

36

36

OC Print-Mail Center

From: Deborah Woodward [DWoodward@waterboards.ca.gov]
Sent: Thursday, March 19, 2009 11:41 AM
To: David Meyer
Cc: Halter, Amanda (OC); Garrett, Christopher (SD); Peter MacLaggan; Chiara Clemente; Catherine Hagan (George)
Subject: Follow-up to March 9 Minimization Plan
Attachments: Follow-up to March 9 Minimization Plan; Poseidon: response to Table 5-2 calculation request; RE: Follow-up to March 9 Minimization Plan

Hi David,

Please see the attached emails relating to my request for clarification on a few things. (Chris's 3/13 email said I should contact you.)

It would be great if you could briefly respond to #1 and #2. I realize these concerns may be relatively minor in the big picture - but I would like to get closure on them.

As for #2, I very much appreciate Amanda's earlier response and understand her explanation, but feel her response does not quite provide the clarification requested.

As for #3, I'm sorry if I attributed a statement to you that was made by someone else on the line - I've not met most of the folks involved so can't always tell who is speaking.

I look forward to hearing from you. Will be in today till about 3:00 and out tomorrow, but I'll be checking email and voicemail off and on. Thanks!

Cheers,
Debbie

Deborah L. Woodward
Water Quality Standards Unit
San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340
phone: 858-637-5586
fax: 858-571-6972
email: dwoodward@waterboards.ca.gov

4/1/2009

Introduction

The purpose of this document is to provide a comprehensive overview of the project's objectives, scope, and timeline.

This document is intended for the project team and stakeholders.

The project is expected to be completed by the end of the year.

The project is a multi-phase initiative that will involve the development of a new product line.

The project is expected to be completed by the end of the year.

The project is a multi-phase initiative that will involve the development of a new product line.

The project is expected to be completed by the end of the year.

The project is a multi-phase initiative that will involve the development of a new product line.

The project is a multi-phase initiative that will involve the development of a new product line.

The project is a multi-phase initiative that will involve the development of a new product line.

The project is a multi-phase initiative that will involve the development of a new product line.

The project is a multi-phase initiative that will involve the development of a new product line.

The project is expected to be completed by the end of the year.

The project is expected to be completed by the end of the year.

The project is a multi-phase initiative that will involve the development of a new product line.

The project is expected to be completed by the end of the year.

The project is expected to be completed by the end of the year.

The project is expected to be completed by the end of the year.

The project is expected to be completed by the end of the year.

ATTACHMENT

OC Print-Mail Center

From: Catherine Hagan (George) [chagan@waterboards.ca.gov]
Sent: Thursday, March 12, 2009 9:46 AM
To: Halter, Amanda (OC); Garrett, Christopher (SD); Singarella, Paul (OC)
Cc: Chiara Clemente; Deborah Woodward
Subject: Follow-up to March 9 Minimization Plan

All,

Staff has reviewed the most recent revisions that were included in the March 9 Minimization Plan. There is one item in Mr. Nordby's statement that we feel is critical that he address for clarity and defensibility of the Plan. There is an apparent comparison error in his Mitigation Computation statement (Attachment 7 of the Plan). He compares impingement impact (in kg Wet Weight/yr) to the expected productivity in the mitigation acreage (in kg Dry weight/yr). We would expect to see a wet-to-wet or a dry-to-dry weight comparison. One avenue for submitting this would be a supplemental statement by Mr. Nordby.

Also, Debbie Woodward would like permission to contact David Mayer to follow up on a few questions of a clarifying/confirming nature concerning the following issues:

(a) Weight discrepancies: The EPS total weights for fish and invertebrate biomass (Table 5-1, second-to-last row) are still slightly less than the total weights (including bar rack) shown on the Tenera 2008 tables (e.g., Tables A and B in Attachment 8). At one time, Dr. Mayer mentioned that the weight discrepancy had to do with a mis-classified snake eel, and I understood him to say that the weights in the revised Plan would be correct. We also mentioned the weight discrepancy in our 2/27/09 letter. Because the matter was never resolved and the discrepancy persists, Dr. Woodward would like clarification as to the nature of the discrepancy, and confirmation as to which of the tables (Table 5-1 or Tables A + B) contain the correct weights.

