THE CITY OF SAN DIEGO

Via Email to bneill@waterboards.ca.gov
and Hand Delivery

July 26, 2011

Mr. Ben Neill, P.E.
San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123

Reference: City of San Diego Public Utilities Department's Comments on Tentative Order No. R9-2011-0052 to Provide a Time Schedule Order ("TSO") for Kinder Morgan Energy Partners ("KMEP) to Comply with a Discharge Prohibition in Its NPDES Permit No. CAG919002 for Its Mission Valley Terminal Dewatering Discharge to Murphy Canyon Creek

Dear Mr. Neill:

The City of San Diego Public Utilities Department ("City") wrote the staff of the Regional Water Quality Control Board ("RWQCB") in May of 2009 and again in September 2010, when amendments to KMEP's NPDES Permit were being considered to increase the allowable volume of discharge into the Murphy Canyon Creek and from there to the San Diego River. The City pointed out that this discharger has had a long history of failure to meet the requirements of its discharge permit for water that it withdraws from the City's aquifer underlying this portion of Mission Valley. Its first failure of record regarded aqueous contaminants, particularly manganese, and required installation of additional treatment equipment to bring the discharge into compliance. Now, it is apparent that the discharge is still not in compliance as a result of its load of Total Dissolved Solids (TDS) on the local water body.

As you note, the water body is listed under the Clean Water Act's "303(d)" list as having an impairment related to, among other things, TDS or Total Dissolved Solids. It is therefore not an inconsequential failure of the KMEP effluent discharge system that large volumes of water are

not only being wasted to the ocean, but that, as the water is wasted it is likely contributing to further impairment of our local water body. In 2009 the City wrote that:

> Discharging this water to either Murphy Canyon, or to the sewer system of the City, is a waste of a precious local resource. The regulations which govern the operation of the sewer system do not permit the discharge of this treated water, and we believe that *only that water which cannot be re-injected into the aquifer from which it was withdrawn for treatment* should be allowed to be discharged in this manner, as it is a literal waste otherwise.

The City still believes that the RWQCB could condition the approval of KMEP's discharge by allowing the "live stream discharge" of *only* that water which cannot be re-injected. This would effectively alleviate the TDS load on the local water body, and reduce the waste of this resource, as now allowed.

In addition to these broad based objections to allowing KMEP to exceed its discharge conditions, the City has the following points to note:

1) KMEP is required by Addendum No. 5 to CAO 92-01 to reach its final goal for the cleanup of this impaired groundwater resource by no later than December 31, 2013. Yet, per the proposed TSO, KMEP is not even required to submit a plan for addressing this TDS "excursion" until September 30, 2013, more than two years from today's date and only two months from the final cleanup deadline.

Although SFPP and, subsequently, KMEP has been monitoring its effluent for years while operating its remedial system, it has apparently made no note of any impacts related to the high TDS to date, and now the RWQCB proposes to give KMEP an additional two years to "evaluate the potential" that its discharge, admittedly high in TDS, is causing a water body already overloaded with TDS to have an "excursion". We have the following questions: (1) Why is this necessary? (2) Why can't the discharger immediately prepare and submit an action plan?

2) Per the proposed TSO, if the conclusion is that the TDS loading is contributing to the water body's overloaded condition, (a conclusion that seems inescapable and not requiring a two year period of study) then a mitigation plan must be submitted by June 30, 2014. This is over six months after KMEP is supposed to have completed remediation, according to the RWQCB's Order. Moreover, installation of any construction for a "treatment system" is not required for another six months (January 30, 2015) – which would make it a system for treatment of an effluent that is supposed to have ceased over 12 months previously, i.e., by the final cleanup deadline of December 31, 2013!

3) There is no explicit discussion in the TSO about whether the proposed increased production of groundwater, which is to be treated and discharged to waste, will in fact result in

reaching the final cleanup deadline of December 31, 2013. As the City pointed out in its comments, dated February 11, 2011, on the Arcadis Work Plan for additional ground water extraction wells in the distal plume (January 27, 2011), there is a real potential for stranding residual MTBE/TBA contamination in fine-grained sediments as the water table is lowered by the increased groundwater extraction. In this case, it will not be true that the proposed "increase in the discharge flow rate discussed in Finding No. 1 will enhance the prospect of KMEP achieving the deadline." As the RWQCB's own experts have stated, "the effect of remediation on groundwater quality impacts cannot be fully assessed until groundwater pumping ceases and groundwater levels are allowed to rise back to natural levels." (Dr. Paul Johnson and Dr. Margaret Eggers comments dated January 7, 2005). Only after that point will it become apparent whether such stranded zones were remediated.

4) There is absolutely no data provided to justify Finding No. 4d, i.e., "the various treatment processes....do not result in significant changes in the overall TDS of the treated groundwater." Such a finding requires chemical analyses of flow rates and chemical concentrations of both influent and effluent waste streams to the Groundwater Extraction Treatment System. The City is disturbed that the RWQCB proposes to simply accept KMEP's argument on this matter. As we pointed out in our letter to the Board of September 28, 2010, KMEP and Arcadis misled the RWQCB on the issue of the manganese concentrations in the effluent from the treatment plant by showing a photo of the manganese dioxide precipitate in the effluent pipe before the manganese treatment system was installed. Therefore, the City requests that the RWQCB now provide the chemical analyses that justify Finding No. 4d, sufficiently in advance of the August 10 hearing to allow for meaningful review of the data.

Finally, although earlier this year RWQCB staff mentioned to City representatives that they would be considering a TSO, the City is disappointed and troubled by the fact that staff did not include the City in any discussions or meetings regarding the basis or contents of the proposed TSO. This, despite the fact that the City has an over-arching responsibility to protect and develop this critical water supply for its residents, as has been communicated to the RWQCB many times over the past decade with regard to this long-endured remediation project. In this context, the City has been thwarted in its efforts to protect its Pueblo water rights to the fullest extent possible and the prolonged remediation process has hampered the City's ability to develop much needed local water supply projects based upon those senior water rights. As you know, as part of your ongoing regulatory efforts, you may require KMEP to, among other things, pay for and provide for replacement water supply that otherwise would be available, but for the contamination.

For the above reasons and for the reasons set forth in the separate letter submitted by the City's Transportation & Storm Water Department, the City objects to the proposed TSO. The RWQCB should require KMEP to upgrade its treatment system forthwith so as to bring the TDS levels in the extracted groundwater within the levels set forth in the Basin Plan and any other applicable laws. There is no need to wait for a future study to discover what is already known and understood. Technologies, such as reverse osmosis, exist today to deal with this problem.

Plus, Kinder Morgan should be required to assume the liability for any harm the City has suffered and will suffer from (i) the discharge of treated groundwater to Murphy Canyon Creek; (ii) the waste of this precious water resource; and (iii) the maintenance of Murphy Canyon Creek to prevent flooding.

Thank you for providing the City with this opportunity to make its views known.

Sincerely,

Marsi A. Steirer
Deputy Director

MAS/cj

cc: David Gibson, RWQCB CEO
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