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15 San Diego Baykeeper and Environmental Health Coalition

16 **CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD**  
17 **REGION 9 - SAN DIEGO**

18 IN THE MATTER OF: ) ORDER NO. R9-2005-0126  
19 )  
20 CLEANUP AND ABATEMENT ORDER NO. ) ENVIRONMENTAL GROUPS' MOTION FOR  
21 R9-2005-0126; SAN DIEGO BAY SHIPYARD ) "DESIGNATED PARTY" STATUS AND  
22 SEDIMENT REMEDIATION ) OPPOSITION TO OBJECTIONS OF CITY OF  
23 ) SAN DIEGO AND NASSCO  
24 )  
25 ) Pre-Hearing Conference:  
26 )  
27 ) 9:00 a.m.  
28 ) September 26, 2005  
RWQCB Meeting Room

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## I. INTRODUCTION

At its pre-hearing conference set for September 26, 2005, the Regional Water Quality Control Board ("Regional Board") will consider which entities deserve to be granted "designated party" status for purposes of administrative hearings regarding Tentative Cleanup and Abatement Order R9-2005-0126. In its Proposed Procedures for Issuance of the Cleanup and Abatement Order, the Regional Board's Advisory Team recommended the entire San Diego Bay Council be considered a "designated party." Currently, only San Diego Baykeeper and Environmental Health Coalition desire such status. The Sierra Club, Surfrider Foundation, and Audubon Society have chosen to participate as "interested persons."

In their objections to any of the Bay Council being designated a party to the action, NASSCO's attorneys go to great lengths to liken the groups' environmental interests to an infinite number of industry groups and private entities that might possess a "generalized interest" in the outcome of proceedings. Simply put, opposing counsel misses the point. San Diego Baykeeper and Environmental Health Coalition ("Environmental Groups") represent members who use the bay in very direct and substantial ways. They fish in the bay and eat the fish that are caught. They boat, and even swim, in the bay. They study the ecosystems in the bay, and teach students why strong protection measures are needed. Because the groups' memberships are so directly affected by the health of San Diego Bay, EHC and Baykeeper have participated in virtually every step of the Regional Board's consideration of shipyard cleanup levels for more than six years. Both San Diego Baykeeper and Environmental Health Coalition have expended significant amounts of time and money to produce relevant evidence regarding appropriate cleanup levels for bay sediments. This evidence has been presented to both the Regional Board and its staff. These groups deserve to participate fully as "designated parties" in this matter. Indeed, the integrity of the final Board decision demands it.

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## II. ARGUMENT

### A. Standard Of Review

California Code of Regulations (“CCR”), Title 23, section 648.1(a) provides the Regional Board substantial latitude to grant “party” status to “any other person whom the Board determines should be designated as a party.” Contrary to NASSCO’s assertion, the Board can simply designate any party it believes should be a party, so long as it applies a credible rationale. But, should the Board feel more comfortable relying on designated standards for administrative intervention, California Government Code (“GC”) section 11440.50 prescribes a four part test for the Regional Board to decide whether the Environmental Groups should be designated parties.

*First*, there must be a motion, in writing, with copies served on all named parties.

*Second*, the motion must be made as early as practicable, and if possible, before any scheduled pre-hearing conference.

*Third*, the motion must state facts demonstrating that the proposed party’s legal rights, duties, privileges, or immunities will be substantially affected, or that the applicant otherwise qualifies as an intervenor under state law.

*Fourth*, the presiding officer must determine that the interests of justice and the orderly and prompt conduct of the proceeding will not be impaired by allowing the intervention. Gov’t Code § 11440.50 (b)(1-4).

Clearly, with the filing and serving of this motion, the first two parts of the administrative intervention test have been met. Applying the third and fourth parts, the Environmental Groups unquestionably qualify as “designated parties.”

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1                   1.       Environmental Health Coalition and San Diego Baykeeper are Appropriate Parties  
2                                       in this Matter Because Their Members' Interests Will Be Affected By the Decision.

