CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

TENTATIVE INVESTIGATIVE ORDER NO. R9-2011-0033

AN ORDER DIRECTING CITIZENS DEVELOPMENT CORPORATION, DEBTOR AND DEBTOR IN POSSESSION TO SUBMIT TECHNICAL REPORTS PERTAINING TO INVESTIGATION OF LAKE SAN MARCOS NUTRIENT IMPAIRMENT SAN DIEGO COUNTY

This Order is issued to Citizens Development Corporation, Debtor and Debtor in Possession (CDC) based upon provisions of California Water Code (Water Code) sections 13267 which authorizes the California Regional Water Quality Control Board, San Diego Region (hereinafter "Regional Board") to issue an investigative order requiring technical reports. The Regional Board finds that:

1. This Investigative Order is based on (1) California Water Code (Water Code) section 13000, et seq., including sections 13267 and 13304; (2) the Federal Water Pollution Control Act (hereinafter "Clean Water Act" or "CWA") including section 303(d) and section 319 of the Clean Water Act; (3) applicable state and federal regulations; (4) all applicable provisions of statewide Water Quality Control Plans adopted by the State Water Resources Control Board ("State Board"); (5) the *Water Quality Control Plan for the San Diego Basin* (Basin Plan) adopted by the Regional Board, including beneficial uses, water quality objectives, and implementation plans contained therein for the protection of waters of the state; (6) State Board policies, including State Board Resolution No. 68-16 (Statement of Policy with Respect to Maintaining High Quality of Waters in California) and State Board Resolution No. 88-63 (Sources of Drinking Water), Resolution No. 92-49 (*Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under California Water Code section 13304)*; and (7) relevant standards, criteria, and advisories adopted by other State and federal agencies.

BACKGROUND

2. Lake San Marcos (Lake) is a privately owned impoundment located in the southwest corner of the Richland hydrologic subarea (HSA) (Basin No. 904.52). San Marcos Creek, a principal tributary to the Lake, is located upstream of the Lake in both the Richland HSA and the Twin Oaks HSA (Basin No. 904.53). The Lake is located in the north central portion of San Diego County. The Creek begins at its headwaters in the City of Escondido, travels trough the City of San Marcos, before arriving in the Lake.

3. The Lake was created in 1951 after impounding water from San Marcos Creek (Creek) behind the dam. Because the Lake elevation remains relatively constant

throughout the dry season, in addition to surface water flows, groundwater is believed to be a significant contributor to Lake water levels.

4. The Lake is a thermally stratified eutrophic water body with high concentrations of nutrients in the sediment. The dissolved oxygen concentrations in the Lake drastically decrease during the spring, summer, and fall months when the Lake is stratified. The dissolved oxygen concentrations mix during the winter months bringing the anoxic nutrient rich bottom water to the surface causing fish kills, algae blooms, and nuisance odors. The Lake's poor water clarity limits aquatic plant growth. Documented conditions of pollution also include the presence of cyanobacteria toxins.

5. The State Board issued License for Diversion and Use of Water, License 7224, Permit 6305 (hereafter "Water Rights License"), to Citizens Development Corporation on March 30, 1965. Pursuant to CDC's Water Rights License, attached hereto as Exhibit A, CDC is authorized to impound water from San Marcos Creek and to use a maximum of 480 acre-feet per year for irrigation purposes on identified lands. The Water Rights License to appropriate water stipulates that water from the Creek may only be impounded between November 1st and "about" April 30 of the succeeding year. CDC's impoundment and use of water under the license "are subject to the continuing authority of the [State Water Board] in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water." (See Attachment A.) At the request of the Regional Board's Executive Officer the State Board's Division of Water Rights recently conducted a field compliance audit at the Lake as CDC has been using the Lake for recreational purposes and not just for irrigation purposes. The Division also reviewed CDC's Lake maintenance, monitoring and reporting practices and will issue a report later this year.

6. Water Code section 13050, subdivision (e) defines "waters of the state" as "any surface water or groundwater, including saline waters, within the boundaries of the state." The Basin Plan for the San Diego Region designates beneficial uses and establishes water quality objectives to protect those uses for waters of the state within the San Diego Region. It also establishes implementation plans to implement water quality objectives." Lake San Marcos and San Marcos Creek are waters of the state.

7. Groundwater in the Richland Hydrologic Subarea (HSA) (Basin 904.52) of the San Marcos HA which includes groundwater underlying and hydrologically connected to the Lake has designated beneficial uses[1] suitable for sources of municipal, agricultural, and industrial supply water. These uses include, but are

[1] Basin Plan, Table 2-2, Footnote 7 " These beneficial uses do not apply to HSA 4.51 and HSA 4.52 between Highway 78 and El Camino Real and to all lands which drain to Moonlight Creek, Cottonwood Creek and to Encinitas Creek and this area is excepted from the sources of drinking water policy. The beneficial uses for the remainder of the subarea are as shown."

not limited to, municipal water supply systems, irrigation to support farming, horticulture, stock watering, and industrial supply water (dependent on water quality).

The Basin Plan designates the following beneficial uses for the inland surface water of the Creek but exempts the Creek from having municipal (MUN)[2] beneficial uses. The Lake impounds Creek waters and therefore possesses the same beneficial uses as designated for the Creek.

a. Human Health
   i. Contact Water Recreation
   ii. Non-Contact Water Recreation
b. Aquatic Dependent Wildlife
   i. Support Warm Water Ecosystems
   ii. Wildlife Habitat
c. Other
   i. Agricultural Supply

8. Section 303(d) of the CWA requires states to identify waters or segments of waters that do not or are not expected to meet water quality standards after implementing technology based controls (referred to as the 303(d) list). For identified waters the state must establish the total maximum daily load or TMDL at a level necessary for the impaired waters to achieve the applicable water quality standards.

9. The Lake and the Creek are listed as impaired water bodies and appear on the San Diego Water Board CWA Section 305(b) Surface Water Quality Assessment and Section 303(d) List of Water Quality Limited Segments 2008 Integrated Report. The Lake is listed as impaired because levels of ammonia as nitrogen, phosphorous, and nutrients do not meet water quality standards. The Creek is listed as impaired because the levels of phosphorous, DDE, toxicity, sediment toxicity, and selenium do not meet water quality standards.

