

No. 21-1040

In the Supreme Court of the United States

CORONA CLAY COMPANY,
Petitioner,
v.

INLAND EMPIRE WATERKEEPER, A PROJECT
OF ORANGE COUNTY COASTKEEPER; AND
ORANGE COUNTY COASTKEEPER,

Respondents.

*On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit*

**SUPPLEMENTAL APPENDIX TO BRIEF
FOR THE RESPONDENTS IN OPPOSITION**

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SUPPLEMENTAL APPENDIX A

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION AT SANTA ANA
HONORABLE DAVID O. CARTER, JUDGE
PRESIDING

CERTIFIED TRANSCRIPT
SACV NO. 18-00333-DOC

INLAND EMPIRE WATERKEEPER, a project of
ORANGE COUNTY COASTKEEPER, a
California Non-profit Corporation,
PLAINTIFFS,

vs.

CORONA CLAY CO., a California Corporation,
DEFENDANT.

REPORTER'S TRANSCRIPT OF PROCEEDINGS
SANTA ANA, CALIFORNIA
WEDNESDAY, JUNE 28, 2019
4:44 P.M.

DEBORAH D. PARKER, CSR 10342
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
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[05:08:59] was filed in good faith with the expectation of prevailing.

And defendants have argued that the motion would improperly exclude evidence tending to disprove plaintiffs' standing. And defendants have argued to the Court that

[05:09:13] plaintiffs have filed dozens of lawsuits in this District and evidence of the prior lawsuit is relevant for the defendant to show that plaintiffs' primary purpose, as carried out by its executive director, is making money rather than maintaining water quality, and thus the

[05:09:31] organization does not have standing to bring this lawsuit.

Counsel, I don't think I need to hear argument on this, I'm granting this motion. This evidence is not relevant, and I previously determined that plaintiffs have standing in the order regarding summary judgment.

[05:09:50] The ninth motion is to preclude introduction of improper character evidence regarding Plaintiff Waterkeeper's Executive Director, Gary Brown.

And the plaintiffs argue that defendant is seeking to assert a defense that water quality is not germane to

[05:10:07] Waterkeeper's purpose and thus Waterkeeper does not have standing to bring the instant action. Plaintiffs are arguing in the papers

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that testimony from Mr. Brown is irrelevant, because he lacks personal knowledge of the issues relevant to the litigation and newspaper article [05:10:24] about Brown should be precluded, because it's irrelevant

[05:10:27] hearsay and was not produced in discovery.

And in reply, the plaintiffs' Executive Director Garry Brown's previous arrest and the article regarding his mismanagement of his previous role with the Boy Scouts, is [05:10:43] relevant to demonstrate that the primary purpose of the plaintiffs' organization is making money for Mr. Brown, and thus plaintiffs' organization is making money for Mr. Brown, and thus plaintiff's do not have standing because they cannot show the goal of preserving water quality is germane to the organization's purpose.

[05:10:59] I'm granting this motion. This evidence is not relevant, and I previously have determined that plaintiffs have standing in the order regarding summary judgment.

The tenth motion is to preclude defendant from attempting to impeach its own storm water samples. And

[05:11:16] plaintiffs have argued that the defendant should not be able to attempt to impeach its own water samples because the Ninth Circuit has held that self-monitoring reports are conclusive evidence of an exceedance of a permit due

[05:11:35] to its own alleged error in sampling.

There is no opposition from the defendant; is that correct?

MR. NEACH: Your Honor, it's not an argument we're going to make.

[05:11:46] THE COURT: Okay.

[05:15:51] list, but neither individual has any personal knowledge of any matter that is of consequence in this action.

And the defendant is arguing that they believe both witnesses have highly pertinent information regarding

[05:16:04] standing.

So I'd like to hear from the parties, but I'm inclined, initially, to grant this motion, unless defendant seeks to call Mr. Brown to testify on an issue relevant to the causes of action in the instant case.

[05:16:17] I think I previously mentioned I have already determined plaintiffs have standing.

So, counsel.