(b) Table 5-2: last row. Table 5-2 (received 3/9/09 PM) has a somewhat different layout to the previous draft from last week, such that the overall concentrations are no longer displayed (i.e., they have been replaced with N/A). Dr. Woodward would like to confirm that the N/A cells for fish (i.e., in the last row, "Weighted Average") would have contained the values 0.6178 fish/MG and 12.2874 grams/MG. If these values are not correct, she would like clarification as to the correct values. [The Plan does not estimate the CDP incremental impacts, and one option for calculation involves the use of such concentrations.]

(c) 2/23/05 survey: In our 3/5/09 PM telecon, we believe it was Dr. Mayer who stated that high impingement on this 307 MGD day was due to "one big shark." Dr. Woodward would like to be certain that we did not misunderstand what Dr. Mayer was saying, as the Plan (e.g., Attachment 5, p.8) and the raw data do not indicate a big shark.

Please let me know at your earliest convenience if Dr. Woodward is free to contact Dr. Mayer directly. If you reply by email, please be sure to include Dr. Woodward's email address in the reply as I am out of the office today and checking email only infrequently. You can also contact me on my cell phone - 619-204-1884 if you have any questions.

Thank you.

Catherine George Hagan
Senior Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
E-mail Address: cgeorge@waterboards.ca.gov

9174 Sky Park Court, Suite 100

San Diego, CA 92123-4340
Telephone: 858.467.2958
Facsimile: 858.571.6972

Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail or telephone and destroy all copies of the original message.

ATTACHMENT

OC Print-Mail Center

From: Halter, Amanda (OC)
Sent: Friday, March 13, 2009 12:58 PM
To: CHagan@waterboards.ca.gov; DWoodward@waterboards.ca.gov
Cc: pmaclaggan@poseidon1.com; Garrett, Christopher (SD); Singarella, Paul (OC)
Subject: Poseidon: response to Table 5-2 calculation request

Catherine and Debbie,

In response to Debbie's question regarding Table 5-2, please see below:

Dr. Woodward is seeking clarification with respect to several points regarding Poseidon's recently submitted Minimization Plan. It was noted that "Table 5-2 (received 3/9/09 PM) has a somewhat different layout to the previous draft from last week, such that the overall concentrations are no longer displayed (i.e., they have been replaced with N/A)." Poseidon was asked to confirm whether in the last row of Table 5-2, the concentration values for fish would have contained the values 0.6178 fish/MG and 12.2874 grams/MG.

The second-to-last row in the following table presents the average concentration values for the entire data set. Our calculations indicate that the concentration values for fish would have contained the values 0.6177 fish/MG and 12.2861 grams/MG.

	CDP's Daily Flow Volume (MGD)	Bony Fishes & Sharks + Rays				Invertebrates		
		Number		Weight (g)		Number		Weight (g)
		Concentration (# Fish & Sharks + Rays / MG)	# Fish & Sharks + Ray Impinged	Concentration (Grams / MG)	Weight in Grams	Concentration (# Inverts / MG)	# Inverts Impinged	Concentration (Grams / MG)
Prorated Estimate of CDP's		0.6177	188	12.2861	3,735.0	0.0694	21	0.7049
Weighted Average Estimate (Last row, Table 5-2)		N/A	232	N/A	4,703.8	N/A	22	N/A

These concentration values were intentionally omitted from the last row of Minimization Plan Table 5-2 because they would have been confusing in that context. These values represent the average concentrations for the entire data set (i.e., all 52 events), whereas the estimates in the last row of Table 5-2 are based on a weighted-average combination of (a) the prorated concentrations and (b) the non-prorated averages of the 2 outliers (i.e., non-flow-related events).

Responses to your other questions will be forthcoming early next week.

4/1/2009

Best regards,
Amanda

Amanda Halter

LATHAM & WATKINS LLP
650 Town Center Drive, 20th Floor
Costa Mesa, CA 92626
Direct Tel: 714-755-2238
Fax: 714-755-8290
Email: amanda.halter@lw.com

To comply with IRS regulations, we advise you that any discussion of Federal tax issues in this e-mail was not intended or written to be used, and cannot be used by you, (i) to avoid any penal imposed under the Internal Revenue Code or (ii) to promote, market or recommend to another party transaction or matter addressed herein.

For more information please go to <http://www.lw.com/docs/irs.pdf>

This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any review, reliance or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies.