REGULATORY CONSIDERATIONS

10. Water Code section 13304, subdivision (a) states that:

Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board, clean up the waste or abate the effects of the waste, or in the case of threatened pollution or

[2] Basin Plan, Table 2-2

nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts. A cleanup and abatement order issued by the state board or a regional board may require the provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or private well owner. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

11. The State Board has adopted Resolution No. 92-49, the *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under [Water Code] Section 13004.* This Resolution sets forth the policies and procedures to be used during an investigation or cleanup of a polluted site and requires that cleanup levels be consistent with State Board Resolution No. 68-16, the *Statement of Policy with Respect to Maintaining High Quality of Waters in California.* Resolution No. 92-49 and the Basin Plan establish cleanup levels to be achieved. Resolution No. 92-49 requires waste to be cleaned up to background, or if that is not reasonable, to an alternative level that is the most stringent level that is economically and technologically feasible in accordance with California Code of Regulations, title 23, section 2550.4. Any alternative cleanup level to background must: (1) be consistent with the maximum benefit of the people of the state; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Board.

12. Water Code section 13267, subdivision (a) states that: "A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement authorized by this division, may investigate the quality of any waters of the state within its region."

13. Water Code section 13267, subdivision (b)[3] provides that:

    [i]n conducting an investigation specified in [Water Code section 13267,] subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging waste within its region . . . shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those

[3] Water Code section 13267, Authority to Require Investigative Reports and Inspections.

reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

14. As detailed above in Finding Nos. 7 and 8, the Lake and the Creek are listed as impaired water bodies on the state's CWA Section 303(d) List. The Lake is listed as impaired because levels of ammonia as nitrogen, phosphorous, and nutrients (collectively Nutrients) do not meet water quality standards. The Creek is listed as impaired because the levels of phosphorous, DDE, toxicity, sediment toxicity, and selenium do not meet water quality standards.

15. Affecting the beneficial uses of waters of the state by exceeding applicable water quality objectives constitutes a condition of pollution as defined in Water Code section 13050, subdivision (l).

16. Under Water Code section 13050, subdivision (m), a condition that occurs as a result of disposal of wastes, is injurious to health or is indecent or offensive to the senses, or is an obstruction to the free use of property, and affects at the same time any considerable number of persons, is a nuisance.

17. Uncontrolled and/or unidentified discharges of the pollutants described below have caused, cause and threaten to continue causing a condition of pollution and nuisance in the Creek and in the Lake. Low dissolved oxygen Lake conditions mix during the winter months bringing the anoxic nutrient rich bottom water to the surface causing fish kills, algae blooms, and nuisance odors. The Lake's poor water clarity limits aquatic plant growth. Documented conditions of pollution also include the presence of cyanobacteria toxins.

18. Known and suspected sources of impairment of the Lake include the following:

    a. Storm Water and Non-Storm Water Discharges: The Lake receives discharges of waste from urban and suburban areas, private golf courses, agricultural land uses, and open space. Direct and indirect discharges of pollutants to the Lake occur from natural sources and anthropogenic activities, such as, improper waste disposal, poor and/or unmanaged landscaping practices from commercial, recreational, and residential sites, sanitary sewer overflows, septic system failures, groundwater infiltration, from the presence and operation of the dam,[4] and other non-point source discharges during storm events and dry weather conditions. In addition, because groundwater flows help to maintain Lake levels through much of

[4] See, *Lake Madrone Water District v. State Water Resources Control Board* (March 30, 1989) 209 Cal.App. 3d 163, 168, where the court found that the district's dam creates a man-made artificial location where sediment concentrates and in doing so, it changes an innocuous substance into one that becomes harmful to aquatic life, thus the court determined that the dam is a producer of waste. The court assumed that the dam is a non-point source of pollution and noted that Congress intended that these sources are subject to regulation by the states, which are regulated in California by Water Code section 13304.

the year, pollutant transport via groundwater is likely a significant contributor to the Lake's impairment.

b. Contribution of the Dam to Nutrient Impairment: Information in the Regional Board's files documents that the dam serves as a sediment trap, reducing sediment load to downstream reaches of the watershed. In a 2010 study of the available water quality data and related information for the Lake, it was noted that in addition to trapping sediment behind the dam, particulate forms of nutrients are retained in the Lake sediment. This trapping of nutrient enriched sediment can lead to long term biogeochemical recycling of nutrients from the sediment to the water column. For the Lake, the study concluded that internal loading of nutrients from bottom sediments can account for more than 95 percent of the overall annual nutrient loading to the water column. The author of the study, Dr. Michael Anderson, retained by some of the Voluntary Parties and CDC, noted that the Lake experiences stratified temperature gradients that reduce the dissolved oxygen concentrations in the cooler bottom water. These algal blooms impair the ecology and water quality of the Lake.[5]

19. Proper operation and maintenance of the Lake and the dam is critical for sustaining healthy physical, chemical, and biological water quality conditions in the Lake. Activities associated with proper Lake management include, but are not limited to, ongoing monitoring of Lake water volume and water quality, ensuring adequate Lake circulation, tracking and controlling water bypass over or through the dam to avoid prolonged conditions of standing water (which promote Lake stratification and eutrophication), and pollutant source control measures to minimize pollutants discharge to the Lake.

20. The Regional Board has identified numerous governmental entities as potentially responsible[6] for some of the past and ongoing Nutrient discharges to the Lake and Creek. Most of these entities (Voluntary Parties) have entered into a voluntary agreement with the Regional Board (in lieu of receiving an investigative or other enforcement order) to conduct work necessary to reasonably achieve abatement of the nutrient impairment to the Creek and Lake.[7] While CDC

[5] Anderson, Michael A., Water Quality Management in Lake San Marcos: Analysis of Available Data, Final Report, Feb 3, 2010.

[6] Other work parties currently include the members of the Participation Agreement, including the County of San Diego, City of San Marcos, City of Escondido, California Department of Transportation, San Marcos Unified School District, and Vallecitos Water District (the "Members"); and through a Cooperation Agreement with the City of Escondido and the Members (collectively, the "Voluntary Parties"). Other potentially responsible parties may be joined voluntarily or by an enforcement order in the future.

[7] The Members of the Participation Agreement as of August 2011 include the City of San Marcos, the County of San Diego, California State University San Macros, CalTrans and Vallecitos Water District. The related voluntary agreement with the Regional Board is contained in Addendum B to the Participation Agreement and while the City of Escondido is not a signatory to Addendum B, they have committed to work in cooperation with the Members through a cooperation agreement and the Regional Board.

participated in some of the negotiations with the Voluntary Parties and the Regional Board, as well as separately with the Voluntary Parties, by June 2011, it became clear that CDC and the Voluntary Parties were unable to reach an agreement to include CDC in the voluntary approach. The Voluntary Parties have already initiated efforts to identify the source(s) and magnitude of nutrient pollution to the Creek and the Lake and are developing a public participation plan for this work effort.

21. The Voluntary Parties' work effort is broad in scope but does not include performance of investigative work and preparation of technical reports set forth in the directives of this Order. Instead, the requirements of this Order are narrowly tailored and directed to CDC which is uniquely situated as Lake owner, water rights license holder for the Lake and adjacent landowner to bear responsibility for and perform the directives set forth herein.

