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13 Monterey County Water Resources Agency

14 SUPERIOR COURT OF CALIFORNIA

15 COUNTY OF MONTEREY

16 MONTEREY COASTKEEPER, a project
17 of the Otter Project, a nonprofit
organization,

18 Petitioner and Plaintiff,

19 v.

20 MONTEREY COUNTY WATER
21 RESOURCES AGENCY, a public agency,

22 Respondent and Defendant.

CASE NO. M 108858

**RESPONDENT/DEFENDANT
MONTEREY COUNTY WATER
RESOURCES AGENCY'S *EX PARTE*
APPLICATION FOR AN ORDER
CONFIRMING THAT CENTRAL COAST
REGIONAL WATER QUALITY
CONTROL BOARD MAY PROCEED
WITH ITS STANDARD PROCESS AND
CONTINUING UPCOMING STATUS
CONFERENCE; DECLARATION OF
NICOLE E. GRANQUIST IN SUPPORT**

Date: March 11, 2015
Time: 1:30 pm
Department: 14

Action Filed: October 21, 2010

EX PARTE APPLICATION

Respondent/Defendant MONTEREY COUNTY WATER RESOURCES AGENCY (“MCWRA”), pursuant to Rules 3.1201, *et seq.* and 3.1300(b) of the California Rules of Court, will and hereby does move this Court *ex parte* for an order confirming that Respondent/Defendant MCWRA can participate as requested by the Central Coast Regional Water Quality Control Board (“Regional Water Board”), in any of the regulatory processes/alternatives outlined by the Regional Water Board in its February 27, 2015 correspondence to this Court, including a meeting with the Regional Water Board attended only by MCWRA. MCWRA believes such participation will further the goals of the Court and the parties to this action, which is to efficiently and effectively resolve the allegations made by Coastkeeper in the pending petition for writ of mandate.

This application is made on the ground that Regional Water Board staff have halted their investigation while waiting for clarification from the Court on this very issue. If the requested clarification is not provided, Regional Water Board staff will not proceed as it otherwise normally would, and will consequently not be able to properly conclude its investigation of Coastkeeper’s allegations. Such an outcome will certainly delay this Court’s ability to make substantive determinations in this proceeding and may prejudice the proceedings.

However, and even more concerning, such an outcome might also lead this Court to reach the wrong conclusion. As Regional Water Board staff have explained to this Court, and as correspondence from Coastkeeper to Regional Water Board staff unfortunately confirms, there is every reason to believe that if Regional Water Board staff are required to alter the standard procedures, that alteration will do nothing but delay – if not prevent – completion of the Regional Water Board staff’s investigation. The fact that Regional Water Board staff have not been able to complete the investigation might then be used by Coastkeeper as support for the argument that a writ is – or has ever been – needed to initiate this standard part of Regional Water Board operations. Thus, a very real risk of prejudice exists if this issue is not addressed now.

The current limbo in which the Regional Water Board finds itself illustrates the very kind of interference with agency jurisdiction that the law confirms must be avoided. Without some

1 response from this Court, either stating that the Court is in no way seeking to modify the Regional
2 Water Board staff's standard processes (and therefore, the Court will not find that MCWRA has
3 acted contrary to any judicial directive regarding independent communications with the Regional
4 Water Board), or even expressing a preference as to which alternative Regional Water Board staff
5 pursues, both the Regional Water Board staff's processes and MCWRA's substantive position in
6 this action will undeniably be harmed. Good cause therefore exists for granting the relief sought
7 here now.

8 In addition, and in light of the delay already caused by this issue, MCWRA respectfully
9 requests that the Court continue the currently-scheduled status conference until May 2015, so as
10 to give the Regional Water Board staff time to complete this important work. Although the parties
11 could certainly appear later this month for a status conference, there is not likely to be much to
12 report, so efficiency supports continuing the status conference until Regional Water Board staff
13 have an opportunity to act.

14 MCWRA's application is based upon this *Ex Parte* Application, the following
15 Memorandum of Points and Authorities and Declaration of Nicole E. Granquist, the Proposed
16 Order served and filed herewith, and on any other evidence the Court may consider at the hearing.

17 Pursuant to California Rules of Court, Rule 3.1203, Deborah Sivas, counsel of record for
18 Coastkeeper, was notified of this *ex parte* application and hearing at approximately 9:53 a.m. on
19 March 10, 2015, the court day before the noticed *ex parte* hearing date, by way of a telephone
20 call. (Declaration of Nicole E. Granquist in Support of Ex Parte Application ("Granquist Decl."),
21 ¶ 8.) Counsel for MCWRA also sent an email message attaching a copy of these moving papers
22 to Ms. Sivas shortly thereafter. (*Id.*, Ex. H.) As of the time this *ex parte* application is being
23 finalized and sent for filing, at approximately 10:15 a.m. on March 10, 2015, MCWRA does not
24 know whether Coastkeeper will oppose the relief sought herein. (*Id.*, ¶ 8.)

25 Pursuant to Rule of Court 3.1202(a), the name, address, and telephone numbers of counsel
26 of record for the parties to this action are:

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2 ENVIRONMENTAL LAW CLINIC
3 Mills Legal Clinic at Stanford Law School
4 559 Nathan Abbott Way
5 Stanford, CA 94305-8610
6 Telephone: (650) 725-4217

7 *Attorneys for Monterey Coastkeeper*

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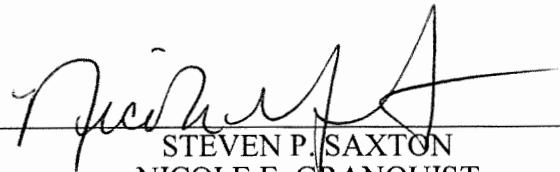
18 DATED: March 10, 2015

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19 *Attorneys for MCWRA*

DOWNEY BRAND LLP

By:



STEVEN P. SAXTON
NICOLE E. GRANQUIST
ELIZABETH B. STALLARD
Attorney for Respondent/Defendant
MONTEREY COUNTY WATER RESOURCES
AGENCY

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 **I.**
22 **RELEVANT FACTUAL BACKGROUND**

23 On February 24, 2015, Steven Shimek, Coastkeeper's Program Director, sent
24 correspondence to the Regional Water Board concerning the then-scheduled March 3, 2015
25 meeting between the Regional Water Board and MCWRA. (Granquist Decl., Ex. A.) On
26 February 25, 2015, Tamarin E. Austin, counsel for the Regional Water Board, responded via e-
27 mail to Mr. Shimek's February 24, 2015, e-mail correspondence. (*Id.*, Ex. B.) Specifically, Ms.
28 Austin asked Mr. Shimek to provide her with a copy of orders confirming certain assertions Mr.

1 Shimek made in his February 24, 2015, correspondence, including with respect to his assertion
2 that Coastkeeper had been directed to participate in the meeting by this Court. (*Ibid.*)

3 Mr. Shimek responded to Ms. Austin's request later that same day. (*Id.*, Ex. C.) In his
4 response to Ms. Austin, Mr. Shimek informed Ms. Austin that the transcript of the February 17,
5 2015 hearing with this Court was not yet available, and again maintained that the Court expected
6 Coastkeeper to participate in the March 3 meeting. (*Ibid.*)

7 On February 27, 2015, the Regional Water Board presented the parties with
8 correspondence addressed to this Court regarding the March 3, 2015, meeting. (*Id.*, Ex. D.) That
9 correspondence was later filed by MCWRA on behalf of the Regional Water Board, at the
10 Regional Water Board's request and with Coastkeeper's knowledge. (*Id.*, ¶ 5, Ex. E.) The
11 Regional Water Board's correspondence addresses, among other things, the benefits of the
12 meeting with MCWRA going forward without Coastkeeper present. This correspondence also
13 detailed the Regional Water Board's standard process – and preference – for responding to a
14 complaint that any party should be required to file a report of waste discharge (as Coastkeeper
15 asserts in this case):

16 The Central Coast Water Board staff's preference is to follow
17 customary procedure and meet first with [MCWRA] and then
develop options for future public consideration.

