

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MONTEREY

BEFORE THE HONORABLE THOMAS W. WILLS, JUDGE

DEPARTMENT 14

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MONTEREY COASTKEEPER,	)	
	)	
Petitioners,	)	Case No: M108858
	)	
vs.	)	
	)	
MONTEREY COUNTY	)	
WATER RESOURCES,	)	
	)	
Respondents.	)	
-----	)	

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MONTEREY, CALIFORNIA

REPORTER'S TRANSCRIPT

TUESDAY, FEBRUARY 17, 2015

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REPORTED BY:  
LINDA PARKS, CSR NO. 9625

A P P E A R A N C E S

FOR THE PETITIONERS:

DEBORAH SIVAS  
Attorney at Law

PHILIP WOMBLE  
Attorney at Law

ALICA THESING  
Attorney at Law

FOR THE RESPONDENTS:

NICOLE GRANQUIST  
Attorney at Law

IRVEN GRANT  
Attorney at Law

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2  
3 THE COURT: Now, in the Monterey Coastkeeper  
4 versus Monterey County Water Resources Agency, Case  
5 No. M108858, counsel are all present and have  
6 previously announced their appearances prior to our  
7 finding a court reporter to come in here.

8 So I have made preliminary comments. And I  
9 will -- first, before you start to argue, I want to  
10 try to get some sense of procedurally where we are  
11 with respect to the Regional Water Board and State  
12 Water Board and what your best time estimates are for  
13 what you anticipate will happen next with those  
14 entities.

15 So against that background, has the Regional  
16 Water Board yet told Respondent Agency when it has to  
17 file the discharge report and what needs to be in it?

18 MR. GRANT: No, your Honor.

19 THE COURT: Is there any indication that  
20 that's going to happen within our lifetime?

21 MR. GRANT: Well, we're going to meet with  
22 them on March the 3d and, as their communication says,  
23 discuss a variety of regulatory tools, means, and  
24 measures, the issue of waste discharge itself.

25 So it's pretty much an open-ended

1 discussion.

2 And I agree with the Court. And I am  
3 puzzled by it and remain puzzled by it. The initial  
4 letter we got on January 7th from the staff of the  
5 Regional Board was that we were discharging.

6 We pushed back a little on that. And the  
7 Board itself came out with this letter indicating that  
8 we are not at least at this time.

9 THE COURT: Where is that? Has that been  
10 submitted to the Court?

11 MR. GRANT: Yes.

12 THE COURT: What document is that?

13 MR. GRANT: You should have an email there,  
14 your Honor, from the Board's attorney.

15 THE COURT: To what document or documents --

16 MS. GRANQUIST: Your Honor --

17 THE COURT: -- is this?

18 MS. GRANQUIST: -- this is Ms. Granquist. I  
19 think I can explain.

20 Subsequent to receiving the January 7th  
21 correspondence from the Regional Water Board, which  
22 quite frankly didn't surprise us a bit, we were in  
23 contact with the Regional Water Board.

24 We received a subsequent email from their  
25 staff attorney, which indicated that they were willing

1 to set up a meeting with us that's scheduled for  
2 March 3d.

3 But it also indicated --

4 THE COURT: All right. Before you go any  
5 further --

6 MS. GRANQUIST: Sure.

7 THE COURT: -- where is this document?

8 MS. GRANQUIST: It should be in the -- it  
9 should be in your files. And I can hand you this.

10 THE COURT: All right. It's not loose. I  
11 assume it's appended to some other document.

12 MS. GRANQUIST: I could --

13 THE COURT: Just a moment.

14 Who submitted it? Who submitted the  
15 document you're referring to?

16 MS. GRANQUIST: This was referenced in our  
17 case management conference statement.

18 THE COURT: Was it submitted? That's my  
19 question.

20 MS. GRANQUIST: Yes. And I apologize. The  
21 other attorney from my office had put together that  
22 filing. So if it was inadvertently omitted, I  
23 apologize.

24 THE COURT: Well, I don't recall seeing it.

25 Now, I was deluged with far more than I

1 expected I was going to receive in advance of today's  
2 hearing.