CDC's Liability

22. The Regional Board has authority under Water Code section 13267 to require a technical report from any individual or entity "suspected" of having discharged or discharging waste within the San Diego Region when there is an investigation into the quality of waters of the state within the region. CDC is named in this Order because evidence in the record shows that it "has discharged, discharges, or is suspected of having discharged or discharging . . . waste" within the San Diego Region.

23. "Evidence" for purposes of Water Code section 13267 "means any relevant evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in a civil action" (Wat. Code § 13267, subd. (e).)

24. The meaning of "discharge" under the Water Code, Division 7, includes not only the initial introduction of waste into the environment, but also the continued migration and spread of waste, including the migration of waste from soil to water and from polluted ground water to clean groundwater. (State Board Order WQ 86-2 [*Zoecon Corp.*].)

25. Waste is broadly defined in the Water Cod as including "sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes or, disposal." (Wat. Code § 13050, subd. (d).)

26. Owners, lessees and operators of a property that is a source of discharge of pollutants are liable for the discharge even if they did not own, lease or operate

the property at the time of the initial discharge of pollutants. (State Board Order WQ 86-2 [*Zoecon Corp.*].) The State Board, in interpreting Water Code section 13304, has consistently held that landowners are responsible for the condition of their property. The State Board has concluded that where the landowner has knowledge of the discharge and sufficient control of the property, the landowner should be subject to a cleanup order under Water Code section 13304. (See., e.g., State Board WQ Order Nos., 84-6, 86-18, 89-1, and 89-8.) The same logic extends to liability for investigations under Water Code section 13267.

27. CDC now as Debtor in Possession in Bankrupty No. 10-15142-LT11 in the United States Bankruptcy Court for the Southern District of California, owns the land underlying the Lake. Groundwater discharges into the Lake waters have occurred and continue to occur and contribute, or are suspected of contributing pollutants to the Lake.

28. CDC as Debtor in Possession owns land adjacent to the Lake, including approximately 252 acres of land within the Creek watershed, which includes the Lake, Lakefront land, the dam, and the Lake San Marcos Resort & Country Club. Lake San Marcos Resort and Country Club is located immediately adjacent to the shores of the Lake. Irrigation runoff and storm water discharges from the private Country Club golf course owned and operated by CDC as well as from surrounding areas contributes pollutants to the Lake and constitutes a discharge of waste within the San Diego Region. Wet weather sampling data, collected by the San Diego County Copermittees pursuant to the requirements of Order No. 2007-001 (MS4 Stormwater Permit) is evidencing substantial nutrient loading to the Creek and the Lake.

29. For the reasons established in Findings 2 through 28, CDC has discharged, discharges or is suspected of having discharged or discharging waste within the San Diego Region.

30. The technical reports required by this investigative order are needed to provide information to the Regional Board regarding discharges of waste caused by CDC and their impact on water quality and beneficial uses of the waters of the State. More specifically, the technical reports required by this investigative order are needed to provide the Regional Board with information on the existing physical, biological, and chemical conditions and processes of the Lake, the nature and extent of pollution conditions in the Lake, information on Lake operations and management and the how the existence and operation of the dam affects Lake water quality. The information CDC is required to provide is necessary to (1) identify sources of nutrients in the surface and ground water discharged to the Lake, (2) assess the impact of the dam on the Lake water quality and beneficial uses, (3) develop a Lake water and nutrient budget, (4) allow proper assessment of Lake chemistry, bathymetry, and sediment depth, and (5) characterize Lake ecology. All of this information will be used to assist in the development and implementation of a plan to achieve nutrient abatement sufficient to reasonably

protect designated beneficial uses for the Lake and the Creek, in conformance with the Basin Plan.

31. Subsequent cleanup activities are expected to occur either voluntarily, or through a Cleanup and Abatement Order under Water Code section 13304 issued to one or more parties responsible for nutrient discharges. Collectively, these actions will result in the restoration and protection of water quality necessary to protect the designated beneficial uses of the Creek and Lake. CDC and those parties paying lease or user fees to CDC will benefit directly from improved Lake water quality that results from abatement of impaired conditions. Benefits will include, but not be limited to, improved Lake aesthetics and removal of nuisance odors. Improved Lake aesthetics may also increase property values. Lake water quality improvement, pollutant source control, and improved Lake management may allow the Regional Board to avoid expending resources developing a TMDL and Waste Load Allocation (WLAs) for the Lake and Creek. While no specific cost for the required reports has been established, the need for investigation and eventual remediation is well established, they are estimated at $459,000. The required investigation is as limited as possible and is consistent with the investigative work being performed by the Voluntary Parties. The results of the collective investigative work is necessary to appropriately characterize the condition of the Lake as well as to identify other sources of pollutants to the Lake and to inform the most cost effective remedial options to restore the water quality objectives and beneficial uses of the Lake. Therefore, the burden of providing the reports required under this Order bears a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.

OTHER CONSIDERATIONS

32. CDC filed a petition for bankruptcy protection in August 2010 (Case No. 10-15142-LT11). On June 28, 2011, the Regional Board filed a protective proof of claim in the bankruptcy case. (See Attachment B.) The supplemental statement supporting the protective proof of claim describes the Regional Board's authorities to implement and enforce environmental laws within its jurisdiction. As stated in the proof of claim, the Regional Board believes that CDC is required to manage and operate the property in its possession in compliance with all valid state and federal environmental laws. (28 U.S.C. § 959(b).) CDC's obligations under this enforcement order issued pursuant to the Regional Board's regulatory powers and authorities are akin to injunctive obligations and thus are not claims as defined in the Bankruptcy Code.

33. While the Regional Board is proceeding to work with most other dischargers and potential dischargers on a voluntary basis under an agreement to perform work in lieu of issuing an investigative order to those parties, CDC was unable to reach agreement with the parties to the voluntary agreement. Moreover, as Lake owner and water rights license holder, CDC is uniquely positioned to perform the investigative work required by this Order and to take steps to alleviate and ameliorate conditions of impairment through implementation of appropriate Lake

management and operations. Accordingly, the Regional Board finds that in light of CDC's continuing obligations to comply with applicable environmental laws and the need to initiate investigative work as a prerequisite to remedial work at the Lake, it is appropriate that this Order to be issued at this time, despite CDC's status as a bankrupt debtor in possession. Because the Bankruptcy Court is scheduled to consider confirming CDC's Plan of Reorganization on or about October 6, 2011, it is important that this order be issued to CDC prior to September 30, 2011.

34. Pursuant to Water Code section 13304(c), and consistent with other statutory and regulatory requirements, including not but limited to Water Code section 13365, the Regional Board is entitled to, and will seek reimbursement for, all reasonable costs actually incurred by the Regional Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order.