18 (*Ibid.*) However, the correspondence also went on to offer *two* alternatives in the event that the
19 Court would not allow the Regional Water Board to follow its standard process:

20 If the Court does not allow [MCWRA] to participate in such a
21 meeting, another option would be to have the Central Coast Water
22 Board and [MCWRA] meet first, followed by a second session that
23 includes Coastkeeper and communicates the main points of the first
24 meeting. Another possibility is arranging a confidential mediation
session between the parties, which the Central Coast Water Board
staff would agree to attend in order to assist the court.

25 (*Ibid.*) The Regional Water Board also explained its legitimate reason for offering these
26 alternatives:

27 These suggestions are intended to minimize legal posturing and
28 rhetoric and allow the parties to have frank discussions about
solutions without being concerned their statements will be treated
as admissions.

1 (*Ibid.*) Finally, the Regional Water Board's correspondence requested that this Court provide
2 clarification regarding its position on this issue, and communicate its preference regarding the
3 options presented in the event that the Regional Water Board's standard process was not
4 acceptable.

5 On March 2, 2015, Mr. Shimek responded to the Regional Water Board's correspondence
6 to the Court. (*Id.*, Ex. F.) In his correspondence, Mr. Shimek dismissed both of the alternatives
7 the Regional Water Board had offered to its standard process; made various inflammatory and
8 inaccurate statements about MCWRA, the Regional Water Board, and even this Court; and
9 eventually asked the Regional Water Board to clarify whether Coastkeeper could attend the
10 March 3 meeting. (*Ibid.*)

11 In response to Mr. Shimek's letter, Ken Harris, the Regional Water Board's Executive
12 Director, explained that the Regional Water Board staff were still awaiting direction from the
13 Court as to how to proceed, and indicated that if such direction was not received by 3:00 p.m. that
14 day (March 2, 2015), staff would not participate in the March 3 meeting. (*Id.*, Ex. G.) Shortly
15 after 3:00 p.m., Mr. Harris wrote the parties again to confirm that no direction had been received
16 from the Court and the meeting would therefore not take place. (*Ibid.*) The Court did contact
17 counsel for MCWRA that afternoon to set up a call between the parties on this issue, but the call
18 did not ultimately convene. (*Id.*, ¶ 7.) As such, the March 3, 2015, meeting never occurred, and
19 has not yet been rescheduled due to the uncertainty as to how such a meeting can proceed.

20 Regional Water Board staff – and the parties – still need clarification from this Court as to
21 how to proceed.

22 **II.** 23 **DISCUSSION**

24 **A. Good Cause Exists to Grant the Application Because Without This Requested** 25 **Clarification, the Regional Water Board Cannot Proceed as it is Legally Authorized** 26 **and Obligated to Do.**

27 This Court has the inherent authority to control its processes and order relief. (Code Civ.
28 Proc. § 1005, subd. (b); Cal. Rules of Court, Rule 3.1300(b); *Western Steel & Ship Repair v. RMI,*
Inc. (1986) 176 Cal.App.3d 1108, 1116 [court has power to shorten time on a noticed motion as

1 part of “the inherent power of courts to control their processes and orders”].) Here, MCWRA is
2 merely requesting that this Court clarify how it would like the parties – and the Regional Water
3 Board – to proceed in light of the discussion that occurred at the February 17, 2015, status
4 conference. Such a request falls squarely within this Court’s inherent authority.

5 There is also obvious good cause to grant this application. The clarification requested is
6 essential in order for the Regional Water Board to proceed with its review of Coastkeeper’s
7 allegations – the very administrative review that Coastkeeper has claimed for years does not exist
8 in order to justify its filing and maintenance of a writ petition. Moreover, and as the Regional
9 Water Board’s correspondence confirms, the Regional Water Board does not know whether it can
10 proceed with its standard administrative process, or if this Court wishes to order or indicate that
11 another process be followed instead, so its progress is effectively stalled. Based on Coastkeeper’s
12 response to the Regional Water Board’s request for clarification from this Court, it is also readily
13 apparent that there is no way for the Regional Water Board to resolve this issue without the
14 Court’s involvement.

15 It is also clear that a significant risk of prejudice exists if this Application is not granted.
16 This Court has clearly indicated its desire to resolve this dispute in the near future. That simply
17 cannot happen unless the requisite clarification is provided now, as the Regional Water Board is
18 not currently proceeding as it otherwise would, and is not likely to proceed until this clarification
19 is received.

20 If the requested clarification is not provided, there is also an obvious risk that the events
21 resulting from this lack of clarification might lead to a different – and wrong – result in this
22 action. At its most basic, there is every reason to believe that if the Regional Water Board is
23 required to alter its standard procedures, that involvement may prevent completion of the
24 Regional Water Board’s investigation. The fact that the Regional Water Board has not been able
25 to complete its investigation might then be used by Coastkeeper as support for the argument that a
26 writ is – or has ever been – needed to initiate this standard part of Regional Water Board
27 operations. Thus, a very real risk of prejudice to MCWRA exists if this issue is not addressed
28 now.

1 In sharp contrast, there is no reason to believe that any prejudice would result to
2 Coastkeeper if this Application is granted. Coastkeeper wants the Regional Water Board to
3 complete its investigation and make a determination with respect to whether or not MCWRA
4 must file a report of waste discharge: it is clear that this will not happen until the clarification is
5 provided. So not only is there no prejudice, but this Application actually benefits Coastkeeper
6 too.

7 With respect to the substance of the clarification sought by this Application, MCWRA
8 does believe that the Regional Water Board should be allowed to proceed with its standard
9 administrative process. For the reasons already explored in the Regional Water Board's own
10 correspondence, the standard process is fair and efficient, and has been developed and honed over
11 time to deal with this very kind of issue. There is also independent value in not requiring the
12 Regional Water Board to act in a way it would not normally act – particularly given
13 Coastkeeper's claim that no standard process ever existed. Of course, to the extent that the Court
14 believes proceeding with one of the alternatives suggested by the Regional Water Board is
15 preferable, MCWRA certainly has no objection to proceeding in that manner either. MCWRA
16 merely wants the Court to provide necessary clarification to the Regional Water Board, so that its
17 investigation can continue to move forward and confirm once and for all that Coastkeeper's
18 procedural and substantive arguments in this proceeding are wholly unfounded.

19 Finally, and in light of the delay already caused by this issue, as well as to account for
20 practical issues like the Regional Water Board staff's calendar, MCWRA respectfully requests
21 that the Court continue the currently-scheduled status conference until May 2015, so as to give
22 the Regional Water Board time to complete its process, including time for MCWRA (and/or
23 Coastkeeper) to meet with Regional Water Board staff once the requisite clarification is provided
24 as to how things should proceed.

25 **B. MCWRA Provided All Notice Required For an *Ex Parte* Order.**

26 The Court may grant an *ex parte* application when the moving party provides notice by
27 10:00 a.m. the court day before the *ex parte* hearing. (Cal. Rules of Court, Rule 3.1203(a).)
28 Here, MCWRA provided notice of this *ex parte* application as required by this Rule, both by

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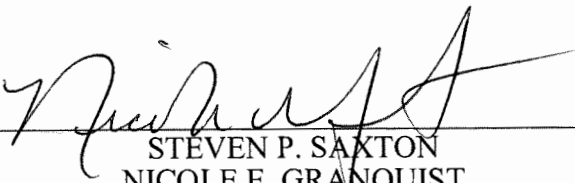
1 calling counsel for Coastkeeper and by providing a copy of these moving papers to counsel for
2 Coastkeeper via electronic mail before the 10:00 a.m. deadline. (Granquist Decl., ¶ 3, Ex. A.) As
3 such, MCWRA satisfied the applicable notice requirement.