3                   Taken together, the administrative standard for Regional Water Board hearing intervention stated  
4 in CCR 648.1 and GC 1440.50 is more liberal than that for traditional intervention in Superior Court  
5 actions under Code of Civil Procedure section 387. Nonetheless, because the Environmental Groups  
6 would qualify as intervenors even under the Code of Civil Procedure, they are appropriate parties in the  
7 current matter.

8  
9                   California Code of Civil Procedure § 387(a) describes the circumstances under which courts *may*  
10 permit intervention. In relevant part, that section provides:

11                                       Upon timely application, any person, who has an interest in the matter in  
12                                       litigation, or in the success of either of the parties, or an interest against  
13                                       both, may intervene in the action or proceeding.” Cal. Code of Civil  
  Procedure §387(a).

14 Whether to permit intervention should further be guided by the principle that “section 387 should be  
15 liberally construed in favor of intervention.” *Simpson Redwood Company v. State of California* (1987)  
16 196 Cal.App.3d 1192, 1200.

17                   The sufficiency of a proposed intervener’s interest under § 387(a) was discussed in *The People*  
18 *ex rel. Richard E. Rominger v. County of Trinity* (1983) 147 Cal.App.3d 655, 662. (Hereinafter *County*  
19 *of Trinity*). *County of Trinity* involved a County ordinance prohibiting the use of phenoxy herbicides.  
20 The same herbicides were regulated, though more leniently, by the State of California. The State  
21 consequently sued to invalidate the County ordinance on grounds that it was preempted by state law.  
22 Sierra Club sought to intervene in support of the County ordinance. Toward that end Sierra Club argued  
23 it had a sufficient interest in the litigation because its members might be harmed while recreating in  
24 forests that, if the State were to succeed in its lawsuit, could be sprayed with the herbicide. *Id* at 661.  
25 The State countered that Sierra Club could not establish with a sufficient degree of certainty that its  
26 members would be physically harmed if the County ordinance were invalidated. *Id* at 663. The court  
27 rejected the State’s argument, and in doing so re-affirmed the rule that “to sustain intervention, ‘it is not  
28 necessary that (the intervener’s) interest in the action be such that he will *inevitably* be affected by the

1 judgment. It is enough that there be a substantial *probability* that his interests will be so affected.’  
2 (Citations).” *Id* at 662. The court consequently determined that, “(i)n alleging that its members would  
3 be harmed if spraying of phenoxy herbicides resumes in Trinity County in the absence of the ordinances,  
4 the Sierra Club does allege specific harm... .” *Id*. Thus, the court held that Sierra Club had an interest in  
5 the litigation sufficient to justify intervention because, if the State were to succeed in the lawsuit, there  
6 was a substantial probability that Sierra Club members would be exposed to a potentially harmful  
7 pollutant.

8 The interests of Environmental Health Coalition (“EHC”) in this instance are similar to those of  
9 Sierra Club described above. EHC carries out its mission via campaigns, including its *Clean Bay*  
10 *Campaign*, espousing the following beliefs and values:

- 11 • All people have the right to live, play and work in a safe and healthy environment.
- 12 • All people have the right and responsibility to act to correct environmental damage and  
13 prevent future degradation.
- 14 • EHC represents the public interest and takes direction from the communities it represents.
- 15 • Communities of color and poor communities are disproportionately affected by toxic  
16 materials used in the workplace and discharged into the air, land and water.
- 17 • Pollution prevention is the most effective approach to addressing the toxics crisis.
- 18 • EHC supports the integrity of ecosystems and recognizes human dependence on them.
- 19 • It is the government's duty to enact and enforce laws to safeguard the environment,  
20 worker and public health.
- 21

22 Each of EHC’s core values are implicated in the shipyard sediment remediation. Further, EHC undertook  
23 a “Survey of Fishers on Piers in San Diego Bay” earlier this year to determine who would be most likely  
24 impacted by bioaccumulating pollutants in the bay. See EHC Press Release, attached hereto as Exhibit 1.  
25 The results of the survey showed that those people EHC represents, specifically communities of color  
26 and poor communities, would be affected most. Hence, like in *County of Trinity*, there is a substantial  
27 probability the very people EHC represents will be affected by the ultimate cleanup level adopted for the  
28

1 polluted shipyard sediments.