35. Adoption of this Order is an enforcement action taken by a regulatory agency and is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) in accordance with California Code of Regulations, title 14, section 15321(a)(2). The implementation of this Order is also an action to assure the restoration of natural resources and/or the environment and is exempt from the provisions of the CEQA, in accordance with California Code of Regulations, title 14, sections 15307 and 15308. The implementation of this Order also constitutes basic data collection, research and/or resource evaluation activities which do not result in a serious or major disturbance to an environmental resource, and is exempt from the provisions of the CEQA, in accordance with California Code of Regulations, title 14, section 15306. This Order requires submittal of detailed reports and plans that address investigative activities. The Regional Board intends to address CEQA compliance as necessary based upon proposed remediation activities under this or a subsequent enforcement order.

36. The Executive Officer may add additional responsible parties to this Order without bringing the matter to the Regional Board for a hearing, if the Executive Officer determines that additional parties are liable for the investigation required by this Order. All dischargers named in this Order and any responsible parties proposed to be added shall receive notice of and shall have the opportunity to comment on, the additional of responsible parties.

IT IS HEREBY ORDERED, pursuant to section 13267 of the California Water Code, that Citizens Development Corporation and its agents, assigns and successors, in order to meet the provisions contained in Division 7 of the Water Code and regulations, plans and policies adopted thereunder, must comply with the following directives:

A. Lake San Marcos Nutrient Impairment Investigation Workplan (Workplan): CDC must prepare a Workplan that describes the sampling program, data collection effort, and analyses CDC will take to investigate nutrient impairments in the Lake. The Workplan must be received by the San Diego Water Board **no later than 5:00 pm on December 1, 2011**. The Workplan must contain the following:

1. Site Conceptual Model: The Workplan shall include a Site Conceptual Model (SCM)[8]. SCM identify what is known about the Lake nutrient impairment and set out a plan to fill gaps in data. The SCM must, at a minimum include, identification of: known and suspected sources of nutrient impairment (spatially and temporally); characterize the extent of nutrient impacts in the Lake; nutrient fate and transport pathways within the Lake; human and ecological receptors; data gaps; and recommendations for the next phase of investigation and/or abatement.

2. Summary of Previously Conducted Investigations: Summarize all previously conducted nutrient impairment and other related nutrient impairment investigations in the Lake and in the Creek segment(s) that receive nutrient discharges directly from CDC privately owned facilities. This information should be used to inform the SCM.

3. Lake Water Balance: Sampling to analyze water balance in the Lake. The Workplan must include, but not be limited to, measurement of water flow volumes from all known and suspected surface water and ground water inputs and discharge locations. The Workplan must also include sampling water flow volumes of any water inputs to the Lake that result from pumping of ground water.

4. Nature and Extent of Lake Nutrient Impairments: Sampling to determine the nature and extent of nutrient impairments in the Lake including affects of seasonal influences. The Workplan must include, but not be limited to, characterization of Lake bathymetry, identification of presence and absence of biological indicators, taxonomic identification, flora/fish/wildlife identification, water quality, and sediment quality.

5. Lake Nutrient Loading: Sampling to quantify nutrient loading to the Lake during both wet weather and dry weather conditions. Data collected must be sufficiently robust (e.g. number of samples and sample locations) to permit CDC to quantify the nutrient loading to the Lake from both surface water and ground water inputs.

[8] Site Conceptual Model is a written and/or pictorial representation of an environmental system and the biological, physical and chemical processes that determine the transport and fate of contaminants through environmental media to environmental receptors and their most likely exposure modes.

6. Lake Operations: Describe and quantify past and present Lake operations including, but not limited to, recreational uses, land management activities, landscaping practices around the Lake, fertilizer and pesticide use around the Lake, and Lake water bypass and retention practices.

7. San Marcos Dam Properties, Operation and Maintenance: Describe and quantify the physical parameters of the dam, past and present dam operations (e.g. retention or release of water and/or sediments), and maintenance activities.

8. Map: Graphically described the locations of all known and suspected nutrient inputs to the Lake (e.g. storm water runoff, non-storm water flows, and ground water infiltration) and discharges from the Lake (e.g. seepage through the dam and losses to ground water transport). The map should also include locations of all CDC privately owned facilities and any storm water conveyance infrastructure.

9. Sampling and Analysis Plan: Describe proposed sampling methodologies, chemical analyses, sample methods, and sampling locations for all proposed investigate work. Contingencies for collection of additional samples should be proposed in the Workplan. All data collected under this Order shall be collected in a manner that meets the data collection protocols established and approved by the San Diego Water Board (Water Board) under the Surface Water Ambient Monitoring Program (SWAMP) Guidelines, pursuant to a Quality Assurance Project Plan (QAPP) developed by CDC and approved by the Water Board.

B. Lake San Marcos Nutrient Impairment Investigation Report: CDC must prepare a Nutrient Impairment Investigation Report (Report) that describes the results of work performed in accordance with the Workplan required in Directive A of this Order. The Report must be received by the San Diego Water Board **no later than 5:00 pm on December 1, 2012** and must contain the following information:

1. Site Conceptual Model (SCM): Description of the final SCM and how it was used to direct the investigative work.

2. Maps and Graphics: Maps and graphics may be used to describe any of the following, Lake configurations, watersheds, Lake impairments, nutrient loads, water budgets, nutrient budgets, in-lake processes, and Lake management.

3. Surface Water Nutrient Load: Description of nutrient load to the Lake via surface water during both wet weather and dry weather conditions. This discussion shall include information on how land use, runoff rates, and drainage within the watershed affect the nutrient load to the Lake. This discussion shall further accurately characterize and quantify all nutrient load preferential pathways that may affect nutrient flow and concentrations to the Lake.

4. Groundwater Nutrient Load: Description of nutrient load contributed to the Lake via groundwater. This description shall include the location of existing monitoring wells (if any) used to determine groundwater sources of nutrients, proposed

location of additional monitoring wells needed to further characterize nutrients in groundwater beneath and around the Lake, subsurface geology, hydrogeology, and all preferential pathways that may affect groundwater flow and transport of nutrients to the Lake.

5. Lake Water Budget: Description of the Lake water budget. This discussion shall include an evaluation and analyses of surface and groundwater flow to the Lake and from the Lake, Lake bathymetry, seasonal flow rates over the dam, evaporation rates, losses and gains due to groundwater extraction/infiltration occurring naturally or by pumping conducted by CDC and/or its affiliated companies (including historical and present pumping rates and volumes).

6. Lake Nutrient Budget: Description of the Lake nutrient budget. This discussion shall include an evaluation and analyses of nutrient loading to the Lake and from the Lake via surface water and groundwater, in-lake processes, in-lake biology, seasonal changes to the Lake's nutrient budget, affects of atmospheric deposition, sediment quality, and sediment accumulation behind the dam.