MR. NEACH: Your Honor, on all of those motions in limine -- I guess it's 8, 9, 12 and 13 -- we cited in our

[05:16:31] opposition, but under the Lujan case, L-U-J-A-N, 504 U.S. 555, they have to prove standing at each stage of litigation. It's not -- it's something very clear that -- sorry, I'm finding the specific page. It's at page 561.

They're not mere pleading requirements but rather

[05:16:58] an indispensable part of the plaintiff's case. Each element must be supported in the same way as any other matter on which the plaintiff utters the burden of proof; in other words, what the manner and degree of evidence required at the successive stages of litigation.

[05:17:14] So I think the Court's ruling on summary judgment

[05:17:18] certainly impacts what it found: Cause of Action 1, Cause of Action 5. But that doesn't give them a free pass at trial on the remaining causes of action. As a matter of fact, the witnesses they put up for standing, we didn't

[05:17:33] depose them. We should be able to get a chance to cross-examine them to get to the veracity of the statements they made in their declaration. I don't think standing is a done issue.

THE COURT: Counsel.

[05:17:45] MS.SPINUZZI: Your Honor, the Lujan case does not make a finding one way or the other as to what defense counsel argues. Rather, that in order to pursue a Clean Water Act case, the plaintiff must meet the Constitutional minimum requirement. But I think that

[05:18:06] defendant's real argument is that they think that we need to establish standing in some higher level for the separate

causes of action. But in a Clean Water Act case, once you've established the Constitutional minimum requirements, a plaintiff is allowed to pursue both procedural and

[05:18:26] substantive issues of any permit that it's seeking to enforce, and so -- and with regards to the issue of whether

or not they had an opportunity to depose our standing witnesses, our standing witnesses were timely disclosed far prior to discovery and they had every opportunity. And had

[05:18:43] they ever made a request to take those depositions, we would

[05:18:45] have happily obliged.

THE COURT: I'm going to grant this motion, unless the defendant seeks to call Mr. Brown to testify on an issue relevant to the causes of action in this matter. I

[05:18:59] previously mentioned I've already determined plaintiffs have standing.

Concerning defendant's motion in limine, your first motion to exclude untimely disclosed witnesses:

Defendant seeks to exclude Thomas Hashemi and

[05:19:13] Karla Gutierrez because they were added to Plaintiffs' Amended Witness List. Defendants have also noted that the plaintiff has generically listed a custodian of record to be called from the California Regional Water Quality Control

Board for Reference Laboratories but has not

[05:19:35] identified those specific witnesses.

Plaintiffs have argued these witnesses are crucial to the case and should not be a surprise to

the defendant. Plaintiffs stated Mr. Hashemi works for the laboratory defendant chose to analyze their storm water samples and

[05:19:49] thus plaintiff needs to call him. Plaintiffs indicate that

they will not in fact call Ms. Gutierrez. As for a custodian of record, plaintiffs added this individual to its witness list in response to defendant's recent arguments seeking to impeach their own storm water sample reports.

[05:20:06] I'm going to deny this motion. Plaintiffs may

[05:26:34] MS. SPINUZZI: Your Honor, if I may. I don't know

if -- sorry. I guess I should stop talking while you're trying to articulate something, but I was going to ask for some points of clarification and perhaps guidance from the

[05:26:46] Court that might --

THE COURT: We're not doing that now. Just tell me the area you're concerned about, and we're going to put everything we've done in writing for you.

MS. SPINUZZI: Okay. For purposes of the trial,

[05:26:53] will we be relitigating the issues of standing, Cause of Action 1 and Cause of Action 5?

THE COURT: No, I don't believe so.

MS. SPINUZZI: Thank you.

MR. ESSAYLI: Your Honor, I think the main

[05:27:05] disconnect here is: They have a completely different understanding of what they think they have to prove at trial versus what we believe they have to prove at trial. And the pretrial order will allude to that. They had all kinds of elements listed, so I think that's part of the disconnect

[05:27:19] here is they feel they've already accomplished –

THE COURT: Let me bid you good night. We're going to have another conference on July 23rd.

MS. SPINUZZI: Thank you.

THE COURT: Okay.

[05:27:26] MS. SPINUZZI: Thank you, Your Honor.

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SUPPLEMENTAL APPENDIX B

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

INLAND EMPIRE WATERKEEPER, ET AL.,
PLAINTIFFS,
V.
CORONA CLAY COMPANY,
DEFENDANT.