3 MR. GRANT: Excuse me, your Honor. It's on  
4 Page 12 and 13, bottom of 12 and the top of 13.

5 MS. GRANQUIST: Correct. It's excerpted in  
6 the actual case management conference statement.

7 THE COURT: All right. But the document  
8 itself has not been supplied; is that --

9 MS. GRANQUIST: I think that's correct, yes.  
10 It's the quote that appears at the bottom of  
11 Page 12 and top of Page 13.

12 THE COURT: Who is Tameron Austin  
13 (phonetic)?

14 MS. GRANQUIST: She's staff counsel for the  
15 Regional Water Board. She's their lawyer.

16 THE COURT: Counsel for Petitioners, have  
17 you seen that correspondence before?

18 MS. SIVAS: No, your Honor. Just now we had  
19 a look at it.

20 MS. GRANQUIST: Well, it was referenced in  
21 our statement and is --

22 THE COURT: Well, yeah. But if you don't  
23 produce the document, you know --

24 MS. GRANQUIST: We were unaware --

25 THE COURT: You've got to remember. We're

1 dealing with a record --

2 MS. GRANQUIST: Correct.

3 THE COURT: -- in this case. And if  
4 something is not in the record and there's been no  
5 request for judicial notice, no presentation of a  
6 document to the Court, how is the Court going to  
7 consider it or opposing counsel be able to review it  
8 and -- and comment on it?

9 MS. GRANQUIST: We were under the  
10 compression that Coastkeeper received this from the  
11 Regional Water Board. So I apologize. My assumption  
12 was that they did have that.

13 THE COURT: That takes care of opposing  
14 counsel, but it still doesn't put it in the record for  
15 the Court.

16 Have you had an opportunity to review that  
17 sufficiently for you to comment on it, Petitioners?

18 Everybody is shaking their heads negatively.

19 MS. SIVAS: No, your Honor. We just looked  
20 at it now.

21 But I would say, just looking at it right  
22 now, it doesn't say anything about them being  
23 discharged. It's just about setting up further  
24 conversations.

25 THE COURT: All right. I'm --

1 MS. GRANQUIST: Your Honor --

2 THE COURT: Just a moment.

3 I'm not quite sure how one would go from the  
4 January 7th, 2015, letter statement that says,  
5 "Central Coast Water Board staff has determined that  
6 MCWRA is a waste discharger and must file a report of  
7 waste discharge pursuant to California Water Code  
8 Section 13260 or 13264" and some other document  
9 ostensibly within that agency could say, "Please be  
10 advised that the Regional Water Board's executive  
11 officer does not construe the letter to the Court as a  
12 request for MCWRA to file an ROWD."

13 Now, unless somebody is splitting hairs,  
14 because that document doesn't -- the first document  
15 doesn't say that you have to file it by a certain  
16 date. They're at best ambiguous.

17 MS. GRANQUIST: Yes.

18 THE COURT: But clearly, the January 7th  
19 letter says that the determination was made; that  
20 timing and content of a report of waste discharge was  
21 yet to be information supplied to Respondent.

22 How do reconcile those two?

23 MS. GRANQUIST: We're struggling with the  
24 same thing, your Honor, which is why that I think,  
25 from the process standpoint for this case today, that



1 the process you proposed, which is perhaps putting  
2 another case management conference, some other  
3 additional time so that we can meet with the Regional  
4 Water Board, I think is going to be extremely helpful.

5 So we have a meeting on March 3d. My --

6 THE COURT: You got most of what I said, but  
7 not everything I said.

8 Go ahead.

9 MS. GRANQUIST: Understood. I understood  
10 that.

11 I think what's going on here, if I can just  
12 sort of speak plainly, is the Regional Water Board has  
13 a lot of different tools at its disposal.

14 Whether or not they're going to ask us to  
15 submit a report of waste discharge or whether they're  
16 going to ask us to do something else is at issue.

17 And so from the Agency's perspective, what  
18 we'd like to be able to do, if you will indulge us, is  
19 to allow some additional time to work this out with  
20 the Regional Water Board.