Latham & Watkins LLP

ATTACHMENT

OC Print-Mail Center

From: Garrett, Christopher (SD)
Sent: Friday, March 13, 2009 1:50 PM
To: CHagan@waterboards.ca.gov; Halter, Amanda (OC); Singarella, Paul (OC)
Cc: pmaclaggan@poseidon1.com; CClemente@waterboards.ca.gov; DWoodward@waterboards.ca.gov; dmayer@tenera.com; pmaclaggan@poseidon1.com
Subject: RE: Follow-up to March 9 Minimization Plan

Catherine---

1. It would probably be most efficient for Debbie to email Dr. Mayer, and just cc me and Peter MacLaggan. As discussed, we are hoping to have a complete record of the information he is providing so there are no miscommunications. However, Debbie should also feel free to call Dr. Mayer directly (without including us) with any followup if that is needed.
2. Regarding this item:

"There is one item in Mr. Nordby's statement that we feel is critical that he address for clarity and defensibility of the Plan. There is an apparent comparison error in his Mitigation Computation statement (Attachment 7 of the Plan). He compares impingement impact (in kg Wet Weight/yr) to the expected productivity in the mitigation acreage (in kg Dry weight/yr). We would expect to see a wet-to-wet or a dry-to-dry weight comparison. One avenue for submitting this would be a supplemental statement by Mr. Nordby."

At our request, Mr. Nordby is preparing a supplemental statement that uses a consistent wet weight/dry weight comparison. We agree with you that the same units have to be used, either wet to wet or dry to dry. My layperson's view is that this comparison will show that more mitigation is being provided relative to impacts, because the mitigation value was measured in dry terms versus a wet weight impact. Mr. Norby should have the statement to you by next Wednesday.

3. Regarding this item

"a) Weight discrepancies: The EPS total weights for fish and invertebrate biomass (Table 5-1, second-to-last row) are still slightly less than the total weights (including bar rack) shown on the Tenera 2008 tables (e.g., Tables A and B in Attachment 8). At one time, Dr. Mayer mentioned that the weight discrepancy had to do with a mis-classified snake eel, and I understood him to say that the weights in the revised Plan would be correct. We also mentioned the weight discrepancy in our 2/27/09 letter. Because the matter was never resolved and the discrepancy persists, Dr. Woodward would like clarification as to the nature of the discrepancy, and confirmation as to which of the tables (Table 5-1 or Tables A + B) contain the correct weights."

We are asking Dr. Mayer to provide this clarification to us as well. He is copied on this email.

4. Regarding this item

"(b) Table 5-2: last row. Table 5-2 (received 3/9/09 PM) has a somewhat different layout to the previous draft from last week, such that the overall concentrations are no longer displayed (i.e., they have been replaced with N/A). Dr. Woodward would like to confirm that the N/A cells for fish (i.e., in the last row, "Weighted Average") would have contained the values 0.6178 fish/MG and 12.2874 grams/MG . If these values are not correct, she would like clarification as to the correct values. [The Plan does not estimate the CDP incremental impacts, and one option for calculation involves the use of such concentrations.] "

Amanda Halter sent you an email responding to this point at 1 pm today.

5. Regarding this item:

(c) 2/23/05 survey: In our 3/5/09 PM telecon, we believe it was Dr. Mayer who stated that high impingement on this 307 MGD day was due to "one big shark." Dr. Woodward would like to be certain that we did not misunderstand what Dr. Mayer was saying, as the Plan (e.g., Attachment 5, p.8) and the raw data do not indicate a big shark.

This statement was not made by Dr. Mayer. I do remember it being made. It is an incorrect statement, and Dr. Mayer has confirmed that this was not correct. Someone at Poseidon had a miscommunication on this point. The raw data submitted to you and the Plan statements on this measurement are correct, the verbal statement was not. We apologize for the incorrect statement on this point..

Chris

Christopher W. Garrett

LATHAM & WATKINS LLP
 600 West Broadway, Suite 1800
 San Diego, CA 92101-3375
 Direct Dial: +1.619.238.2827
 Fax: +1.619.696.7419
 Email: christopher.garrett@lw.com
<http://www.lw.com>

From: Catherine Hagan (George) [mailto:CHagan@waterboards.ca.gov]
Sent: Friday, March 13, 2009 9:55 AM
To: Halter, Amanda (OC); Garrett, Christopher (SD); Singarella, Paul (OC)
Cc: pmaclaggan@poseidon1.com; Chiara Clemente; Deborah Woodward
Subject: RE: Follow-up to March 9 Minimization Plan

Chris, thank you for getting back to us so quickly. We appreciate the offer to set up a call with Dr. Mayer. If you prefer, Debbie Woodward can call him directly. She also asked me to let you know that she is happy to have an email exchange with him, if that is easier. Please just let me know how you would like to

4/1/2009

proceed.
Catherine

Catherine George Hagan
Senior Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
chagan@waterboards.ca.gov

9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340
Telephone: 858.467.2958
Facsimile: 858.571.6972

>>> <CHRISTOPHER.GARRETT@LW.com> 3/12/2009 10:15 AM >>>
Thank you for the email. We'll get back to you shortly.