7. In-Lake Processes: Description of in-lake processes and how they affect nutrient impairments in the Lake. This discussion shall, at minimum, include explanations of how and what processes occur in the Lake vertically and horizontally, how pollutant transport occurs from the sediments to the water column, how seasonal variation affect in-lake processes, and how biological process affect lake water quality.

8. Compliance with Water Quality Standards: Description of whether or not water quality in the Lake meets water quality standards set forth in the Basin Plan. The Report shall make conclusions and provide recommendations for actions to bring Lake water quality into compliance with water quality standards.

9. Lake Use and Management: Description of historical, current, and planned future uses of the Lake and operation and maintenance actions used to manage Lake water levels, water quality, and uses. The Report shall make conclusions and provide recommendations on ways to modify, replace, and/or add management measures to improve the health of the Lake.

10. Conclusions and Recommendations: The Report must include conclusions based on the results of the work conducted in the Workplan and evaluations of any other existing information on the Lake. The Report must further make recommendations for cleanup and abatement actions and additional investigative work, if needed.

11. Chemical and Biological Analyses: Description of the laboratory analytical methods and protocols used for each environmental media including soil, water, air, and sediment. The suite of chemical analyses, methods and protocols must be adequate to quantitatively identify and characterize the nutrient impairment.

Describe biological analyses including biomass assessment, taxonomic identification, Lake flora sampling, and fish and wildlife/food web conditions.

C. Compliance Dates: The following is a list of compliance dates for activities presented in the preceding Directives.

Directive	*Activity*	*Compliance Date*
A	Lake San Marcos Nutrient Investigation Workplan	December 1, 2011
B	Lake San Marcos Nutrient Investigation Report	December 1, 2012

D. PROVISIONS

1. **Duty to Comply:** CDC must obtain any permits and access agreements needed to implement the requirements of this Order. CDC must properly manage, treat, and/or dispose of any contaminated water samples in accordance with applicable federal, state, and local laws and regulations.

2. **Use of Registered Professionals:** CDC shall provide documentation that any reports required under this Order were prepared under the direction of appropriately qualified professionals. In preparing the technical report required by this Order, any engineering or geologic evaluation and judgments must be performed by or under the direction of registered professionals. A statement of qualifications and registration numbers of the responsible lead professional shall be included in the report submitted by CDC. The lead professional shall sign and affix their registration stamp to the report.

3. **Use of Qualified Technical Professionals:** CDC shall ensure that plans and reports, required under this Order, are prepared under the direction of technical professionals who are appropriately qualified to evaluate short and long term impacts to ecological receptors.

4. **Laboratory Qualifications:** Unless otherwise permitted by the San Diego Water Board, all analyses shall be conducted at a State (ELAP) certified laboratory. CDC must use a laboratory capable of producing and providing quality assurance / quality control (QA/QC) records for San Diego Water Board review. The director of the laboratory whose name appears on the certification shall supervise all analytical work in his/her laboratory and shall sign all reports submitted to the San Diego Water Board.

5. **Laboratory Analytical Reports:** Any report presenting new analytical data is required to include the complete laboratory analytical report(s). The laboratory analytical report must be signed by the laboratory director and contain:

    a) Complete sample analytical report;

    b) Complete laboratory quality assurance / quality control (QA/QC) report;

    c) Discussion of the QA/QC data, and

    d) A transmittal letter that shall indicate whether or not all the analytical work was supervised by the director of the laboratory, and contain the following statement, "*All analyses were conducted at a laboratory certified for such analyses by the CDPH in accordance with current procedures approved by the United States Environmental Protection Agency.*"

6. **Analytical Methods:** Specific methods of analysis must be identified in the technical reports. If the CDC proposes to use methods or test procedures other than those included in the most current version of "Test Methods for Evaluations Solid Waste, Physical/Chemical Methods, SW'846" (U.S. Environmental Protection Agency) or "Guidelines Establishing Test Procedures for the Analysis of Pollutants; Procedures for Detection and Quantification" (40 CFR 136) the exact methodology must be submitted for review and must be approved by the San Diego Water Board prior to use.

7. **Signatory Requirements:** The Work Plan and Report required under this Order shall be signed and certified by either a principal executive officer , ranking elected official, or the person with overall responsibility for environmental matters for that municipality. Additional report submitted in support of the Work Plan and Report must be signed by the principal author. *Certification Statement:* Any person signing a document under this provision shall make the following certifications:

    "*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*"

8. **Submittal of Documents**
   All documents submitted to the San Diego Water Board in compliance with this Order must be submitted in electronic format (compact disk (CD-ROM or CD) in a Portable Document Format (PDF) that contains Optical Character Recognition (OCR), unless otherwise directed. All electronic format documents required under this Order must be submitted to:

   Executive Officer
   California Regional Water Quality Control Board
   San Diego Region
   9174 Sky Park Court, Suite 100
   San Diego, CA 92123-4340
   Attn: Chiara Clemente, Central Watershed Unit

   Additionally, electronic format documents must be submitted via electronic mail (e-mail) to Ms. Clemente at Cclemente@waterboards.ca.gov

   All correspondence and documents submitted to the San Diego Water Board must include the following CIWQS ID in the header or subject line:

   CIWQS ID: *TBD*

9. **Records Maintenance:** CDC must retain records of all monitoring information, including all calibration and maintenance records, and copies of all plans and reports required by this Order, and must make them available to the public upon request. Records must be maintained for a minimum of five years from the date of the sample, measurement, or report. This period may be extended at the request of the San Diego Water Board.

10. **Changes to Order:** This Order, including extensions of deadlines contained in this Order may be amended, rescinded, or updated for good cause by the Executive Officer. CDC may propose changes or alternatives to the requirements in this Order if a valid rationale for the changes is shown. The filing of a request by the Dischargers for amending, rescinding, or updating this Order, or notification of planned changes or anticipated noncompliance does not stay any condition of this Order.

11. **Cost Recovery:** Pursuant to Water Code section 13365, the Discharger shall reimburse the Regional Board for reasonable costs associated with oversight of the implementation of this Order. Within 30 days of the effective date of this Order, the Discharger shall provide the name and address where the invoices shall be sent. Failure to provide a name and address for invoices and/or failure to reimburse the Regional Board's oversight costs in a timely manner shall be considered a violation of this Order.

E. NOTIFICATIONS

1. **All Applicable Permits:** This Order does not relieve CDC of the responsibility of obtaining permits or other entitlements to perform necessary investigative activities. This includes, but is not limited to, actions that are subject to local, state, and/or federal discretionary review and permitting.

2. **Enforcement Discretion:**The Regional Board reserves its right to take any enforcement action authorized by law for violations of the terms and conditions of this Order.