21 The correspondence that came from their  
22 staff counsel, when they talk about tools in their  
23 regulatory toolbox, indicates that perhaps -- and I --  
24 they're not here. So I can't -- I can only speculate  
25 as to the reasons for why the differing

1           communications.  Maybe that they're contemplating  
2           something slightly different now than the report of  
3           waste discharge.  Perhaps they were regulated in some  
4           different ways.  Perhaps they decided to do something  
5           else.  Unfortunately I don't know.

6                        I will know more after March 3d.  That's  
7           when we are sitting down with them, and we're going to  
8           have all the discussions that I think will inform this  
9           process and understand exactly where we stand.

10                      And my suspicion is that they have got a  
11           process in mind that's going to involve multiple  
12           parties.  And whether or not we're a discharger and  
13           report of waste discharge under that process, I don't  
14           know yet.

15                      And so I'm sorry that I can't offer you  
16           more.

17                      We attempted to have the meeting with the  
18           Regional Water Board prior to this hearing.  We tried  
19           actually quite hard to schedule that.  And the  
20           Regional Water Board staff were unavailable.

21                      So it leaves me in the position of me  
22           telling you that I've got a meeting in two weeks.  And  
23           after that, I think we'll know quite a bit more.  But  
24           I don't know it yet.

25                      THE COURT:  Petitioners, have you been

1 invited to this meeting?

2 MS. SIVAS: No, your Honor.

3 MR. WOMBLE: No, your Honor, we have not  
4 been invited to this meeting.

5 And Coastkeeper cannot be a part of the  
6 administrative process until the Water Agency files  
7 its report of waste discharge. The Regional Board  
8 does not have a mandatory duty to issue waste  
9 discharge requirements until that report is filed.

10 And that's why we think that the preliminary  
11 relief that you've suggested is appropriate.

12 The Regional Board has provided this Court  
13 with its legal interpretation of the Porter-Cologne  
14 Act, indicating that the Water Agency is a waste  
15 discharger.

16 And its recent -- this email that we just  
17 saw for the first time today provides more reason for  
18 this Court to provide the preliminary relief that  
19 you've suggested.

20 After the Water Agency again files its  
21 report, then Coastkeeper can be part of the  
22 administrative process.

23 And we also think that the suggestion you  
24 initially had regarding a deadline for the Water  
25 Agency to file its report of waste discharge is

1 appropriate. And because as you noted, at the moment,  
2 we are not involved in these discussions between the  
3 Regional Water Board and the Water Agency.

4 We would suggest that the Water Agency file  
5 its report within 60 days. That would be by mid  
6 April. And then we can have an initial return to the  
7 writ in 90 days where the Water Agency could show the  
8 Court that it has file its report of waste discharge.

9 But under the California Water Code Section  
10 13260, the Water Agency has to file its report of  
11 waste discharge. And it's a separate question what  
12 ends up being in their waste discharge requirement.  
13 And they're permanent from the Regional Board. And  
14 that is what these discussions that -- that Respondent  
15 refers to are circling around.

16 THE COURT: Well, I'll tell you what part of  
17 my concern is. If I were to issue a writ today, it  
18 would say file a report.

19 But the problem is the Agency has said  
20 they're going to -- they're going to tell Respondent  
21 Agency when it's got to be filed and what's got to be  
22 in it. So it's not a very helpful order if I just  
23 tell them they have to file a report.

24 What I'm inclined to do is I would consider,  
25 following the March 3d meeting at a hearing date which

1 I will set now, a request for preliminary relief.  
2 It's probably not going to be a final relief because I  
3 don't know how this is going to play out in the  
4 administrative process that goes from the Regional  
5 Board to the State Board.

6 Nobody has said they're going to appeal a  
7 decision of the Regional Board to the State Board.  
8 But I have a feeling that as surely as night follows  
9 day, that's going to happen.

10 But do I want to keep a fire under this to  
11 keep it moving and get it concluded.

12 And I do not want to make an order that is  
13 going to be at odds with an otherwise appropriate  
14 order by a state regulatory agency.

15 If the meeting is on March 3d -- I'm going  
16 to recess for a few seconds. I'm going to check the  
17 calendar to make sure that we have another judge here  
18 on the day that I'm thinking about assigning for this.  
19 I'll be right back.

20 (Recess.)

21 THE COURT: March 19th. And I am -- I'm  
22 going to make some orders about supplying information  
23 to Petitioners in advance of that hearing.