2 Similarly, San Diego Baykeeper strives to protect regional water bodies for a membership that,  
3 along with the general public, specifically consists of fishermen, scientists, educators, and boaters. The  
4 “Baykeeper” name alone is telling. Baykeeper’s members fish in the bay, swim and otherwise recreate in  
5 the bay, study the bay, and utilize bay resources to teach students about natural ecosystems. Continued  
6 degradation of bay water quality, as occurs via pollution of the shipyard sediments, negatively impacts  
7 the health, welfare, and quality of life for Baykeeper’s members. Hence, like EHC, Baykeeper’s interests  
8 in setting an appropriate shipyard sediment cleanup level are sufficient to warrant intervention.  
9

10 Counsel for NASSCO will surely attack these asserted member interests and impacts at the pre-  
11 hearing conference. By their signatures below, Laura Hunter and Bruce Reznik declare, under penalty of  
12 perjury, that these statements accurately reflect the potential impacts to members of EHC and Baykeeper  
13 respectively.  
14

15 A. The Environmental Groups’ Reputations Depend on Their Abilities to Advocate  
16 for a Clean Bay and, therefore, Financial and Other Contributions Could Decrease  
17 If They Are Precluded From Actively Participating In these Proceedings.

18 The case *Simpson Redwood Company v. State of California*, 196 Cal.App.3d 1192, 1200-1201 .  
19 established as a relevant factor to the decision whether to allow an environmental group to intervene the  
20 issue of whether the group’s reputation would suffer as a result of non-participation. When the explicit  
21 purpose of the group is at issue, the denial of right to participate could compromise the public’s view of  
22 the group’s effectiveness. The attendant impact to the group’s reputation could then result in decreased  
23 membership, contributions, and ultimately, viability.  
24

25 As noted above, EHC has a “Clean Bay Campaign.” If not allowed to participate as a party, the  
26 effectiveness of the campaign may be called into question. Similarly, how can the group be called  
27 “Baykeeper” if it is not allowed to directly participate in keeping the bay clean? State law allows the  
28

1 Board to consider the potentially negative impacts to the Environmental Groups' reputation when  
2 deciding to grant them "designated party" status.

3 2. Intervention by the Environmental Groups Will Not Impair the Interests of Justice Nor  
4 the Orderly and Prompt Conduct of the Proceedings.

5 The State Water Resources Control Board has a history of allowing interested environmental  
6 groups to participate as "parties" in adjudicative public hearings, even without the submission of formal  
7 written motions. Attached hereto as Exhibit 2 is a Notice of Public Hearing dated March 2, 2002. On  
8 page 2 of the Notice, three Los Angeles based environmental groups – Natural Resources Defense  
9 Council, Santa Monica BayKeeper, and Heal the Bay – are designated as parties, and all others wishing  
10 to participate are required to formally request party status. The State Water Board recognized the  
11 longstanding involvement of these entities in the process of stormwater permit development at issue in  
12 the hearing, and therefore granted them party status outright. Clearly their participation in that formal  
13 adjudicative hearing was not considered overly burdensome by the State Board.  
14

15  
16 In the current matter, though EHC and San Diego Baykeeper seek party status individually, the  
17 groups' interests will be singularly represented. The Bay Council is not a formal entity, and thus is not  
18 an appropriate party. Also, because EHC and Baykeeper have different Boards of Directors, decision-  
19 making structures, budgets, and litigation propensities, they cannot be considered a single party.  
20 Nonetheless, both of the Environmental Groups agree to jointly produce expert witnesses and  
21 documentary evidence.<sup>1</sup> Essentially, they will function as a single entity, with both groups represented by  
22

23  
24 \_\_\_\_\_  
25 <sup>1</sup> The evidence to be supplied by the Environmental Groups can generally be described as expert  
26 assessment of NASSCO's "Exponent Report," including written and oral testimony as to the scientific  
27 validity of the reference pool chosen by Board staff and the likelihood that the proposed cleanup levels  
28 will protect beneficial uses as required by law. Further, the Environmental Groups intend to produce  
evidence regarding the Board's proposed application of environmental cost-benefit assessment theories  
to the "economic feasibility" considerations under State Water Resources Control Board Resolution 92-  
49.