SA CV 18-00333-DOC
OCTOBER 24, 2019
SANTA ANA, CALIFORNIA
(4:02 P.M. TO 4:18 P.M.)
(4:31 P.M. TO 4:35 P.M.)
(4:38 P.M. TO 5:07 P.M.)
(5:35 P.M. TO 6:01 P.M.)
(6:39 P.M. TO 6:43 P.M.)

DAY 4, VOLUME 4
BEFORE THE HONORABLE DAVID O. CARTER
UNITED STATES DISTRICT JUDGE

APPEARANCES: SEE NEXT PAGE

COURT REPORTER: RECORDED; COURT
SMART

COURTROOM DEPUTY: DEBORAH LEWMAN

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TRANSCRIBER: DOROTHY BABYKIN
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PROCEEDINGS RECORDED BY ELECTRONIC
SOUND RECORDING;
TRANSCRIPT PRODUCED BY TRANSCRIPTION
SERVICE.

TESTIMONY. AND IT WOULD REQUIRE US TO
EITHER STAND OUTSIDE A FACILITY WHEN IT
RAINS TO GO RUNNING AFTER AND
DOCUMENTING THE DISCHARGE WHEN
THEIR OWN LAB REPORTS THAT THEY
SUBMITTED PROVE VIOLATIONS.

THE CASES THAT I CITED, YOUR HONOR,
ARE NOT GOING TO TELL YOU WHAT
LANGUAGE TO PUT IN OUR JURY
INSTRUCTION. BUT WHAT THEY WILL SAY IS
THAT THE PREDICATE OF A DISCHARGE
REACHING A WATER OF THE UNITED STATES
CANNOT BE PART OF THAT IF YOU ARE GOING
TO ALLOW A MONITORING REPORT TO SERVE
AS CONCLUSIVE EVIDENCE OF A VIOLATION.

THE COURT: SO, WHY WOULD I
INSTRUCT THE JURY? WHY WOULDN'T I
LEAVE THAT FOR A JURY DETERMINATION?

IN OTHER WORDS, WHY WOULDN'T THE JURY BE PUT IN THE POSITION OF DECIDING WHETHER IT DID, IN FACT, REACH THE WATERS OR NOT?

MS. SPINUZZI: BECAUSE, YOUR HONOR, LET'S SAY-- LET'S SAY, FOR EXAMPLE, THAT THE JURY DECIDES THERE WASN'T

ENOUGH EVIDENCE TO SHOW THAT THE DISCHARGE ACTUALLY REACHED THE WATERS. BUT WHAT THEY HAVE IS CLEAR AND CONVINCING EVIDENCE THAT THE DEFENDANT HAS ITS OWN SAMPLING REPORT GIVEN TO THE STATE AS PROOF THAT IT DID ITS SAMPLING THAT SHOWS VIOLATIONS THAT WAS UPLOADED LATE.

THEY WOULDN'T BE ABLE TO FIND A VIOLATION, YOUR HONOR, BECAUSE--

THE COURT: WELL, DON'T YOU HAVE THAT --

MS. SPINUZZI: -- YOU WILL HAVE ADDED AN ELEMENT.

THE COURT: JUST A MOMENT.

DON'T YOU HAVE THAT IN YOUR SIXTH AND SEVENTH CAUSES OF ACTION?

MS. SPINUZZI: THAT'S NOT PART OF THE SIXTH AND SEVENTH CAUSES OF ACTION, YOUR HONOR.

AND NOR COULD YOU PROVE SUCH VIOLATIONS IF IT WAS PART OF THE CASUE OF ACTION UNLESS YOU HAD AN EYEWITNESS OR UNLESS YOU HAD LIKE WE

THINK WE HAVE HERE A JUDICIAL ADMISSION THAT COME IN THROUGH A REQUEST FOR ADMISSIONS, WHICH WE WOULD LIKE TO READ TO THE COURT.

THE COURT: WHAT DID YOU WANT TO READ TO ME?

MS. SPINUZZI: IN REQUEST FOR ADMISSIONS, YOUR HONOR.

AND WE ARE READING FROM OUR SET TWO, NUMBER 68.