24 I think any communications between  
25 Respondent and the Regional Board needs to be

1       supplied. Any document submitted to the Regional  
2       Board needs to be supplied.

3               So Petitioners, are you saying that at this  
4       stage of the administrative process, there is no  
5       opportunity for Petitioners to take part in any  
6       discussions or review by the Regional Board?

7               MR. WOMBLE: Yes, your Honor.

8               THE COURT: What is it again? I think you  
9       mentioned it earlier. What is it that triggers your  
10      first right to participate in some proceeding or  
11      proceedings before then?

12              MR. WOMBLE: After the Water Agency files  
13      its report of waste discharge can Coastkeeper  
14      participate in the administrative process. Only after  
15      they file that report, does the Regional Board have  
16      any mandatory duty regarding waste discharge  
17      requirement under the statute.

18              MS. GRANQUIST: Your Honor, may I speak on  
19      that point?

20              THE COURT: Yes.

21              MS. GRANQUIST: I disagree vehemently with  
22      that representation. This is a meeting that's open to  
23      the public. There is no trigger from a process or  
24      procedure standpoint in terms of being precluded from  
25      being able to participate or not. The submittal of

1 the report of waste discharge doesn't change that.

2 The Regional Water Board's normal practice  
3 in every circumstance I have ever been in is to have  
4 meetings with potential dischargers. No one is  
5 precluded from attending those.

6 I -- I just -- I can't disagree more with  
7 that statement.

8 THE COURT: Well, when -- do Petitioners  
9 know when and where this meeting is going to take  
10 place?

11 MR. WOMBLE: No, your Honor.

12 THE COURT: Respondents are directed --

13 MS. GRANQUIST: It was in the case  
14 management conference statement. They are aware.

15 THE COURT: All right. The address is  
16 there?

17 MS. GRANQUIST: It is. It's at the Regional  
18 Water Board's office.

19 Actually, you know -- what is it?

20 MR. GRANT: Yes.

21 MS. GRANQUIST: Yes. The Regional Water  
22 Board's offices. I'm happy to provide them any  
23 supplemental notice, but they -- they were aware.

24 THE COURT: If there is any change in the  
25 time or location of that meeting, it is to be provided

1 to Petitioners immediately.

2 MS. GRANQUIST: That's no problem, your  
3 Honor.

4 In terms of the language that you are  
5 crafting in terms of communications to the Board or  
6 documents to the Board, I'm presuming that that  
7 applies to Respondents and to Petitioners. And if  
8 not, I would request that that be the case.

9 THE COURT: I think the parties should do  
10 that.

11 MS. GRANQUIST: Yeah.

12 THE COURT: I think that's appropriate.

13 MS. GRANQUIST: Yeah.

14 THE COURT: But since you're the ones that  
15 have had contact so far, you're the ones that came to  
16 mind immediately.

17 MS. GRANQUIST: Yeah. Thank you, your  
18 Honor.

19 THE COURT: There's a good chance that if  
20 nothing concrete has occurred by the date we next  
21 convene, the Court will grant some form of preliminary  
22 relief unless there has been a change.

23 And again, the only action by the Board or  
24 on behalf of the Board that's in the Court record is  
25 Exhibit "B" to the Ms. Sivas' declaration that



1 attaches the letter that was sent out rather promptly,  
2 I might add, in response to the Court's certification  
3 of questions to be addressed by the Board.

4 So based on what I've seen so far, it looks  
5 like the Board is not wasting any time in responding  
6 to these issues. But I want to keep this alive and  
7 moving and not be bogged down in interminable  
8 administrative processes.

9 MR. GRANT: Your Honor, I just note that the  
10 January 7th letter is from the staff, not the Board.

11 MS. GRANQUIST: Yeah.

12 MR. GRANT: And I think that makes a  
13 difference.

14 THE COURT: Well, I didn't address the  
15 letter to the staff. It was addressed to the Board.  
16 And if that's who the Board elected to have it address  
17 the Court, so be it. Okay?

18 MR. GRANT: Okay.

19 THE COURT: Nobody else in the Board elected  
20 to address the Court.

21 I really want the parties to think about --  
22 you've got plenty of other issues to deal with -- but  
23 what realistic relief the Court can grant.