4 **III.**
5 **CONCLUSION**

6 For all these reasons, this Court should grant all relief sought by this Application, and
7 provide needed clarification regarding how the Regional Water Board is entitled to proceed.

8
9 DATED: March 10, 2015

DOWNEY BRAND LLP

10
11 By: 
12 STEVEN P. SAKTON
13 NICOLE E. GRANQUIST
14 ELIZABETH B. STALLARD
15 Attorney for Respondent/Defendant
16 MONTEREY COUNTY WATER RESOURCES
17 AGENCY

18 **DECLARATION OF NICOLE E. GRANQUIST**

19 I, Nicole E. Granquist, hereby declare as follows:

20 1. I am an attorney licensed to practice law in the State of California, and I am a
21 Partner at Downey Brand LLP, attorneys of record for Respondent and Defendant Monterey
22 County Water Resources Agency (“MCWRA”) in this action. I have personal knowledge of the
23 facts set forth herein, except for those matters stated upon information and belief and if called
24 upon to testify, I could and would testify competently thereto.

25 2. Steven Shimek, Coastkeeper’s Program Director, sent a letter to Ken Harris,
26 Executive Officer of the Central Coast Regional Water Quality Control Board (“Regional Water
27 Board”) on February 24, 2015. A true and correct copy of Mr. Shimek’s correspondence with
28 Mr. Harris, on which I was copied, is attached hereto as **Exhibit A**.

3. Tamarin E. Austin, counsel for the Regional Water Board, responded to Mr.

1 Shimek's correspondence via electronic mail on February 25, 2015. A true and correct copy of
2 Ms. Austin's response, on which I was copied, is attached hereto as **Exhibit B**.

3 4. Mr. Shimek responded to Ms. Austin's correspondence that same day. A true and
4 correct copy of his February 25, 2015, response, on which I was copied, is attached hereto as
5 **Exhibit C**.

6 5. On February 27, 2015, the Regional Water Board presented the parties with
7 correspondence addressed to this Court regarding the March 3, 2015, meeting. That
8 correspondence was later filed by MCWRA on behalf of the Regional Water Board, at the
9 Regional Water Board's request, and with Coastkeeper's knowledge. A true and correct copy of
10 the Regional Water Board's February 27, 2015, correspondence to the Court, and the email thread
11 of the same date detailing the Regional Board's request that one of the parties file the
12 correspondence on its behalf and confirming that MCWRA will do so, are attached hereto as
13 **Exhibits D and E**, respectively.

14 6. Attached hereto as **Exhibit F** is a true and correct copy of correspondence sent by
15 Steven Shimek to the Regional Water Board on March 2, 2015, on which I was copied.

16 7. Attached hereto as **Exhibit G** is a true and correct copy of e-mail correspondence
17 sent by Ken Harris to me, Mr. Shimek, and others on March 2, 2015, and the associated thread.
18 As explained in my correspondence, the Court did contact counsel for MCWRA that afternoon to
19 set up a call between the parties on this issue. However, the call did not ultimately convene. As
20 such, the March 3, 2015, meeting did not go forward, and has not been rescheduled.

21 8. At approximately 9:53 a.m. on March 10, 2015, I contacted Deborah Sivas,
22 counsel of record for Coastkeeper, to inform her of the date and time of the hearing for this
23 application, and to inform her of the relief that would be sought. I was unable to reach her, and
24 therefore left a detailed voice mail message concerning the *ex parte* hearing and the relief sought
25 in the application. I then followed up with an email message confirming all of the required
26 details, a true and correct copy of which is attached hereto as **Exhibit H**. As of the time this
27 application is being sent to file, I have not heard back from Ms. Sivas, and therefore do not know
28 if Coastkeeper intends to oppose the application.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 10th day of March, 2015, in Sacramento, California.

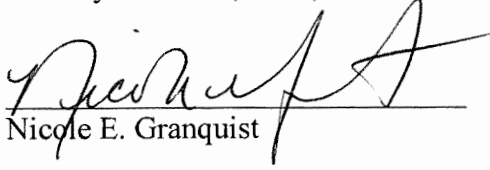

Nicole E. Granquist

EXHIBIT A

EXHIBIT A



The Otter Project

www.otterproject.org

P.O. Box 269
Monterey, CA 93942
831/663-9460

February 24, 2015

Via Electronic Mail

Mr. Ken Harris, Executive Officer
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA. 93401-7906
Via email kharris@waterboards.ca.gov

Re: Monterey Coastkeeper v Monterey County Water Resource Agency Litigation

Dear Mr. Harris:

As you know, Monterey Coastkeeper brought suit against Monterey County Water Resources Agency (MCWRA) in 2010 seeking to compel MCWRA to file a report of waste discharge in connection with its management of the Blanco Drain and Reclamation Ditch and to comply with its separate and independent public trust fiduciary obligations. From the outset, MCWRA has steadfastly insisted that it has no legal obligations under either the Porter-Cologne Water Quality Control Act or California's common law public trust doctrine and that Coastkeeper's claims should be directed to or against the Central Coast Regional Water Quality Control Board (Regional Board).

MCWRA's position, which we believe is incorrect as a matter of law, persuaded the Monterey Superior Court to delay any ruling in the case and to certify to the Regional Board the questions you received in December 2014. Having reviewed the Regional Board's January 7, 2015 response to those questions, the Court held another hearing in this matter on February 17, 2015. Although we had hoped that the Court would finally rule on our writ petition at that hearing, MCWRA argued that a subsequent January 22, 2015 email correspondence from Tamarin Austin – which we had not seen – indicated that the Regional Board was not, after all, going to require a report of waste discharge as suggested in the January 7 response to the certified questions and that the Regional Board, in fact, disagreed with January 7 response, which was “just the staff's” interpretation. MCWRA informed the Court that it would be meeting with the Regional Board on March 3 to discuss tools other than waste discharge requirements to address any concerns about its activities.

MCWRA's arguments at the February 17 hearing visibly confused the court about the Regional Board's position and resulted in another continuance of the court hearing until March 19, 2015. In the meantime, Judge Wills ordered that all communication between the parties and the Regional Board be transparent and provided to the other side. He also inquired about the nature of the upcoming March 3 meeting. When we indicated, in response to Judge Will's questions, that Coastkeeper had no information about the meeting and was not invited to participate, MCWRA's counsel stated that all Regional Board meetings with potential dischargers are “public” and that nothing in the statute prevented us from attending. Based on that response, the court directed that Coastkeeper participate

in the March 3 meeting and MCWRA agreed to provide us with relevant details, which we have not yet received. Accordingly, Coastkeeper and its counsel intend to participate in the March 3 meeting between the Regional Board and MCWRA as directed by the court. Today, we learned from MCWRA's counsel that the meeting will take place at 10 a.m. at MCWRA's offices in Salinas and I would appreciate your providing any other relevant details (agenda, participants, etc.). In order to provide the Regional Board with a better understanding of the court's direction, we will send you a transcript of the February 17 court hearing as soon as it is available.

MCWRA's position at the February 17 hearing, as it has been throughout this litigation, is that the Regional Board is responsible for implementing the Porter-Cologne Act, that the Regional Board has repeatedly told MCWRA it is not a waste discharger and need not file a report of waste discharge, and that only the Regional Board has any public trust obligations with respect to the water bodies at issue here. We, of course, disagree with each of these propositions and thus have pursued our claims only against MCWRA. But given MCWRA's insistence that the Regional Board is the only proper party to this litigation, the court indicated at the last hearing that it may provide an opportunity to amend the pleadings to join the Regional Board. This would be quite extraordinary because we have already finished discovery, fully briefed the case, and had a writ trial. But with MCWRA's repeated insistence that the Regional Board is the proper target of Coastkeeper's claims, we have not been able to obtain a final judgment in the case.