1 single counsel – Coast Law Group LLP – for purposes of these proceedings.

2 Further, where an environmental group seeking to intervene will raise issues distinct from other  
3 parties in the litigation, but the issues center around essentially the same set of facts, there is no undue  
4 complication of proceedings. *Simpson Redwood Company v. State of California*, 169 Cal.App.3d 1192,  
5 1202 (1987); *See also, County of Trinity*, 147 Cal.App.3d 655, 664 (1983) (Environmental group’s  
6 intervention does not enlarge scope because no new legal or factual issues presented).  
7

8 The Regional Board should follow the example of the State Board noted above and list both  
9 groups as parties, but limit them to the same procedural and presentation time limits as if they were a  
10 single entity.  
11

12 3. The Environmental Groups’ Interests are Not Adequately Represented  
13 By The Regional Board Advisory Team

14 NASSCO, in its objections to the Advisory Team’s proposed designation of the Bay Council as a  
15 party, makes the claim that Regional Board staff “is statutorily authorized and fully capable of  
16 representing any interests Bay Council may have in the water quality of San Diego Bay.”<sup>2</sup> This statement  
17 ignores the substantial past disagreements the Environmental Groups have had with Board staff on a  
18 number of issues and decisions related to cleanup of the shipyards’ polluted sediments. Just because the  
19 agency is ordered by statute to pursue the goal of clean water, there is no guarantee staff will interpret  
20 this obligation in the same manner as the Environmental Groups. By its own reasoning, NASSCO can  
21 similarly rest assured that Southwest Marine will advocate for the least expensive cleanup, and therefore  
22 it need not participate in the proceedings either.  
23

24 The court in *County of Trinity* addressed the issue of agency representation of environmental  
25

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26  
27 <sup>2</sup> This exact same argument failed when NASSCO’s counsel unsuccessfully sought to preclude  
28 San Diego Baykeeper and two other environmental groups from intervening in the Building Industry  
Association’s challenge to this Board’s adoption of the San Diego Municipal Stormwater Permit.



1 interests:

2 "We are not dealing here with two private parties litigating a private matter but rather  
3 with two public bodies litigating the fate of ordinances designed to protect the public's  
4 health and security. Any argument that the parties should be permitted to litigate  
5 without the "interference" of the very people those ordinances were designed to  
6 protect is an unacceptable assertion of bureaucratic dominion and control to the  
7 exclusion of the citizenry." 147 Cal.App.3d 655,665.

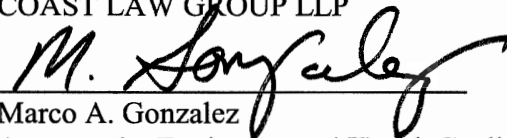
8 The same rationale applies here. The interests of EHC's and Baykeeper's members cannot conceivably  
9 be represented in their entirety by the Regional Board staff.

10 **III. CONCLUSION**

11 For the foregoing reasons, the Regional Board should designate both Environmental Health  
12 Coalition and San Diego Baykeeper as parties in this matter. In the interests of orderly and prompt  
13 conduct of proceedings, procedures or orders should be adopted requiring the two parties to coordinate  
14 their presentations of witnesses, evidence, and arguments such that they effectively function as one  
15 party.

16 Dated: September 20, 2005

COAST LAW GROUP LLP

17 

18 Marco A. Gonzalez  
19 Attorney for Environmental Health Coalition  
20 and San Diego Baykeeper

21 Dated: September 20, 2005

ENVIRONMENTAL HEALTH COALITION

22 \_\_\_\_\_  
23 Laura Hunter  
24 Director, Clean Bay Campaign

25 Dated: September 20, 2005

SAN DIEGO BAYKEEPER

26 \_\_\_\_\_  
27 Bruce Reznik  
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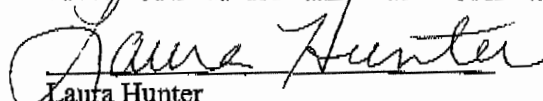
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25 Director, Clean Bay Campaign