3. **Enforcement Notification:** Water Code section 13268(a)(1) provides that any person failing or refusing to furnish technical or monitoring report information as required section 13267 (b), or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly for an administratively imposed liability of up to $1,000 per day for each day compliance is not achieved with an Order issued in accordance with subdivision 13268(b).

4. **Requesting Administrative Review by the State Board:** Any person affected by this action of the Regional Board may petition the State Board to review the action in accordance with section 13320 of the California Water Code and California Code of Regulations, title 23, section 2050 and following. The State Water Board, Office of Chief Counsel, must receive the petition by 5 p.m., thirty days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday or state holiday, the petition must be received by the State Water Board by 5 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be round on the Internet at http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

I, David W. Gibson, do hereby certify that the foregoing is a full, true and correct copy of an investigative order adopted by the San Diego Water Board during its meeting on September 14, 2011.

Ordered By:

_____

David W. Gibson
EXECUTIVE OFFICER
September XX, 2011

CIWQS Place ID: TBD upon adoption
Reg. Measure No.: TBD upon adoption
Party ID: TBD upon adoption
Violation ID: TBD upon adoption

Attachment A

STATE OF CALIFORNIA—STATE WATER RIGHTS BOARD

License for Diversion and Use of Water

APPLICATION 10711 PERMIT 6305 LICENSE 7224

THIS IS TO CERTIFY, *That*

Citizens Development Corporation
c/o Gordon Frazar, Manager
P. O. Box 303
San Marcos, California

has S *made proof as of* July 18, 1963, *(the date of inspection) to the satisfaction of the State Water Rights Board of a right to the use of the water of* San Marcos Creek in San Diego County

tributary to Pacific Ocean

for the purpose of irrigation use *under Permit* 6305 *of the State Water Rights Board and that said right to the use of said water has been perfected in accordance with the laws of California, the Rules and Regulations of the State Water Rights Board and the terms of the said permit; that the priority of the right herein confirmed dates from* September 13, 1943, *and that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to the amount actually beneficially used for said purposes and shall not exceed* four hundred eighty (480) acre-feet per annum to be collected from about November 1 of each year to about April 30 of the succeeding year.

The maximum withdrawal in any one year has been 224 acre-feet.

The point of diversion of such water is *located* :

South eighty-two degrees west (S82°W), two hundred thirty-five (235) feet from NE corner of Section 29, T12S, R3W, SBB&M, being within $NE\frac{1}{4}$ of $NE\frac{1}{4}$ of said Section 29.

A description of the lands or the place where such water is put to beneficial use is as follows:

76 acres within Section 17, T12S, R3W, SBB&M.
40 acres within Section 16, T12S, R3W, SBB&M.
180 acres within Section 21, T12S, R3W, SBB&M.
249 acres within Section 20, T12S, R3W, SBB&M.
545 acres total as shown on map filed with State Water Rights Board.

All rights and privileges under this license including method of diversion, method of use and quantity of water diverted are subject to the continuing authority of the State Water Rights Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

Reports shall be filed promptly by licensee on appropriate forms which will be provided for the purpose from time to time by the State Water Rights Board.

The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein specified and to the lands or place of use herein described.

FORM 64

This license is granted and licensee accepts all rights herein confirmed subject to the following provisions of the Water Code:

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the board.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

Section 1627. A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code) but no longer.

Section 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

Section 1629. Every licensee, if he accepts a license does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property cannot agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

Dated: MAR 30 1965

L. K. Hill
Executive Officer

LICENSE 7224

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

LICENSE
TO APPROPRIATE WATER

ISSUED TO Citizens Development Corporation

DATED MAR 30 1965

47580 8-61 3M © SPO

J. VICTOR SCAMMON J.V.S. 1/22/65

Attachment B

B 10 (Official Form 10) (04/10)

UNITED STATES BANKRUPTCY COURT Southern District of California	PROOF OF CLAIM
Name of Debtor: Citizens Development Corporation	Case Number: 10-15142-LT11

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property):
California Regional Water Quality Control Board, San Diego Region

Name and address where notices should be sent:
California Regional Water Quality Control Board / c/o Catherine Hagan
9174 Sky Park Ct., Ste. 100, San Diego, CA 92123

Telephone number:
(858) 467-2958

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number:_____
(*If known*)

Filed on:_____

Name and address where payment should be sent (if different from above):

Telephone number:

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: $ 459,000.00

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: Water Pollution Control Cleanup **See attached documents.**
(See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: 2000

3a. Debtor may have scheduled account as: _____
(See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Value of Property:$_____ **Annual Interest Rate**___%

Amount of arrearage and other charges as of time case filed included in secured claim, if any: $_____ **Basis for perfection:** _____

Amount of Secured Claim: $_____ **Amount Unsecured:** $_____

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See instruction 7 and definition of "redacted" on reverse side.)*

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☐ Wages, salaries, or commissions (up to $11,725*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

Amount entitled to priority:

$_____

**Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

Date: 06/28/2011

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

/s/ Catherine Hagan

FOR COURT USE ONLY

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, there may be exceptions to these general rules.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:
Fill in the federal judicial district where the bankruptcy case was filed (for example, Central District of California), the bankruptcy debtor's name, and the bankruptcy case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is located at the top of the notice.

Creditor's Name and Address:
Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. **Amount of Claim as of Date Case Filed:**
   State the total amount owed to the creditor on the date of the Bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. **Basis for Claim:**
   State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if the trustee or another party in interest files an objection to your claim.

3. **Last Four Digits of Any Number by Which Creditor Identifies Debtor:**
   State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

   3a. Debtor May Have Scheduled Account As:
   Use this space to report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

4. **Secured Claim:**
   Check the appropriate box and provide the requested information if the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See DEFINITIONS, below.) State the type and the value of property that secures the claim, attach copies of lien documentation, and state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing.

5. **Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a).**
   If any portion of your claim falls in one or more of the listed categories, check the appropriate box(es) and state the amount entitled to priority. (See DEFINITIONS, below.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. **Credits:**
   An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. **Documents:**
   Attach to this proof of claim form redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary. FRBP 3001(c) and (d). If the claim is based on the delivery of health care goods or services, see instruction 2. Do not send original documents, as attachments may be destroyed after scanning.

Date and Signature:
The person filing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2), authorizes courts to establish local rules specifying what constitutes a signature. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. Attach a complete copy of any power of attorney. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS

Debtor
A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

Creditor
A creditor is a person, corporation, or other entity owed a debt by the debtor that arose on or before the date of the bankruptcy filing. See 11 U.S.C. §101 (10)

Claim
A claim is the creditor's right to receive payment on a debt owed by the debtor that arose on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

Proof of Claim
A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

Secured Claim Under 11 U.S.C. §506(a)
A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car.
A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

Unsecured Claim
An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claim Entitled to Priority Under 11 U.S.C. §507(a)
Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted
A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor should redact and use only the last four digits of any social-security, individual's tax-identification, or financial-account number, all but the initials of a minor's name and only the year of any person's date of birth.