To provide a better understanding of our legal claims against MCWRA in this case, I am enclosing the trial briefs and subsequent case management conference statements. As you will see, we believe our Porter-Cologne Act claim is very straight-forward and that the facts we have obtained through extensive discovery fully support that claim. We have asked the court to issue a writ directing MCWRA to file a report of waste discharge, which will initiate the public permitting process. In addition, we believe that MCWRA has public trust obligations in connection with its extensive management of these water bodies, separate and apart from whatever public trust obligations the Regional Board may have. On that claim, we have asked the court to declare that MCWRA has such obligations and has not yet fulfilled those obligations in connection with its management decisions. We do not believe it is within the Regional Board's authority to pass on the question of MCWRA's common law duties, as that determination is solely within the jurisdiction of the court. MCWRA insists, however, that any public trust obligations belong entirely to the Regional Board, and it seems that is an additional basis for the court's suggestion that the Regional Board might be joined in this action.

The court has ordered the parties to submit further case management statements five court days in advance of the March 19 hearing to explain the status of this matter following the March 3 meeting. To make that meeting as productive as possible, Coastkeeper provides its vision for a practical resolution of this dispute in the broader context of agricultural water and wastewater issues facing the Salinas Valley:

Coastkeeper's Vision for Lower Salinas Water Quality Solutions

MCWRA

- MCWRA accepts that their activities of defoliation, dredging, and pumping constitute a discharge and they file a report of waste discharge;
- MCWRA accepts their public trust responsibilities to protect water resources for a range of beneficial uses;

- Reclamation Ditch
 - MCWRA creates and maintains a network of small to medium sized engineered off-channel wetlands along the approximately 22-mile course of the Reclamation Ditch. Some wetlands can be sited in areas that are sometimes/often too wet to farm (they once were wetlands and their farm-value is diminished);
 - Constructed wetlands will reduce, but may not completely eliminate, the need for treatment at the end-of-ditch. Summer flows of the Reclamation Ditch can be diverted to the Monterey Regional Water Pollution Control Agency treatment plant for advanced treatment to groundwater recharge standards. Use of existing infrastructure should be maximized. The goal is to divert and treat summer flows, approximately 5-10 cfs (high winter flows will not be diverted as the sediment carried by high flows is needed to replenish down-watershed marsh habitats).
- Blanco Drain
 - MCWRA creates and maintains an in-channel engineered wetland in a significant portion of the approximately 4-mile ditch, to reduce the cost of end-of-ditch treatment;
 - Summer flows of approximately 5-10 cfs will be diverted to the MRWPCA treatment plant for advanced treatment to groundwater recharge standards.

RWQCB

- Establishes strong waste discharge requirements for the Blanco Drain and Reclamation Ditch watersheds;
- Waste Discharge Requirements include the requirement for treatment to groundwater recharge standards;
- Future Ag Orders (the Waiver) offer relief (TBD) to growers who participate in engineered wetland solutions (i.e. mitigation of their discharges by investment in wetland SEPs).

The Otter Project / Monterey Coastkeeper

- Coastkeeper will become an active partner to secure land acquisition and improvement funds for a Lower Salinas Water Supply and Quality Project.
- Coastkeeper will encourage conservation and environmental justice partners to accept provisions in future Ag Orders (the Waiver) allowing growers who cooperate in wetland projects some form of relief (i.e. wetland project-level monitoring instead of individual monitoring).
- To the best of its capacity, Coastkeeper will implement a food safety outreach campaign targeting produce buyers and providing them with the most recent science about water quality, engineered wetlands, and reduced pathogen risk.

Separate from the Coastkeeper v MCWRA case, Coastkeeper believes the Agricultural Conditional Waiver is essentially source control regulation: Growers should be applying -- and verifying -- appropriate, non-polluting amounts of pesticides and nutrients.

In regards to this case, Coastkeeper believes source controls will never be perfect and the load of legacy nutrients is extreme. Therefore, there is a need for treatment at every opportunity. After MCWRA files their Report of Waste Discharge, strong WDRs are needed to catalyze improvements in water quality. Three facts form the basis for our belief that water should be treated to an advanced – groundwater replenishment – standard:

1. In the Lower Salinas Valley, water is cycling between surface and groundwater: Water falls from the sky as rain, percolates, is pumped and can become polluted, percolates again, and the cycle repeats;
2. Saltwater intrusion extends far inland and the basin is in deficit;

3. New water supplies are critically needed for domestic, agricultural, and environmental beneficial uses, and drought will be a persistent and recurring problem.

Monterey Coastkeeper believes our lawsuit provides an opportunity to move towards sustainable water supplies and greatly improved water quality. We believe it is imperative that all agencies conserve, protect, and help restore our clean water supplies.

Sincerely,



Steve Shimek
Executive Director
exec@otterproject.org

Attachments

1. Coastkeeper's Petition for Writ of Mandate
2. Coastkeeper's Trial Brief
3. MCWRA's Opposition Brief
4. Coastkeeper's Reply Brief
5. Coastkeeper's Status Update Report
6. MCWRA's Statement in Advance of Hearing

CC:

Ms. Sheila Soderberg (ssoderberg@waterboards.ca.gov)
Mr. Harvey Packard (hpackard@waterboards.ca.gov)
Mr. Michael Thomas (mthomas@waterboards.ca.gov)
Dr. Jean-Pierre Wolff (jp.wolff@wolffvineyards.com)
Dr. Lew Bauman (baumanl@co.monterey.ca.us)
Mr. David Chardavoyne (chardavoyne@co.monterey.ca.us)
Mr. Claude Hoover, MCWRA Board Chair (claude.hoover@gmail.com)
Mr. Irvan Grant (granti@co.monterey.ca.us)
Ms. Nicole Granquist (ngranquist@downeybrand.com)
Ms. Tamarin Austin (tamarin.austin@waterboards.ca.gov)
Ms. Jessica Jahr (Jessica.Jahr@waterboards.ca.gov)
Mr. Michael Lauffer (Michael.lauffer@waterboards.ca.gov)
Ms. Deborah Sivas (dsivas@stanford.edu)
Ms. Alicia Thesing (athesing@stanford.edu)
Mr. Matthew Sanders (msanders@stanford.edu)

EXHIBIT B

EXHIBIT B

Granquist, Nicole

From: Austin, Tamarin@Waterboards <Tamarin.Austin@waterboards.ca.gov>
Sent: Wednesday, February 25, 2015 2:43 PM
To: Steve Shimek; Harris, Ken@Waterboards
Cc: Soderberg, Sheila@Waterboards; Packard, Harvey@Waterboards; Thomas, Michael@Waterboards; jp.wolff@wolffvineyards.com; Bauman, Lew@Monterey; chardavoynede@co.monterey.ca.us; claude.hoover@gmail.com; granti@co.monterey.ca.us; Granquist, Nicole; Jahr, Jessica@Waterboards; Lauffer, Michael@Waterboards; Deborah A. Sivas; athesing@stanford.edu; Matthew J. Sanders
Subject: RE: RWQCB and MCWRA meeting on March 3.

Mr. Shimek,

Would you kindly provide us with a copy of the order(s) you reference:

“ In the meantime, Judge Wills ordered that all communication between the parties and the Regional Board be transparent and provided to the other side.”

