</sup> *Id.* at 890. The City recognizes that it is the General Construction Activities Storm Water Permit, not the MS4 permit, which is at issue in this Hearing, but submits that the process for achieving water quality is the same.

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complaint in this matter, alleging violations of the General Permit for Storm Water Discharges Associated with Construction Activity. The City invites the attention of the members of the Board to the City's submissions, among the highlights of which are:

- The letter submitted by Carlsbad Mayor "Bud" Lewis, describing his and the City's commitment to compliance with the Clean Water Act;
- Carlsbad City Manager Ray Patchett's letter describing the commitment of the Carlsbad City staff to these matters;
- The letter from Glenn Prum, the Director of Public Works for the City of Carlsbad, as to his Department's processes, procedures and storm water training;
- The letter from "Skip" Hammann, the City Engineer of the City of Carlsbad, describing the contract difficulties encountered by the City on the Golf Course Construction Project, the constraints imposed by the Public Contracts Code, the corrective actions and procedures taken by the City, and the City's response to the Board's inspections;<sup>3</sup>
- The letter from Ron Ball, the City Attorney of the City of Carlsbad, describing revisions and NOI backup procedures put in place by his office.
- The Charts showing the City's implementation of the Awahnee Principles; and
- The City's responses to third-party comments on the ACL.

These all present evidence for your consideration as to the City's efforts. These include, but are not limited to, revision of procedures, checklists, and other practices, to say nothing of the retention of outside counsel. In addition, the City responded to Mr. Robertus' inquiry as to the City's implementation of the Ahwancee Principles.

Mr. Melbourn's staff report details not only the allegations and inspections, but the cooperative efforts by Board Staff and the City to resolve this matter. That resolution resulted in the City's agreement to an original (and reaffirmed) Staff Recommendation calling for the imposition of civil liability in the amount of \$23,900. The City works to improve BMPs, both on its own initiative and upon suggestions, when made, by Board Staff during on-site inspections of the BMPs installed by the City.

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<sup>3</sup> A recent record-breaking storm event resulted in the release of storm water from the site, despite BMPs which had been installed by the City and viewed by Board Staff in site visits.

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**Conclusion.**

The City submits that upon consideration by the Board, the Board should approve the original Staff Recommendation, which has been agreed to by the City, an agreement reached through the iterative process. That Staff Recommendation, reaffirmed for this hearing, calling for the imposition of civil liability in the amount of \$23,900, is the right resolution for this matter. The City asks for your adherence to a result reached through the iterative process.

Please include this letter, and the correspondence referenced above, in the record of this matter. The City reserves the right to submit additional comments.

Very truly yours,

BURKE, WILLIAMS & SORENSEN, LLP



Rufus C. Young, Jr.  
Of Counsel

cc: John H. Robertus, Executive Officer  
Frank Melbourn, P.E., Water Resources Control Officer  
John Richards, State Board Staff Counsel

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