Evidence of Perfection
Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

INFORMATION

Acknowledgment of Filing of Claim
To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system (www.pacer.psc.uscourts.gov) for a small fee to view your filed proof of claim.

Offers to Purchase a Claim
Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.

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Attorneys for Creditor
California Regional Water Quality Control Board, San Diego Region

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

In Re: CITIZENS DEVELOPMENT CORPORATION, Debtor.	CASE NO. 10-15142-LT11 Chapter 11 SUPPLEMENTAL STATEMENT OF CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN DIEGO REGION, IN SUPPORT OF PROOF OF CLAIM

SUPPLEMENTAL STATEMENT IN SUPPORT OF PROOF OF CLAIM

I. INTRODUCTION

The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), by and through its authorized attorneys, submits this Supplemental Statement in support of its Proof of Claim against Citizens Development Corporation ("Debtor") in this Chapter 11 bankruptcy proceeding. As indicated in the Proof of Claim, the San Diego Water Board submits a protective claim for $459,000 (Four Hundred

Fifty-Nine Thousand Dollars), based upon the estimated present value of the tasks required by Debtor to investigate and characterize the condition of the water and sediment in Lake San Marcos (diagnostic work). (See Exhibit "A" [1 page] attached and incorporated by this reference.) The San Diego Water Board reserves its right to revise its claim to include additional cost information for remedial work and ongoing management work as the scope of that work and associated costs become known.

Creditor San Diego Water Board is referenced on the attached Proof of Claim form as:

CALIFORNIA REGIONAL WATER CONTROL BOARD,
SAN DIEGO REGION
ATTN: MS CATHERINE GEORGE HAGAN
9174 Sky Park Court, Suite 100,
San Diego, CA 92123

A. REGIONAL WATER QUALITY CONTROL BOARD REGULATORY AUTHORITY

The San Diego Water Board is one of nine regional boards established by the Porter-Cologne Water Quality Control Act (Cal. Wat. Code § 13000, et seq.) to regulate water quality, and is, along with the California State Water Resources Control Board, the principal state agency with primary responsibility for the coordination and control of water quality within the San Diego region. Cal. Wat. Code § 13001. The San Diego Water Board administers and enforces the Porter-Cologne Water Quality Control Act and administers certain provisions of the Federal Water Pollution Control Act ("Clean Water Act") (33 U.S.C. §§ 1251-1387), among other laws. Pursuant to these authorities, the San Diego Water Board adopts and implements its regional water quality control plan through which the board designates beneficial uses of waters within the region and establishes water quality objectives to protect those uses, issues waste discharge requirements and National Pollutant Discharge Elimination System permits, issues investigative orders, issues cleanup and abatement orders and takes

enforcement actions, including the assessment of administrative civil liabilities. In addition, the San Diego Water Board has authority to seek injunctive relief to require compliance with and enforce violations the Clean Water Act and the Porter-Cologne Water Quality Control Act, including but not limited to investigative orders issued pursuant to Water Code section 13267 and cleanup and abatement orders issued pursuant to Water Code section 13304. In general, persons found to be legally responsible for investigation and cleanup of waste under the Water Code are jointly and severally liable. (See, e.g., In the Matter of the Petition of Union Oil, State Water Resources Control Board Order No. WQ 90-2, p. 8.)

B. SOVEREIGN IMMUNITY

By filing this claim, the San Diego Water Board does not waive its sovereign immunity, except as otherwise provided by law. The San Diego Water Board makes this protective claim for itself and no other agency, unit or entity of the State of California. Any waiver of sovereign immunity under the law resulting from the filing of this claim is by the San Diego Water Board, and no other agency, unit, or entity of the State of California, and is strictly limited to this protective claim. Further, the filing of this protective claim shall not be deemed or construed as a waiver of any objections or defenses that the San Diego Water Board, or any other agency, unit, or entity of the State of California may have to this Court's jurisdiction over Claimant or such other agency, unit, or entity based upon the Eleventh Amendment or related principles of sovereign immunity or otherwise, all of which are hereby preserved.

II. GROUNDS FOR FILING THIS CLAIM

The Debtor has various obligations to the San Diego Water Board. The Debtor owns the land on which Lake San Marcos (Lake) is located and is responsible for ensuring beneficial uses of the Lake are maintained. The Lake area was developed upon formation by a dam built in 1953 through San Marcos Creek. The San Diego

Water Board believes existence of the dam that serves to create the Lake has contributed and continues to contribute to water quality impairment of the Lake.

According to the Federal Water Pollution Control Act (Clean Water Act), section 303 (d) list of impaired water body segments within the San Diego Region developed in 2008, the Lake is listed as impaired in that the water quality does not attain beneficial uses of the Lake designated in the San Diego Water Board's Water Quality Control Plan due to ammonia as nitrogen, phosphorus and nutrients. These excessive nutrients contribute to eutrophication problems such as periodic algal blooms, confirmed presence of cyanobacteria toxins, and occasional fish kills at the Lake. Residents living near the Lake have reported nuisance algae and odor conditions to the San Diego Water Board for several years.

There are many potential sources of pollution to the Lake. Due to the wide range of potential sources, it has been difficult to determine how to clean up and abate the pollutants that are contributing to the impairment of the Lake water quality without first learning more about the current conditions of the Lake water and sediment and the sources of the impairing pollutants.

The Debtor's principal obligations to the San Diego Water Board are injunctive (obligations to comply with directives to perform investigative or diagnostic work and/or to comply with directives in cleanup and abatement order(s) to remediate the conditions of the Lake) and thus are not claims as defined in the Bankruptcy Code. This claim is intended to cover any and all claims as defined in 11 U.S.C. § 101(5) as a protective measure related to the injunctive obligations of the Debtor. Furthermore, the San Diego Water Board files this protective claim for any oversight costs that may be incurred by the San Diego Water Board in assuring that the Debtor satisfies its obligations pursuant to investigative, cleanup and abatement or other enforcement orders as may be issued by the San Diego Water Board. Nothing in this Proof of Claim constitutes a waiver of any rights of the San Diego Water Board or election of remedies with respect to such

rights and obligations.