I'm sure we can get follow up work from Mr. Nordby on the dry/wet weight issue, and set up a call with Dr. Mayer, including on the "one big shark" point.

Chris

-----Original Message-----

From: Catherine Hagan (George) [mailto:chagan@waterboards.ca.gov]
Sent: Thursday, March 12, 2009 9:46 AM
To: Halter, Amanda (OC); Garrett, Christopher (SD); Singarella, Paul (OC)
Cc: Chiara Clemente; Deborah Woodward
Subject: Follow-up to March 9 Minimization Plan

All,

Staff has reviewed the most recent revisions that were included in the March 9 Minimization Plan. There is one item in Mr. Nordby's statement that we feel is critical that he address for clarity and defensibility of the Plan. There is an apparent comparison error in his Mitigation Computation statement (Attachment 7 of the Plan). He compares impingement impact (in kg Wet Weight/yr) to the expected productivity in the mitigation acreage (in kg Dry weight/yr). We would expect to see a wet-to-wet or a dry-to-dry weight comparison. One avenue for submitting this would be a supplemental statement by Mr. Nordby.

Also, Debbie Woodward would like permission to contact David Mayer to follow up on a few questions of a clarifying/confirming nature concerning the following issues:

(a) Weight discrepancies: The EPS total weights for fish and invertebrate biomass (Table 5-1, second-to-last row) are still slightly less than the total weights (including bar rack) shown on the Tenera 2008 tables (e.g., Tables A and B in Attachment 8). At one

4/1/2009

time, Dr. Mayer mentioned that the weight discrepancy had to do with a mis-classified snake eel, and I understood him to say that the weights in the revised Plan would be correct. We also mentioned the weight discrepancy in our 2/27/09 letter. Because the matter was never resolved and the discrepancy persists, Dr. Woodward would like clarification as to the nature of the discrepancy, and confirmation as to which of the tables (Table 5-1 or Tables A + B) contain the correct weights.

(b) Table 5-2: last row. Table 5-2 (received 3/9/09 PM) has a somewhat different layout to the previous draft from last week, such that the overall concentrations are no longer displayed (i.e., they have been replaced with N/A). Dr. Woodward would like to confirm that the N/A cells for fish (i.e., in the last row, "Weighted Average") would have contained the values 0.6178 fish/MG and 12.2874 grams/MG. If these values are not correct, she would like clarification as to the correct values. [The Plan does not estimate the CDP incremental impacts, and one option for calculation involves the use of such concentrations.]

(c) 2/23/05 survey: In our 3/5/09 PM telecon, we believe it was Dr. Mayer who stated that high impingement on this 307 MGD day was due to "one big shark." Dr. Woodward would like to be certain that we did not misunderstand what Dr. Mayer was saying, as the Plan (e.g., Attachment 5, p.8) and the raw data do not indicate a big shark.

Please let me know at your earliest convenience if Dr. Woodward is free to contact Dr. Mayer directly. If you reply by email, please be sure to include Dr. Woodward's email address in the reply as I am out of the office today and checking email only infrequently. You can also contact me on my cell phone - 619-204-1884 if you have any questions.

Thank you.

Catherine George Hagan
Senior Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
E-mail Address: cgeorge@waterboards.ca.gov

9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340
Telephone: 858.467.2958
Facsimile: 858.571.6972

Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized

review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail or telephone and destroy all copies of the original message.

To comply with IRS regulations, we advise you that any discussion of Federal tax issues in this e-mail was not intended or written to be used, and cannot be used by you, (i) to avoid any penalties imposed under the Internal Revenue Code or (ii) to promote, market or recommend to another party any transaction or matter addressed herein.

For more information please go to <http://www.lw.com/docs/irs.pdf>

This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any review, reliance or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies.

Latham & Watkins LLP

To comply with IRS regulations, we advise you that any discussion of Federal tax issues in this e-mail was not intended or written to be used, and cannot be used by you, (i) to avoid any penalties imposed under the Internal Revenue Code or (ii) to promote, market or recommend to another party any transaction or matter addressed herein.

For more information please go to <http://www.lw.com/docs/irs.pdf>

This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any review, reliance or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies.

Latham & Watkins LLP