“the court directed that Coastkeeper participate in the March 3 meeting”

Thank you for your assistance with this matter,

Yours very truly,

Tamarin E. Austin
Senior Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
(916) 341-5171
taustin@waterboards.ca.gov

From: Steve Shimek [<mailto:exec@otterproject.org>]
Sent: Tuesday, February 24, 2015 5:31 PM
To: Harris, Ken@Waterboards
Cc: Soderberg, Sheila@Waterboards; Packard, Harvey@Waterboards; Thomas, Michael@Waterboards; jp.wolff@wolffvineyards.com; Bauman, Lew@Monterey; chardavoynede@co.monterey.ca.us; claude.hoover@gmail.com; granti@co.monterey.ca.us; ngranquist@downeybrand.com; Austin, Tamarin@Waterboards; Jahr, Jessica@Waterboards; Lauffer, Michael@Waterboards; Deborah A. Sivas; athesing@stanford.edu; Matthew J. Sanders
Subject: RWQCB and MCWRA meeting on March 3.

Dear Executive Officer Harris:

Please see the attached letter, RWQCB 2_24_15.pdf (116kb), for information pertaining to the meeting in Salinas on March 3 with Monterey County Water Resources Agency; we will attend that meeting with counsel. More explanation is contained in the pdf. Thank you for your hard work on this issue.

Sincerely,
Steve Shimek

Steve Shimek
Executive Director and Founder
The Otter Project and Monterey Coastkeeper
PO Box 269
Monterey, CA 93942
831-663-9460 (always try this phone first)
831-241-8984 (cell)
exec@otterproject.org

EXHIBIT C

EXHIBIT C

Granquist, Nicole

From: Steve Shimek <exec@otterproject.org>
Sent: Wednesday, February 25, 2015 3:39 PM
To: Austin, Tamarin@Waterboards; Harris, Ken@Waterboards
Cc: Soderberg, Sheila@Waterboards; Packard, Harvey@Waterboards; Thomas, Michael@Waterboards; jp.wolff@wolffvineyards.com; Bauman, Lew@Monterey; chardavoynde@co.monterey.ca.us; claude.hoover@gmail.com; granti@co.monterey.ca.us; Granquist, Nicole; Jahr, Jessica@Waterboards; Lauffer, Michael@Waterboards; Deborah A. Sivas; atthesing@stanford.edu; Matthew J. Sanders
Subject: RE: RWQCB and MCWRA meeting on March 3.

Ms. Austin:

Thank you for your email. We were only vaguely aware of the March 3 meeting before the February 17 hearing. It is the transcript of that hearing that shows we asked the Judge to rule so that a formal process would begin and we could participate. It was at this point that Ms. Granquist, for MCWRA, said that the Judge need not rule, anyone could attend and participate. And it was then that Judge Wills expressed that we participate.

I hope you will contact Ms. Granquist to verify her statement.

The same day as the hearing we requested a copy of the transcript. The day after the hearing I delivered a check to the courthouse to pay for the transcript. At that time the court reporter said that it would be two weeks before we received the transcript.

We will call today to try to expedite the transcript. But in this situation, it is the transcript that reflects the Judge's statements.

Sincerely,
Steve Shimek

From: Austin, Tamarin@Waterboards [<mailto:Tamarin.Austin@waterboards.ca.gov>]
Sent: Wednesday, February 25, 2015 2:43 PM
To: Steve Shimek; Harris, Ken@Waterboards
Cc: Soderberg, Sheila@Waterboards; Packard, Harvey@Waterboards; Thomas, Michael@Waterboards; jp.wolff@wolffvineyards.com; Bauman, Lew@Monterey; chardavoynde@co.monterey.ca.us; claude.hoover@gmail.com; granti@co.monterey.ca.us; ngranquist@downeybrand.com; Jahr, Jessica@Waterboards; Lauffer, Michael@Waterboards; Deborah A. Sivas; atthesing@stanford.edu; Matthew J. Sanders
Subject: RE: RWQCB and MCWRA meeting on March 3.

Mr. Shimek,

Would you kindly provide us with a copy of the order(s) you reference:

“ In the meantime, Judge Wills ordered that all communication between the parties and the Regional Board be transparent and provided to the other side.”

“the court directed that Coastkeeper participate in the March 3 meeting”

Thank you for your assistance with this matter,

Yours very truly,

Tamarin E. Austin

Senior Staff Counsel

Office of Chief Counsel

State Water Resources Control Board

(916) 341-5171

taustin@waterboards.ca.gov

From: Steve Shimek [<mailto:exec@otterproject.org>]

Sent: Tuesday, February 24, 2015 5:31 PM

To: Harris, Ken@Waterboards

Cc: Soderberg, Sheila@Waterboards; Packard, Harvey@Waterboards; Thomas, Michael@Waterboards; jp.wolff@wolffvineyards.com; Bauman, Lew@Monterey; chardavoynede@co.monterey.ca.us; claude.hoover@gmail.com; granti@co.monterey.ca.us; ngranquist@downeybrand.com; Austin, Tamarin@Waterboards; Jahr, Jessica@Waterboards; Lauffer, Michael@Waterboards; Deborah A. Sivas; athesing@stanford.edu; Matthew J. Sanders

Subject: RWQCB and MCWRA meeting on March 3.

Dear Executive Officer Harris:

Please see the attached letter, RWQCB 2_24_15.pdf (116kb), for information pertaining to the meeting in Salinas on March 3 with Monterey County Water Resources Agency; we will attend that meeting with counsel. More explanation is contained in the pdf. Thank you for your hard work on this issue.

Sincerely,

Steve Shimek

Steve Shimek

Executive Director and Founder

The Otter Project and Monterey Coastkeeper

PO Box 269

Monterey, CA 93942

831-663-9460 (always try this phone first)

831-241-8984 (cell)

exec@otterproject.org

EXHIBIT D

EXHIBIT D



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

February 27, 2015

The Honorable Thomas Wills
Monterey County Superior Court
1200 Aguajito Road
Monterey, CA 93940

Dear Judge Wills,

I am writing on behalf of the Central Coast Regional Water Quality Control Board (Central Coast Water Board). As you are aware, staff from the Central Coast Water Board has a meeting with the Monterey County Water Resources Agency (Agency) on March 3. Because of conflicting procedural information from parties to the above-styled proceeding, the Central Coast Water Board requests clarification from the court to help ensure the board's staff can effectively assess options to address water quality conditions present in the Blanco Drain and Reclamation Canal. While the format of the board's request is unusual, it is compelled by the short timeframes involved and the desire to provide a forum that is most likely to result in solution-oriented discussions regarding potential board actions.

We received a letter from Steve Shimek of the Otter Project referencing an order of the Court and stating that, "the court directed that Coastkeeper participate in the March 3 meeting." That letter also repeats a statement made in the February 17 hearing that the March 3 meeting is "public," which may explain why the press has contacted the Central Coast Water Board staff, asking to attend the meeting. I asked Mr. Shimek for a copy of the court's order, and he informed me that the directive was an oral statement and invited me to confirm the order with Nicole Granquist, counsel for the Agency. Ms. Granquist agreed that she was required to provide information concerning the meeting to Coastkeeper, but disagreed that the court ordered Coastkeeper to participate in the March 3 meeting.

The Central Coast Water Board has a transparent decision-making process, but that does not mean all interested persons participate in all formative, informal meetings with staff. As background, it is the Central Coast Water Board's standard approach for staff to begin the permitting process by meeting with a discharger in person and not in a public forum. This encourages candid conversations and a collaborative approach. The Central Coast Water Board has a variety of regulatory tools to address water quality issues, including the use of waste discharge requirements; cleanup and abatement orders; and oversight of a voluntary process. When possible, the Central Coast Water Board tries to work collaboratively with the

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, Ca 95812-0100 | www.waterboards.ca.gov

discharger on the general framework for addressing the water quality issue and after that, the board initiates the public process. That process may include stakeholder meetings, workshops, and ultimately, circulation of a draft order for public review and comment and, if necessary, a public hearing.

