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# California Regional Water Quality Control Board San Diego Region

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May 7, 2009

[Sent Via Email]

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Dear Ms. Okamoto and Ms. Chen:

**SUBJECT: ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R9-2009-0028, RULING ON PROSECUTION TEAM EVIDENTIARY OBJECTIONS DATED MAY 4, 2009**

The Advisory Team has considered the Prosecution Team's Evidentiary Objections and the Opposition to the Motion to Strike submitted by South Orange County Wastewater Authority and South Coast Water District (SOCWA/SCWD) in the above-referenced matter. The Prosecution Team seeks to have the San Diego Regional Water Quality Control Board (San Diego Water Board) strike portions of the SOCWA/SCWD evidentiary submittal dated April 21, 2009. Specifically, the Prosecution Team requests that Sections III and IV of the April 21, 2009 letter, and corresponding Attachments D and E, be stricken from the record in this matter and not considered by the San Diego Water Board when it hears the matter at its May 13, 2009 meeting.

Administrative Civil Liability (ACL) Complaint No. R9-2009-0028 proposes that the San Diego Water Board impose mandatory minimum penalties pursuant to Water Code sections 13385(h) and 13385(i) in an amount of \$204,000 for alleged violations of Order No. R9-2006-0054 (NPDES No. CA0107417). The

*California Environmental Protection Agency*

Mayumi Okamoto  
Patricia Chen

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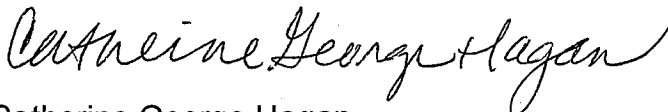
May 7, 2009

ACL Complaint does not seek to impose discretionary liability beyond the proposed mandatory minimum penalties.

The Prosecution Team is correct that to the extent Sections III and IV of the April 21, 2009, and corresponding Attachments D and E challenge provisions in the underlying order, Order No. R9-2006-0054, these sections are not relevant to the matter of whether mandatory minimum penalties should be imposed for alleged violations and may not be considered by the San Diego Water Board for that purpose. As the Prosecution Team notes, arguments about the appropriateness of provisions in the underlying order should have been raised through the decision review process set forth in Water Code section 13320.

While the ACL Complaint does not seek to impose discretionary liability beyond the proposed mandatory minimum penalties, arguments and corresponding evidence concerning the appropriateness of provisions in the underlying order could be considered by the San Diego Water Board pursuant to section 13385(e) if it were to consider imposing additional discretionary liability. The San Diego Water Board retains authority to consider imposing discretionary liability until it takes final action. Water Code section 13385(e) provides that when a regional water board considers imposing discretionary liability for violations of an NPDES permit, it shall take into account a number of factors, including "other matters as justice may require." Because Sections III and IV, and corresponding Attachments D and E could be relevant for that purpose, it is not appropriate to strike them from the record. As noted above, however, in the absence of consideration of discretionary liability, arguments about the appropriateness of provisions set forth in the underlying order, adopted in 2006, are not relevant to the issue of whether mandatory minimum penalties are appropriate.

Sincerely,



Catherine George Hagan  
Senior Staff Counsel