MR. NEACH: WELL, YOUR HONOR, I OBJECT. THIS IS LIKE BRINGING IN NEW EVIDENCE OR SOMETHING.

MS. SPINUZZI: WELL, WE COULD ASK FOR—

MR. NEACH—CLOSE OF EVIDENCE. IT'S — IT'S—

THE COURT: WELL, I ANT TO HEAR WHAT THIS IS. SO--

MS. SPINUZZI: SO, WATERKEEPER ASKED THE DEFENDANT TO ADMIT THAT DISCHARGES OF STORM WATER FROM THE FACILITY FLOW INDIRECTLY TO TEMESCAL CREEK.

THERE WAS AN OBJECTION AS TO THE DEFINED TERM "FACILITY."

AND SUBJECT TO THAT OBJECTION, THE DEFENDANT STATED AS FOLLOWS,

“ADMITTED THAT DISCHARGES OF STORM WATER FROM THE INDUSTRIAL AREA ON THE PROPERTY IDENTIFIED IN PROPOUNDING PARTY’S EXHIBIT B INDIRECTLY FLOWS TO TEMESCAL WASH.”

(PAUSE IN PROCEEDINGS.)

THE COURT: WELL, WHAT STOPPED YOU FROM BRINGING THAT AT THE TIME OF TRIAL?

(PAUSE IN PROCEEDINGS.)

MS. SPINUZZI: NOT CERTAIN HOW TO GET IT IN, YOUR HONOR.

THE COURT: OKAY.

WELL, COULD YOU HAVE SIMPLY ASKED FOR A REQUEST TO INTRODUCE THIS INTERROGATORY?

MS. SPINUZZI: I BELIEVE I COULD HAVE, YOUR HONOR.

THE COURT: OKAY.

MS. SPINUZZI: WE’RE GOING TO ASK THAT IT BE TREATED AS A JUDICIAL ADMISSION.

I WILL NOTE THAT WE ARE ALSO GOING TO BE NEEDING TO ASK—REQUEST—FOR JUDICIAL NOTICE ON THE PERMIT ITSELF.

THE COURT: OKAY.

COUNSEL.

MR. NEACH: YOUR HONOR, I—WE OBJECT ENTIRELY TO BRINGING IN NEW

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EVIDENCE THAT ALL OF A SUDDEN THE JURY
IS GOING

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SUPPLEMENTAL APPENDIX C

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

INLAND EMPIRE WATERKEEPER, a
project of Orange County Coastkeeper, and
ORANGE COUNTY COASTKEEPER, a
California non-profit corporation,

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Plaintiffs,

v.

CORONA CLAY CO., a California
corporation,

Defendant.

Case No.: 8:18-cv-00333 DOC (DFM)

Hon. David O. Carter

**PLAINTIFFS' OPPOSITION BRIEF
TO DEFENDANT'S MOTION FOR
RELIEF FROM JUDGMENT
UNDER FRCP 60(b), OR, IN THE
ALTERNATIVE, TO ALTER OR
AMEND JUDGMENT UNDER
FRCP 59(e)**

Hearing Date: June 1, 2020

Time: 8:30 a.m.

Location: Courtroom 9D

Action Filed: April 20, 2018

Trial Date: October 21, 2019

Judgment entered: April 6, 2020

#186, p. 33:8-16. Defendant continually failed to implement BMPs that achieve technology-based effluent limitations throughout the litigation. Their own consultant admitted at trial that their main focus of compliance, the expansion of settling basins, happened after Waterkeeper filed this lawsuit to force Defendant to comply with its permit obligations. ECF # 186, pp. 52:13-15; 56:13-15. He further admitted that as of the trial, Defendant still did not retain all of its industrial stormwater. *Id.* at p. 62:7-10.

Given Defendant's improper attempt to have the Court infer compliance from new factual assertions, Waterkeeper is compelled to respond with its own. Waterkeeper conducted a further inspection of Defendant's facility in April 2020. Polluted storm water was seen discharging from Defendant's industrial site. Heimstra Dec., ¶ 9; Ex. A-D. Using drone technology, that discharge was traced through the vegetated plain and along a road to Temescal Creek. *Id.* Thus, contrary to Defendant's claim, it has not brought itself into compliance through adequate practices or structural changes.