In this instance, with respect to the two water bodies, there are numerous parties who will be interested in participating in the public process: landowners and growers adjacent to the two water bodies; municipalities and local agencies such as Monterey Regional Water Pollution Control Agency, which operates the local wastewater treatment plant; and other environmental groups, just to name a few. If the court prohibits the Agency from meeting with Central Coast Water Board staff without Coastkeeper, the Board would be remiss in not inviting these other parties to the table. Because the Central Coast Water Board has not even begun to discuss potential options for regulatory or even voluntary solutions to the water quality issues, inviting those multiple groups to the table is premature and will result in an unwieldy discussion with little likelihood of solutions or progress. The Central Coast Water Board staff is not inclined to devote the great outlay of resources involved in having four or five staff members spend an entire day on this project without a more focused objective.

This is a process that is going to take months to select a direction and engage all of the stakeholders necessary to solve the water quality problem. The Central Coast Water Board staff view next week's meeting as a brainstorming session, intended to discuss a variety of regulatory and voluntary options for the Agency to consider. Mr. Shimek's letter presents a series of potential options that are a definite starting point for these discussions and will be considered if the meeting goes forward. There are numerous legal and funding issues both the Agency and Central Coast Water Board staff undoubtedly will want to consider separately after that session; it is highly improbable that any final decision will be made next week.

We understand the Court's desire for transparency and we appreciate, indeed advocate, public input in the Central Coast Water Board's process. It is our hope that there is some flexibility in the Court's desire for transparency that would allow the Agency to participate in a meeting with the Central Coast Water Board staff without Coastkeeper and the press, in the ordinary approach for considering regulatory and voluntary clean-up options.

The Central Coast Water Board staff's preference is to follow customary procedure and meet first with the Agency and then develop options for future public consideration. If the Court does not allow the Agency to participate in such a meeting, another option would be to have the Central Coast Water Board and Agency meet first, followed by a second session that includes Coastkeeper and communicates the main points of the first meeting. Another possibility is arranging a confidential mediation session between the parties, which the Central Coast Water Board staff would agree to attend in order to assist the court. These suggestions are intended to minimize legal posturing and rhetoric and allow the parties to have frank discussions about solutions without being concerned their statements will be treated as admissions.

Thank you in advance for clarification of the order and consideration of the above options for moving forward.

Respectfully submitted,

Handwritten signature of Tamarin E. Austin in cursive, with the initials 'TAE' written at the end.

Tamarin E. Austin
Senior Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
(916) 341-5161
taustin@waterboards.ca.gov

EXHIBIT E

EXHIBIT E

Granquist, Nicole

From: Granquist, Nicole
Sent: Monday, March 02, 2015 9:46 AM
To: 'Crowl, Adrianna@Waterboards'; exec@otterproject.org
Cc: Soderberg, Sheila@Waterboards; Packard, Harvey@Waterboards; Thomas, Michael@Waterboards; jp.wolff@wolffvineyards.com; Bauman, Lew@Monterey; chardavoyne@co.monterey.ca.us; claude.hoover@gmail.com; granti@co.monterey.ca.us; Jahr, Jessica@Waterboards; Lauffer, Michael@Waterboards; athesing@stanford.edu; Okun, Lori@Waterboards; Deborah A. Sivas (dsivas@stanford.edu); Granquist, Nicole; Austin, Tamarin@Waterboards (Tamarin.Austin@waterboards.ca.gov)
Subject: RE: Monterey Coastkeeper v. Monterey County Water Resources Agency [M 108858]

All:

The letter will be filed with the Superior Court today, and a copy hand delivered to Judge Wills' chambers.

Thanks,

Nicole E. Granquist

DOWNEY BRAND

Downey Brand LLP
621 Capitol Mall, 18th Floor
Sacramento, CA 95814
916-444-1000 Main
916-520-5369 Direct
916-520-5769 Fax
ngranquist@downeybrand.com
www.downeybrand.com

From: Crowl, Adrianna@Waterboards [<mailto:Adrianna.Crowl@waterboards.ca.gov>]
Sent: Friday, February 27, 2015 1:29 PM
To: exec@otterproject.org; Granquist, Nicole
Cc: Soderberg, Sheila@Waterboards; Packard, Harvey@Waterboards; Thomas, Michael@Waterboards; jp.wolff@wolffvineyards.com; Bauman, Lew@Monterey; chardavoyne@co.monterey.ca.us; claude.hoover@gmail.com; granti@co.monterey.ca.us; Jahr, Jessica@Waterboards; Lauffer, Michael@Waterboards; athesing@stanford.edu; Okun, Lori@Waterboards
Subject: Monterey Coastkeeper v. Monterey County Water Resources Agency [M 108858]

Dear Mr. Shimek and Ms. Granquist,

Please find attached a letter for Judge Wills. I have talked to Errol, who answers the phone at the Monterey Superior Court, and left two messages for Renee del Fuentes, the supervisor, but I am unable to find someone who can give me information on how to contact Judge Wills or his clerk. I suspect that one or both of you have a way to communicate with them and, given the timing of this issue, ask that you kindly forward this on. Please let me know if you are able to do so. Thank you in advance for your assistance.

Tamarin E. Austin
Senior Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
(916) 341-5161
taustin@waterboards.ca.gov

Granquist, Nicole

From: Austin, Tamarin@Waterboards <Tamarin.Austin@waterboards.ca.gov>
Sent: Friday, February 27, 2015 3:45 PM
To: Crowl, Adrianna@Waterboards; exec@otterproject.org; Granquist, Nicole
Cc: Soderberg, Sheila@Waterboards; Packard, Harvey@Waterboards; Thomas, Michael@Waterboards; jp.wolff@wolffvineyards.com; Bauman, Lew@Monterey; chardavoyne@co.monterey.ca.us; claude.hoover@gmail.com; granti@co.monterey.ca.us; Jahr, Jessica@Waterboards; Lauffer, Michael@Waterboards; atthesing@stanford.edu; Okun, Lori@Waterboards
Subject: RE: Monterey Coastkeeper v. Monterey County Water Resources Agency [M 108858]

This responds to Nicole's email and offer to file and hand deliver the letter with the court. We have no resources to file or hand deliver the letter with the court. If you or another party is able to do that, we would appreciate the assistance.

Thank you,

Tamarin Austin

From: Crowl, Adrianna@Waterboards
Sent: Friday, February 27, 2015 1:28 PM
To: exec@otterproject.org; ngranquist@downeybrand.com
Cc: Soderberg, Sheila@Waterboards; Packard, Harvey@Waterboards; Thomas, Michael@Waterboards; jp.wolff@wolffvineyards.com; Bauman, Lew@Monterey; chardavoyne@co.monterey.ca.us; claude.hoover@gmail.com; granti@co.monterey.ca.us; Jahr, Jessica@Waterboards; Lauffer, Michael@Waterboards; atthesing@stanford.edu; Okun, Lori@Waterboards
Subject: Monterey Coastkeeper v. Monterey County Water Resources Agency [M 108858]

Dear Mr. Shimek and Ms. Granquist,

Please find attached a letter for Judge Wills. I have talked to Errol, who answers the phone at the Monterey Superior Court, and left two messages for Renee del Fuentes, the supervisor, but I am unable to find someone who can give me information on how to contact Judge Wills or his clerk. I suspect that one or both of you have a way to communicate with them and, given the timing of this issue, ask that you kindly forward this on. Please let me know if you are able to do so. Thank you in advance for your assistance.