A. PROTECTIVE FILING FOR INJUNCTIVE/WORK OBLIGATIONS

During the bankruptcy proceedings, the Debtor in Possession is required to manage and operate the property in its possession in compliance with all valid state and federal environmental laws. (28 U.S.C. § 959(b).) The San Diego Water Board has been working with the Debtor as well as with multiple entities such as municipalities who share some responsibilities for conditions at the Lake in an effort to have the Debtor and the other parties complete collective diagnostic work to determine the causes and contributing factors to the present impaired condition of water quality in the Lake. Upon completion of diagnostic work, the San Diego Water Board and the public will have the information needed to inform development of remediation strategies to cleanup and control conditions causing ongoing impairment of water quality.

At the present time, the San Diego Water Board is proceeding to work with most municipalities on a voluntary basis under an agreement to perform work in lieu of issuing an investigative order to these parties. To date, it does not appear that Debtor will reach agreement with the other parties in terms of appropriate cost contribution to enable Debtor's voluntary participation. Therefore, the San Diego Water Board intends to consider issuance of an enforcement order under Water Code section 13267 in the near future. It is anticipated that such an enforcement order would require the Debtor, based on its ownership of the land underlying the Lake, to complete investigation of some aspects of the Lake condition, such as lake bathymetry, sediment and water column testing, and flow measurements, for which Debtor may be uniquely responsible and well-positioned to perform.

Debtor's obligations under an enforcement order as may be issued by the San Diego Water Board pursuant to the board's regulatory powers and authorities are akin to injunctive obligations and thus are not claims as defined in the Bankruptcy Code. (*See e.g., Ohio v. Kovacs*, 469 U.S. 274, 284-285, 83 L.Ed. 649, 105 S.Ct. 705 (1985)

(injunction not dischargeable); *In re Davis,* 3 F.3d 113, 116 (5th Cir. 1993) (creditor entitled to an equitable remedy is not required to accept a suboptimal remedy of money damages); *In re Chateaugay*, 944 F.2d 997, 1008 (2d Cir. 1991) (most environmental injunctions are not claims); *In re Torwico Electronics, Inc. v. State of New Jersey, Dept. of Environmental Protection and Energy*, 8 F.3d 146 (3d Cir. 1993) (order was not a dischargeable claim because State sought clean up rather than money and the release of hazardous waste was "threatened and ongoing" and was an "attempt to prevent additional damage"). That the San Diego Water Board has not yet issued an enforcement order to Debtor directing the performance of specific investigative and/or remedial work does not relieve the Debtor of its ongoing environmental obligations. As such, the San Diego Water Board reserves the right to take future actions to enforce obligations of the Debtor under investigative, cleanup and abatement orders and other authorities of the San Diego Water Board.

The San Diego Water Board believes that its position--that the imposition of obligations under an enforcement order are not claims--will be upheld by a court of competent jurisdiction. The San Diego Water Board files this Proof of Claim with respect to the Debtor's obligations pursuant to investigative or cleanup and abatement orders issued by the San Diego Water Board or other injunctive obligations of the Debtor only in protective fashion with respect to such obligations should the Debtor contend that such obligations are claims under section 101(5)(A) of the Bankruptcy Court and there is a final court order upholding that contention. Therefore, the San Diego Water Board files this protective claim in the alternative with respect to such obligations. Nothing in this Proof of Claim constitutes a waiver of any rights of the San Diego Water Board or election of remedies with respect to such rights and obligations.

In addition, based upon California environmental laws and regulations, the San Diego Water Board may initiate enforcement action in California under 11 U.S.C. § 362(b)(4) which excludes "the commencement or continuation of an action or

proceeding by a governmental unit to enforce such governmental unit's police or regulatory power" from the operation of the automatic stay.

C. Estimated Cost of Complying with Injunctive Obligations

As indicated in the Proof of Claim, the San Diego Water Board submits a protective claim for $459,000 (Four Hundred Fifty-Nine Thousand Dollars), based upon the estimated present value of the tasks the San Diego Water Board will consider requiring Debtor to perform to investigate and characterize the condition of the water and sediment in Lake San Marcos (diagnostic work). (See Exhibit "A" [1 page] attached and incorporated by this reference.) The total amount of Debtor's obligations is necessarily uncertain at this time as completion of diagnostic work by Debtor and completion of parallel diagnostic work by other entities is prerequisite to determining appropriate longer term remediation strategies to cleanup and control conditions causing ongoing impairment of water quality in the Lake and the associated costs to complete such remediation. The San Diego Water Board makes an express reservation to amend this amount to include other monies Debtor may owe, including additional amounts required to fully investigate and characterize the condition of the water and sediment in Lake San Marcos, amounts to remediate and/or implement ongoing management strategies to control the conditions of the water in the Lake, or for contractual or regulatory obligations, based upon further investigation. The San Diego Water Board reserves the right to supplement this claim with additional documents about additional cost information.

III. CONCLUSION

In sum, this protective claim is asserted for all obligations, including injunctive obligations that are not claims, and amounts owed to the San Diego Water Board by the Debtor, as of the petition date or thereafter, in connection with investigative orders, cleanup and abatement orders, oversight costs, and any other applicable laws to the extent such obligations are considered claims under 11 U.S.C. § 101(5) arising from

Debtor's activities in the State of California. The San Diego Water Board reserves the right to contend that all or any such obligations are not claims and are mandatory injunctive obligations of the Debtor for which proofs of claim are not required under the Bankruptcy Code. In addition, the San Diego Water Board reserves its right to issue further directives as they relate to any investigative, cleanup, abatement, or any other directive as the San Diego Water Board deems necessary.

DATED: June 28, 2011

Respectfully Submitted,

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/s/ David H. Robinson

DAVID H. ROBINSON
Deputy Attorney General

Attorneys for the California Regional Water Quality Control Board, San Diego Region

DECLARATION OF DAVID. H. ROBINSON

I, DAVID H. ROBINSON, declare as follows:

1. I am an attorney at law, in good standing, and duly licensed to practice in the courts of the State of California and in the United States District Court, Southern District of California. I am a Deputy Attorney General in the Office of the Attorney General, a branch of the Department of Justice of the State of California. In this matter, I represent the California Regional Water Quality Control Board, San Diego Region ("San Diego Water Board").

2. Attached as Exhibit "A" is a true and correct copy of the San Diego Water Board's estimated present value of the tasks required to investigate and characterize the condition of the water and sediment in Lake San Marcos [1 page].

I declare under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge, except for those matters stated on my information and belief which I believe to be true and that if called as a witness I could competently so testify.

Executed this 28th day of June, 2011, in San Diego, California.

DAVID H. ROBINSON
Deputy Attorney General

Exhibit A to Supplemental Statement in Support of Proof of Claim

Estimated present value of the tasks the San Diego Water Board may require Debtor to perform to investigate and characterize the condition of Lake San Marcos (diagnostic work):

$459,000 – tasks to understand in-lake processes including but not limited to depth profiling, flow measurements, sediment and water column characterization, biological measurements and associated quality assurance and modeling.