26 Dated: September 20, 2005

SAN DIEGO BAYKEEPER

27 \_\_\_\_\_  
28 Bruce Reznik  
Executive Director



## Media Release

**For Immediate Release:  
March 4, 2005**

**Contacts:**

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Mobile: (619) 997-9983  
Gabriel Fabila: (619) 474-0220 ext.105  
Mobile: (619) 952-3358

# Contaminated Catch - A Risk for Bay Fisher Families

## State Leaders Ortiz and Saldaña join EHC in urging Regional Water Board action

**(National City)-** Today at a press conference in Pepper Park in National City, Environmental Health Coalition (EHC) released its landmark report ‘**Survey of Fishers on Piers in San Diego Bay.**’ The first survey of San Diego Bay pier fishers and their fish consumption patterns, it documents that people are consuming fish in quantities that can damage their health. EHC is urging the San Diego Regional Water Quality Control Board (Regional Board) to direct the shipyards responsible for significant contamination of the Bay to remove more than one million tons of toxic sediments to protect the health of fish consumers and the San Diego Bay ecosystem.

Contamination of fish and sediments from San Diego Bay is well documented. In 1990, a study by the National Oceanic and Atmospheric Administration (NOAA) rated San Diego Bay as one of the most contaminated urbanized coastal areas in the nation. A second study in 1996 by the State Water Resources Control Board, again, documented widespread contamination. Human health risk studies done in 1990, 1991, 1995, 1998, and 2004 have estimated significant health risks when people consume bay fish at higher rates of consumption than the average recreational fisher. What has been missing is evidence that people are consuming fish at those higher rates that can damage their health. This report presents that missing evidence.

EHC will use this data to support a specific set of recommendations to the Regional Board later this year, once the board sets a hearing date for the issue of sediment clean-up levels. Laura Hunter, Director of EHC’s Clean Bay Campaign summarized the organization’s demands: “EHC is calling on the State to act to remove dangerous chemicals from the Bay known to bioaccumulate and threaten the health of families that rely on the Bay for a food source.” She said “By taking these specific actions, the Regional Board will help protect the communities most affected by the contamination of the Bay and human health and the environment in general,” she concluded.

**EXHIBIT 1**

Members of the San Diego Bay Council and local fishermen were at hand today, in support of the findings of this groundbreaking report. Also present were elected officials Assemblymember Lori Saldaña from the 76th Assembly District, and State Senator Deborah Ortiz, D-Sacramento.

"I agree with the EHC report: it's time to move forward and safeguard our bay, improve water quality, and protect the health of everyone who lives and visits there" said Saldaña, a long time clean water advocate for the San Diego region; "Together, we will create programs that mitigate the harm done to the bay, and protect everyone who uses it for recreation and sustenance" she added.

The survey was completed during the winter and spring months of 2004, and it reveals that a significant population of fishers frequently fish near contaminated areas of the Bay and feed their families with the fish they catch. More than 100 fishers were surveyed at the Chula Vista Pier, Pepper Park Pier in National City and the Convention Center Pier in San Diego. Some of the key results of the survey are:

- 96% of the fishers were Filipino or Latino
- 83% were residents of west Chula Vista, National City or Barrio Logan
- 63% of the fishers, their families or friends consumed the fish they caught
- 35% fed the fish to their children
- 31% fished at least weekly and 25% fished 4 to 7 times a week
- Over half of the Filipino fishers fished at least 4 times a week

This survey report confirms cultural differences among populations that have not been taken into account in other reports of fish consumption. For example, one of the results is that people are eating parts of the fish other than the fillets (which is the part of the fish typically analyzed for fish consumption studies) and in some cases the fish is prepared in a manner that uses the whole fish. This is of particular importance because contaminants can concentrate in the skin, fat, and internal organs. Additionally, the cooking methods that were most mentioned in the survey were frying and stewing, methods that remove less contaminants from the fish than baking or broiling.

**The key actions that EHC is recommending the Regional Board to take are as follows:**

1. Require commercial shipyards and naval facilities to clean up to protective background levels for remediation of toxic sediments in San Diego Bay and to support protective sediment quality objectives for the State.
2. Consider the environmental justice impacts in decision-making and implement precaution in all permitting and regulatory decisions.
3. Revise the fish consumption warning for San Diego Bay based on higher consumption levels.
4. Update and replace fish warning signs to include Tagalog
5. Work with the Department of Toxic Substances Control and the Office of Environmental Health Hazard Assessment to initiate an outreach and education program to educate fishers of the Bay of the risks of consuming Bay fish and some means to reduce the risks.