Tamarin E. Austin
Senior Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
(916) 341-5161
taustin@waterboards.ca.gov<<mailto:taustin@waterboards.ca.gov>>

Granquist, Nicole

From: Granquist, Nicole
Sent: Friday, February 27, 2015 1:59 PM
To: 'Crowl, Adrianna@Waterboards'; 'exec@otterproject.org'
Cc: 'Soderberg, Sheila@Waterboards'; 'Packard, Harvey@Waterboards'; 'Thomas, Michael@Waterboards'; 'jp.wolff@wolffvineyards.com'; 'Bauman, Lew@Monterey'; 'chardavoyne@co.monterey.ca.us'; 'claude.hoover@gmail.com'; 'granti@co.monterey.ca.us'; 'Jahr, Jessica@Waterboards'; 'Lauffer, Michael@Waterboards'; 'athesing@stanford.edu'; 'Okun, Lori@Waterboards'; 'Zinman, Kathy x6405'; Granquist, Nicole; 'Deborah A. Sivas'; Lutman, Becky
Subject: RE: Monterey Coastkeeper v. Monterey County Water Resources Agency [M 108858]

Tamarin,

It is typically quite difficult to get a hold of court staff. I would recommend the Regional Water Board simply file the letter and hand deliver a copy to Judge Wills' department.

We are happy to help with this, MCWRA uses a local filing service, and I am cc 'ing Kathy Zinman from the County Counsel's office to assist should you authorize MCWRA to move ahead with that process (my assistant can help too if need be).

I am also cc 'ing Debbie Sivas, as I did not see her on the original email.

I am out of the office today, but can coordinate via email.

Thanks.

Nicole

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

From: Crowl, Adrianna@Waterboards [Adrianna.Crowl@waterboards.ca.gov]
Sent: Friday, February 27, 2015 01:29 PM Pacific Standard Time
To: exec@otterproject.org; Granquist, Nicole
Cc: Soderberg, Sheila@Waterboards; Packard, Harvey@Waterboards; Thomas, Michael@Waterboards; jp.wolff@wolffvineyards.com; Bauman, Lew@Monterey; chardavoyne@co.monterey.ca.us; claude.hoover@gmail.com; granti@co.monterey.ca.us; Jahr, Jessica@Waterboards; Lauffer, Michael@Waterboards; athesing@stanford.edu; Okun, Lori@Waterboards
Subject: Monterey Coastkeeper v. Monterey County Water Resources Agency [M 108858]

Dear Mr. Shimek and Ms. Granquist,

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Tamarin E. Austin
Senior Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
(916) 341-5161
taustin@waterboards.ca.gov

EXHIBIT F

EXHIBIT F

Granquist, Nicole

From: Steve Shimek <exec@otterproject.org>
Sent: Monday, March 02, 2015 11:04 AM
To: Austin, Tamarin@Waterboards (Tamarin.Austin@waterboards.ca.gov); kharris@waterboards.ca.gov
Cc: Soderberg, Sheila@Waterboards; Granquist, Nicole; Packard, Harvey@Waterboards; Thomas, Michael@Waterboards; jp.wolff@wolffvineyards.com; Bauman, Lew@Monterey; chardavoyne@co.monterey.ca.us; claude.hoover@gmail.com; granti@co.monterey.ca.us; Jahr, Jessica@Waterboards; Lauffer, Michael@Waterboards; athesing@stanford.edu; Okun, Lori@Waterboards; Deborah A. Sivas (dsivas@stanford.edu)
Subject: MCWRA RWQCB March 3 meeting - Please advise
Attachments: Harris Austin 3_1_15.pdf
Importance: High

Please see the attached letter



The Otter Project

www.otterproject.org

P.O. Box 269
Monterey, CA 93942
831/663-9460

March 1, 2015

Dear Mr. Harris and Ms. Austin,

I am in receipt of your email dated February 25 and your letter to the court of February 27. Thank you. We have not yet received the transcript from the court reporter. Several points have become very clear through all of these communications:

- 1) It is critical that we all communicate very clearly and quote each other correctly. MCWRA has repeatedly excerpted from RWQCB emails and letters and twisted the words into unintended meanings. This occurred in MCWRA's pre-trial brief when it maintained the RWQCB had determined MCWRA was not a discharger (see MCWRA's Reply Brief at page 13 (previously provided)) and it occurred again on February 17 when MCWRA very plainly said that the Board had contradicted the staff and determined MCWRA was not a discharger.
- 2) MCWRA seeks to deflect blame from itself and onto the RWQCB. From the earliest briefs through today, MCWRA maintains that it is not a discharger and has no public trust obligations; the RWQCB has all responsibility. MCWRA's refusal to file a report of waste discharge, repeated misrepresentations and deflections, and insistence that the RWQCB is the single party with public trust obligations has delayed water quality improvements in the Lower Salinas watershed for decades. We hope the issue of whether MCWRA is a discharger and must file a report of waste discharge is behind us, but Judge Wills seems inclined to bring the RWQCB into the fray over public trust obligations.
- 3) Ms. Austin's letter to the Court of February 27 suggests that the Court could order mandatory mediation. Coastkeeper and MCWRA have already undergone a year of court ordered mediation -- with an expensive JAMS mediator and a team of consultants hired to scope solutions, entirely paid for by Coastkeeper -- that went nowhere because MCWRA refused to accept any responsibility as a discharger or a trustee of the public trust.
- 4) Ms. Austin's letter also raises the possibility of some kind of voluntary compliance. Given MCWRA's misrepresentations and refusal to accept any responsibility, it seems reckless to believe MCWRA will come into any form of voluntary compliance. Be advised that Coastkeeper cannot accept any form of unenforceable voluntary agreement.

The March 3 meeting is being held at MCWRA's request and MCWRA has said the meeting is public. The RWQCB has clearly indicated that Coastkeeper is not invited. Judge Wills has just as clearly indicated, based on MCWRA's statements, we should attend and participate. Coastkeeper is in an awkward position and as you'll read in the transcript when it becomes available, it was MCWRA's obfuscations that led to the confusion. Please clarify the status of the March 3 meeting, and whether or not Coastkeeper should attend.

Given our previous experience with this matter, we simply do not trust that MCWRA will not make some twisted misrepresentation that will delay a ruling in this matter and will further delay improvements in water quality. Please advise.

Sincerely,

Steve Shimek
Executive Director

EXHIBIT G

EXHIBIT G

From: Granquist, Nicole
Sent: Monday, March 02, 2015 5:02 PM
To: 'Harris, Ken@Waterboards'; Steve Shimek; Austin, Tamarin@Waterboards
Cc: Soderberg, Sheila@Waterboards; Packard, Harvey@Waterboards; Thomas, Michael@Waterboards; jp.wolff@wolffvineyards.com; Bauman, Lew@Monterey; chardavoyne@co.monterey.ca.us; claude.hoover@gmail.com; granti@co.monterey.ca.us; Jahr, Jessica@Waterboards; Lauffer, Michael@Waterboards; athesing@stanford.edu; Okun, Lori@Waterboards; Deborah A. Sivas (dsivas@stanford.edu); Granquist, Nicole
Subject: RE: MCWRA RWQCB March 3 meeting - Please advise

Ken,

Following up on my earlier message, please be advised that, while the Court scheduled a call to occur this afternoon, the Court never joined the conference line. Given it is now 5:00 p.m., I suspect we will not speak with Judge Wills today.

Thanks,

Nicole E. Granquist

DOWNEY BRAND

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916-520-5369 Direct
916-520-5769 Fax
ngranquist@downeybrand.com
www.downeybrand.com

From: Granquist, Nicole
Sent: Monday, March 02, 2015 3:26 PM
To: 'Harris, Ken@Waterboards'; Steve Shimek; Austin, Tamarin@Waterboards
Cc: Soderberg, Sheila@Waterboards; Packard, Harvey@Waterboards; Thomas, Michael@Waterboards; jp.wolff@wolffvineyards.com; Bauman, Lew@Monterey; chardavoyne@co.monterey.ca.us; claude.hoover@gmail.com; granti@co.monterey.ca.us; Jahr, Jessica@Waterboards; Lauffer, Michael@Waterboards; athesing@stanford.edu; Okun, Lori@Waterboards; Deborah A. Sivas (dsivas@stanford.edu); Granquist, Nicole
Subject: RE: MCWRA RWQCB March 3 meeting - Please advise

Ken,

My co-counsel, Irv Grant, from the County Counsel's office, was contacted by the Court a short time ago, Judge Wills has ordered a call with counsel to discuss this matter this afternoon. We have contacted Coastkeeper's counsel to

determine if they are available for the call. We will keep you apprised, but ask that the meeting not be taken off of Regional Water Board staff's calendars quite yet.