24 Again, I'm not -- I don't think it's  
25 appropriate for the Court to step on the toes of any

1 regulatory agency so -- as it appears to be performing  
2 its obligations.

3 Is there anything else you want to address  
4 at this time? Either counsel?

5 And again, you know, when I got this file to  
6 review the documents, I figure a case management  
7 statement I can get through in a minute or less. And  
8 I got really what were pretty lengthy briefs. It  
9 wasn't quite what I envisioned happening today.

10 But I've read them, quickly, but I read  
11 them. And right now, there's a bit of a tension  
12 between making sure that administrative remedies are  
13 pursued so long as the administrative agencies are  
14 responding in a timely and appropriate fashion on one  
15 hand and making sure that there is a timely resolution  
16 of this matter.

17 Anybody else have anything you want to add  
18 at this time? Petitioners?

19 MR. WOMBLE: No, your Honor.

20 THE COURT: Okay. Respondent?

21 MR. GRANT: I don't think so, your Honor.

22 THE COURT: All right.

23 MS. SIVAS: Your Honor, you set March 19th  
24 as a hearing to come back. Did you have a time for  
25 that?

1 THE COURT: Yeah. Let's -- that's a  
2 Thursday. You'll need to provide a reporter unless  
3 the Court affirmatively tells you that you don't need  
4 to because we have one available.

5 But Thursdays are almost invariably a date  
6 that we don't have reporters available.

7 On the other hand, it's a day that usually  
8 this department is dark.

9 And so Madam Clerk, will you just check and  
10 make sure that I didn't set something else for that  
11 day?

12 MS. GRANQUIST: Your Honor, we will  
13 coordinate to have the reporter here.

14 THE COURT: All right.

15 THE CLERK: We're dark.

16 THE COURT: All right. And I will expect  
17 you to file whatever you're going to file. And keep  
18 it brief, if you would. You know, facts are more what  
19 I need at this point than argument. If you want to  
20 state concisely in one paragraph problems raised by  
21 the facts, you can do so. But right now, what I  
22 really need to know is what is happening at the  
23 administrative level. So try to keep it under five  
24 pages. Okay?

25 MS. GRANQUIST: Yes, your Honor. And we

1 file those five days prior?

2 THE COURT: Five days in advance, yeah.

3 MS. GRANQUIST: Okay. Thank you.

4 THE COURT: So no later than five days in  
5 advance.

6 MS. GRANQUIST: Thank you, your Honor.

7 THE COURT: Okay. Anything else we need to  
8 address? Respondents.

9 MS. GRANQUIST: No, your Honor.

10 THE COURT: Petitioners?

11 MS. SIVAS: Just the time for that hearing,  
12 your Honor.

13 THE COURT: (Indicating).

14 MS. SIVAS: A time for the hearing on  
15 March 19th.

16 THE COURT: Yeah. 9:00 a.m.

17 MS. SIVAS: 9:00 a.m.

18 THE COURT: You asked me that once already,  
19 and I didn't answer you.

20 All right. 9:00 a.m., March 19th, in  
21 Department 14. Okay?

22 MS. GRANQUIST: Thank you, your Honor.

23 THE COURT: You're welcome. Good luck.

24 MS. SIVAS: Thank you.

25 MR. WOMBLE: Thank you.

(Whereupon, the proceedings were  
concluded.)

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1 STATE OF CALIFORNIA )  
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3 COUNTY OF MONTEREY )  
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7 I, Linda Parks, Registered Professional  
8 Reporter, Official Certified Shorthand Reporter of the  
9 State of California, County of Monterey, do hereby  
10 certify:

11 That I reported in shorthand the testimony  
12 and proceedings held in the foregoing cause on the  
13 17th day of February 2015; that the testimony and  
14 proceedings were reported stenographically by me and  
15 later transcribed by computer under my direction; that  
16 the foregoing is a true record of the testimony and  
17 proceedings taken at that time.

18 In witness whereof, I have subscribed my  
19 name this 2d day of March 2015.  
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21  
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23 \_\_\_\_\_  
24 LINDA PARKS, CSR 9625  
25