“Protecting the health of Californians, and especially our children, is one of the highest

priorities and responsibilities government has,” said Senator Deborah Ortiz, chair of the Senate Health Committee. “The dedicated efforts by organizations like the Environmental Health Coalition are critical to ensuring the safety of those who live in our community. With the continuing, grassroots level commitment of EHC, we will win the fight and ensure we have clean air and water, and our children are free of exposure to dangerous chemicals.”

The contamination of the fish in San Diego Bay is the direct result of sediment and water contamination. A key pollution source are the San Diego shipyards like Southwest Marine and NASSCO, who for more than 20 years have been illegally dumping wastes into San Diego Bay and have contaminated the sediments in the Bay. In 2001, the Regional Board ordered the shipyards to perform sediment sampling in order to establish cleanup levels. Now, consultants for the shipyards have developed a plan that proposes leaving all of the contaminated sediments in the Bay and performing no cleanup at all. If this happens, it would put the people who fish from the Bay and the wildlife in jeopardy for years to come.

####

*Environmental Health Coalition is dedicated to environmental and social justice. We believe that justice is achieved when empowered communities act together to make social change. We organize and advocate to protect public health and the environment threatened by toxic pollution. EHC supports efforts that create a just society and that foster a healthy and sustainable quality of life.*

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# State Water Resources Control Board



**Winston H. Hickox**  
Secretary for  
Environmental  
Protection

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**Gray Davis**  
Governor

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at [www.swrcb.ca.gov](http://www.swrcb.ca.gov).*

## NOTICE OF PUBLIC HEARING ON STAY REQUESTS

The State Water Resources Control Board will hold a hearing to consider issuance of a stay on

Petitions of  
County of Los Angeles and Los Angeles County Flood Control District et al.;  
City of Artesia et al.; City of Arcadia et al.;  
Los Angeles County Economic Development Corporation et al.;  
Playa Capital Company; and Western States Petroleum Association  
(Waste Discharge Requirements Order No. 01-182 for Municipal Storm Water  
and Urban Runoff Discharges [NPDES No. CAS004001]  
within Los Angeles County, except for Long Beach):  
Los Angeles Region.  
SWRCB/OCC File No. A-1448

**Monday, March 25, 2002, 10:00 a.m.**

**Metropolitan Water District of Los Angeles  
700 North Alameda Street  
Board Room, First Floor  
Los Angeles, California**

### PURPOSE OF HEARING

The State Water Resources Control Board (State Board) has received requests from the City of Los Angeles and the Cities of Arcadia et al. to stay the effect of the municipal storm water permit for Los Angeles County pending resolution of the consolidated petitions on the merits. The State Board will hold a hearing to consider issuance of a stay.

The purpose of this hearing is to receive any relevant testimony or evidence and to hear policy statements on whether to issue a stay in this matter. The hearing will be limited to this purpose. The bases for a stay will be limited to the submissions by the City of Los Angeles and the Cities of Arcadia et al. A stay of the effect of the permit may be granted only if petitioners produce proof of (1) substantial harm to them or to the public interest if a stay is not granted, (2) a lack of substantial harm to other interested persons and to the public interest if a stay is granted, and (3) substantial questions of fact or law regarding the permit. The hearing will be limited to this purpose.

The hearing will be held on *Monday, March 25, 2002, at 10:00 a.m.* The hearing may be conducted by one State Board Member. At the hearing, the State Board will receive oral and written testimony and policy statements on the issue described above. All persons who wish to provide information relating to whether to stay the effect of the permit pending resolution of the petitions on the merits may submit policy statements.

### HEARING PARTICIPATION

Participants at the hearing are either “parties” or “interested persons.” Parties to the hearing may present evidence and are subject to cross-examination. Parties may also cross-examine other parties’ witnesses. Cross-examination is limited to testimony and evidence.