Thank you.

Nicole E. Granquist

DOWNEY BRAND

Downey Brand LLP
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Sacramento, CA 95814
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916-520-5369 Direct
916-520-5769 Fax
ngranquist@downeybrand.com
www.downeybrand.com

From: Harris, Ken@Waterboards [<mailto:Ken.Harris@waterboards.ca.gov>]
Sent: Monday, March 02, 2015 3:19 PM
To: Steve Shimek; Austin, Tamarin@Waterboards
Cc: Soderberg, Sheila@Waterboards; Granquist, Nicole; Packard, Harvey@Waterboards; Thomas, Michael@Waterboards; jp.wolff@wolffvineyards.com; Bauman, Lew@Monterey; chardavoyne@co.monterey.ca.us; claude.hoover@gmail.com; granti@co.monterey.ca.us; Jahr, Jessica@Waterboards; Lauffer, Michael@Waterboards; athesing@stanford.edu; Okun, Lori@Waterboards; Deborah A. Sivas (dsivas@stanford.edu)
Subject: RE: MCWRA RWQCB March 3 meeting - Please advise

All, The Regional Board has not heard from Judge Wills regarding our request to meet with the MCWRA independently on Tuesday. Therefore, the Regional Board will not be attending.

Ken Harris

From: Harris, Ken@Waterboards
Sent: Monday, March 02, 2015 1:20 PM
To: 'Steve Shimek'; Austin, Tamarin@Waterboards
Cc: Soderberg, Sheila@Waterboards; Granquist, Nicole; Packard, Harvey@Waterboards; Thomas, Michael@Waterboards; jp.wolff@wolffvineyards.com; Bauman, Lew@Monterey; chardavoyne@co.monterey.ca.us; claude.hoover@gmail.com; granti@co.monterey.ca.us; Jahr, Jessica@Waterboards; Lauffer, Michael@Waterboards; athesing@stanford.edu; Okun, Lori@Waterboards; Deborah A. Sivas (dsivas@stanford.edu)
Subject: RE: MCWRA RWQCB March 3 meeting - Please advise

Dear Mr. Shimek,

Thank you for your letter. We appreciate that you are in an awkward position, not unlike that of the Regional Water Board. Staff is attempting to hold a productive meeting in an environment where candid conversation and creative ideas will not be taken out of context or suppressed. We are open to suggestions on how that could occur, but Regional Water Board staff are concerned that having an "open" or "public" meeting at this juncture is simply not a productive use of time. We are hoping to hear from Judge Wills with his authorization to allow the Agency to meet independently (at least for a preliminary session) with the Regional Water Board. If that does not occur by 3:00, we will cancel the meeting scheduled for tomorrow.

Ken Harris

Executive Officer
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

Office Phone: 805.549.3140
Fax: 805.543.0397



From: Steve Shimek [<mailto:exec@otterproject.org>]
Sent: Monday, March 02, 2015 11:04 AM
To: Austin, Tamarin@Waterboards; Harris, Ken@Waterboards
Cc: Soderberg, Sheila@Waterboards; Granquist, Nicole; Packard, Harvey@Waterboards; Thomas, Michael@Waterboards; jp.wolff@wolffvineyards.com; Bauman, Lew@Monterey; chardavoyne@co.monterey.ca.us; claude.hoover@gmail.com; granti@co.monterey.ca.us; Jahr, Jessica@Waterboards; Lauffer, Michael@Waterboards; athesing@stanford.edu; Okun, Lori@Waterboards; Deborah A. Sivas (dsivas@stanford.edu)
Subject: MCWRA RWQCB March 3 meeting - Please advise
Importance: High

Please see the attached letter

Granquist, Nicole

From: Harris, Ken@Waterboards <Ken.Harris@waterboards.ca.gov>
Sent: Monday, March 02, 2015 3:19 PM
To: Steve Shimek; Austin, Tamarin@Waterboards
Cc: Soderberg, Sheila@Waterboards; Granquist, Nicole; Packard, Harvey@Waterboards; Thomas, Michael@Waterboards; jp.wolff@wolffvineyards.com; Bauman, Lew@Monterey; chardavoyne@co.monterey.ca.us; claude.hoover@gmail.com; granti@co.monterey.ca.us; Jahr, Jessica@Waterboards; Lauffer, Michael@Waterboards; atthesing@stanford.edu; Okun, Lori@Waterboards; Deborah A. Sivas (dsivas@stanford.edu)
Subject: RE: MCWRA RWQCB March 3 meeting - Please advise

All, The Regional Board has not heard from Judge Wills regarding our request to meet with the MCWRA independently on Tuesday. Therefore, the Regional Board will not be attending.

Ken Harris

From: Harris, Ken@Waterboards
Sent: Monday, March 02, 2015 1:20 PM
To: 'Steve Shimek'; Austin, Tamarin@Waterboards
Cc: Soderberg, Sheila@Waterboards; Granquist, Nicole; Packard, Harvey@Waterboards; Thomas, Michael@Waterboards; jp.wolff@wolffvineyards.com; Bauman, Lew@Monterey; chardavoyne@co.monterey.ca.us; claude.hoover@gmail.com; granti@co.monterey.ca.us; Jahr, Jessica@Waterboards; Lauffer, Michael@Waterboards; atthesing@stanford.edu; Okun, Lori@Waterboards; Deborah A. Sivas (dsivas@stanford.edu)
Subject: RE: MCWRA RWQCB March 3 meeting - Please advise

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Fax: 805.543.0397



From: Steve Shimek [<mailto:exec@otterproject.org>]

Sent: Monday, March 02, 2015 11:04 AM

To: Austin, Tamarin@Waterboards; Harris, Ken@Waterboards

Cc: Soderberg, Sheila@Waterboards; Granquist, Nicole; Packard, Harvey@Waterboards; Thomas, Michael@Waterboards; jp.wolff@wolffvineyards.com; Bauman, Lew@Monterey; chardavoyne@co.monterey.ca.us; claude.hoover@gmail.com; granti@co.monterey.ca.us; Jahr, Jessica@Waterboards; Lauffer, Michael@Waterboards; athesing@stanford.edu; Okun, Lori@Waterboards; Deborah A. Sivas (dsivas@stanford.edu)

Subject: MCWRA RWQCB March 3 meeting - Please advise

Importance: High

Please see the attached letter

EXHIBIT H

EXHIBIT H

Granquist, Nicole

From: Granquist, Nicole
Sent: Tuesday, March 10, 2015 10:00 AM
To: Deborah A. Sivas (dsivas@stanford.edu)
Cc: Granquist, Nicole; Stallard, Elizabeth; Alicia Thesing (athesing@stanford.edu)
Subject: Monterey Coastkeeper v. MCWRA - Ex Parte Notice

Debbie,

Good morning. Following up on my voicemail to you at 9:53 a.m. this morning, the purpose of this email is to inform you that MCWRA will be going in on an ex parte basis tomorrow, Wednesday, March 11, 2015, at 1:30 p.m., in Department 14 of the Monterey County Superior Court to ask the Court to issue an Order clarifying how the Central Coast Regional Water Quality Control Board should proceed, in keeping with its February 27, 2015 correspondence to the Court.

Please let us know as soon as possible whether you intend to oppose the ex parte application.

Thank you.

Nicole E. Granquist

DOWNEYBRAND

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