Parties and interested persons may present non-evidentiary policy statements. Interested persons are not subject to cross-examination and may not cross-examine other parties. Parties may be cross-examined only regarding evidence they submit and not policy statements. Parties must clearly identify any portions of their presentations that are policy statements. Policy statements may refer to evidence in the record and must be limited to **five pages, double-spaced, with a font no smaller than 12.**

The following participants are hereby designated as parties at the hearing:

1. All petitioners in SWRCB/OCC Files A-1448 et al.;
2. Natural Resources Defense Council, Santa Monica BayKeeper, and Heal the Bay;
3. Los Angeles Regional Water Quality Control Board.

All other persons who wish to participate in the hearing as parties must request party status. Requests must be submitted no later than **5:00 p.m. on March 13, 2002.** The submissions shall explain the basis for party status and why the existing parties do not adequately represent the person’s interests. Persons or entities with similar interests are requested to select one representative to serve as a party on behalf of the group. All designated parties must submit the following no later than **5:00 p.m. on March 20, 2002:** the evidence and exhibits that will be presented, a list of witnesses and their full testimony to be presented, and references to evidence



in the administrative record that should be considered by the State Board. All submissions shall be made to:

Elizabeth M. Jennings, Esq.  
Office of Chief Counsel  
State Water Resources Control Board  
1001 I Street, 22nd Floor [95814]  
P.O. Box 100  
Sacramento, CA 95812-0100  
Email: [bjennings@exec.swrcb.ca.gov](mailto:bjennings@exec.swrcb.ca.gov)

**The State Board will strictly enforce the deadlines, page limits, and limits on oral presentations and written submissions described herein.**

Oral testimony that goes beyond the scope of written testimony will be excluded. Parties who propose to offer expert testimony must include a statement of qualifications of the expert witness. Parties must submit all documents to the State Board and must send one copy to each person at the address listed on attached pages to this notice. Parties may make electronic submissions. Interested persons may submit one copy of policy statements in advance to the State Board only.

### **HEARING PROCEDURES**

To ensure that all participants have an opportunity to participate in the hearing, the following time limits will apply. Each of the three parties listed above, and any other parties that are designated, will have a total of 30 minutes to present their testimony and policy statements. Interested persons will have 3 minutes to present a policy statement. Interested persons with similar concerns should participate in a joint presentation, and the State Board may limit such statements if they are repetitive. Participants are requested to avoid redundant comments. Additional time may be provided upon a showing that additional time is necessary.

The State Board will conduct the hearing in accordance with the State Board's regulations governing adjudicative proceedings and the Administrative Procedure Act (APA). The State Board's regulations are in the California Code of Regulations, title 23, section 648 et seq. (<http://www.calregs.com>) or upon request. The APA provisions are at California Government Code section 11400 et seq. The hearing will not be conducted as a formal hearing under Chapter 5 of the Administrative Procedure Act (commencing at Government Code section 11500).

### **CLOSED SESSION**

The State Water Board may meet in closed session to deliberate on a decision to be made based on evidence taken at the hearing, either immediately following the hearing or at a subsequent time. The closed session is authorized under Government Code section 11126, subdivision (c)(3).

### **FURTHER ACTION ON THE STAY REQUEST**

The State Board may act on the stay requests at a subsequent meeting, whose time and place will be publicized. A draft decision will be circulated to the public, and the public will have an opportunity to comment on the draft decision prior to final State Board action. The State Board will not allow the introduction of evidence or exhibits following the close of the hearing.

### **LOCATION AND ACCESSIBILITY**

The Metropolitan Water District of Los Angeles is accessible to people with disabilities. Public parking is available across the street from the building. A map of the exact location is attached to this notice.

Individuals who require special accommodations are requested to contact Adrian Perez at (916) 341-5880 at least five (5) working days prior to the hearing.

### **IF YOU HAVE ANY QUESTIONS**

Questions concerning the hearing may be addressed to Elizabeth Miller Jennings, Senior Staff Counsel IV at (916) 341-5175 or at [bjennings@exec.swrcb.ca.gov](mailto:bjennings@exec.swrcb.ca.gov).

/s/  
Maureen Marché  
Clerk to the Board

Dated: March 7, 2002

Enclosures



169 Saxony Road, Suite 201 Encinitas, CA 92024  
 Ph: 760.942.8505 Fx: 760.942.8515  
 www.coastlawgroup.com

## FAX COVER SHEET

FAX NUMBER TRANSMITTED TO: 858-571-6972

To: Frank Melbourn  
 From: Marco Gonzalez  
 Client/Matter: Shipyard Sediment Cleanup and Abatement Order  
 Date: September 20, 2005

DOCUMENTS	NUMBER OF PAGES*
Declaration of Service by Mail	1

COMMENTS:

*The information contained in this facsimile message is information protected by attorney-client and/or the attorney/work product privilege. It is intended only for the use of the individual named above and the privileges are not waived by virtue of this having been sent by facsimile. If the person actually receiving this facsimile or any other reader of the facsimile is not the named recipient or the employee or agent responsible to deliver it to the named recipient, any use, dissemination, distribution, or copying of the communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via U.S. Postal Service.*

\* NOT COUNTING COVER SHEET. IF YOU DO NOT RECEIVE ALL PAGES, PLEASE TELEPHONE US IMMEDIATELY AT (760) 942-8505.

**DECLARATION OF SERVICE BY MAIL**

*In the Matter of Tentative Cleanup and Abatement Order  
No. R9-2005-0126; Shipyard Sediment Remediation*

I, **MARCO A. GONZALEZ**, declare that: I am over the age of eighteen years and not a party to the above action; I am employed in, or am a resident of, the County of San Diego, California, where the mailing occurs; and my business address is **169 Saxony Road, Suite 201, Encinitas, CA 92024**.

I further declare that I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business.

I served the following document(s): **ENVIRONMENTAL GROUPS' MOTION FOR "DESIGNATED PARTY" STATUS AND OPPOSITION TO OBJECTIONS OF CITY OF SAN DIEGO AND NASSCO**

by placing a true copy of each document in a separate envelope addressed to each addressee, respectively, as follows:

<b>Frank Melbourn</b> <b>RWQCB</b> <b>9174 Sky Park Court</b> <b>San Diego, CA 92123</b>	<b>Michael Chee</b> <b>NASSCO</b> <b>PO Box 85278</b> <b>San Diego, CA 92186</b>
<b>Sandor Halvax</b> <b>BAE Systems San Diego Ship Repair Inc.</b> <b>PO Box 13308</b> <b>San Diego, CA 92170</b>	<b>David Merk</b> <b>Director of Environmental Services</b> <b>Port of San Diego</b> <b>PO Box 120488</b> <b>San Diego, CA 92112</b>
<b>Brian Gordon</b> <b>Department of the Navy</b> <b>Environmental Department N45</b> <b>Commander Navy Region Southwest</b> <b>33000 Nixie Way, Bldg. 50, Ste. 326</b> <b>San Diego, CA 92147</b>	<b>Scott Tulloch</b> <b>City of San Diego</b> <b>Metropolitan Wastewater Department</b> <b>9192 Topaz Way</b> <b>San Diego, CA 92123</b>
<b>Vincent Gonzales</b> <b>SDG&amp;E Sempra Energy</b> <b>555 West Fifth Street, Ste. 1400</b> <b>San Diego, CA 92123</b>	<b>H. Allen Fernstrom</b> <b>Marine Construction and Design Company</b> <b>2300 West Commodore Way</b> <b>Seattle, WA 98199</b>
<b>Christopher J. McNevin</b> <b>Attorney for Chevron USA Inc.</b> <b>Pillsbury Winthrop Shaw Pittman, LLC</b> <b>10250 Constellation Blvd., 21<sup>st</sup> Floor</b> <b>Los Angeles, CA 90067</b>	<b>Roy Than</b> <b>BP West Coast Products LLC</b> <b>6 Centerpointe Drive</b> <b>La Palma, CA 90623</b>

I then sealed each envelope and, with the postage thereon fully prepaid, I placed each for deposit in the United States Postal Service, this same day, at my business address shown above, following ordinary business practices.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Dated: September 20, 2005

  
**MARCO A. GONZALEZ**