Finally, at trial Defendant's expert admitted that Defendant had failed to properly sample its storm water or timely report its results, that the storm water samples evidence levels of pollution that was too high, and that Defendant needed to have engaged in more

robust efforts. ECF #186, pp. 62-65. Yet Defendant has not uploaded any storm water sampling results, monitoring reports, or exceedance response technical reports since July 2019. Novak Decl., ¶¶ 5-6. Defendant has not made good faith attempts to comply with the terms of its Permit, but rather, continues to display the malignant indifference to the Clean Water Act that this Court found upon summary judgment.

e. Economic Impact of the Penalty on the Violator.

The fifth factor to consider is the economic impact of the penalty on the violator, or the violator's ability-to-pay ("ATP"). 33 U.S.C. § 1319(d). The plaintiff must show that the defendant has a general ability to pay the penalty and then the burden shifts to the defendant to show that the penalty exceeds its ability to pay. *In re Chempace Corp.*, Docket No. 5-IFFRA-96-017, 2000 WL 696821, at *10 (EAB May 18, 2000). If proven, the penalty may be reduced to the "highest amount that the violator can reasonably pay

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SUPPLEMENTAL APPENDIX D

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Case 8:18-cv-00333-DOC-DFM Document 196-2
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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

INLAND EMPIRE WATERKEEPER, a
project of Orange County Coastkeeper, and
ORANGE COUNTY COASTKEEPER, a

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California non-profit corporation,
Plaintiffs,

v.

CORONA CLAY CO., a California
corporation,
Defendant.

Case No.: 8:18-cv-00333 DOC
(DFM)

Hon. David O. Carter

**DECLARATION OF RAY
HIEMSTRA IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO
DEFENDANT'S RULE 60(B)
MOTION
(Federal Water Pollution Control
Act, 33 U.S.C. §§ 1251 et seq.)**

Hearing Date: June 1, 2020

Time: 8:30 a.m.

Location: Courtroom 9D

Action Filed: April 20, 2018

DECLARATION OF RAY HIEMSTRA

I, Ray Hiemstra, hereby declare the following:

1. The facts set forth in this declaration are based on my personal knowledge and if called as a witness, I could and would competently testify thereto under oath. As to those matters that reflect a personal opinion, they reflect my personal opinion and judgment upon the matter.

2. I am an employee of Orange County Coastkeeper (“Coastkeeper”) and I am the Associate Director of Programs.

3. I have been employed by Orange County Coastkeeper at all times relevant to this matter.

4. Inland Empire Waterkeeper is a program of Orange County Coastkeeper.

5. One of my responsibilities at Coastkeeper is to oversee our storm water monitoring program. This requires that I visit industrial facilities that Coastkeeper and Waterkeeper are investigating throughout the region.

6. I have personally observed Defendant Corona Clay Company’s facility during rain events since January 20, 2017, as part of Coastkeeper’s water quality monitoring program.

7. I have directed trained water quality monitoring teams who photographed, completed rain event inspection forms, completed chains of custody and collected storm water samples from Corona Clay on January 8, 2018 and November 29, 2018.

8. On October 22, 2019, I testified at trial as a witness for Coastkeeper on my wet weather observations of Corona Clay.

9. On April 10, 2020, I returned to the Corona Clay site to document my observations during a rain event. Although it was raining when I was traveling to Corona Clay and I observed and documented storm water runoff, rain had ceased by the time I arrived. I parked across from the Corona Clay entrance on Dawson Canyon Road and walked to the base of the driveway to an storm water inlet identified as Discharge Point #1 in Corona Clay's Storm Water Pollution Prevention Plan ("SWPPP") and SWPPP best management practices map ("BMP Map"). *See* Exhibit A, SWPPP BMP Map (Corona Clay generated map of the facility with Discharge Point #1 located at the lower left of the image). *See also*, Exhibit A, Exhibit Location Map (pinpoints on a satellite image locating Exhibits A-D and intersection of Dawson Canyon Road and Park Canyon Road). There, I personally observed and recorded my observations with my cellphone camera,

taking photographs of storm water discharges from a clay pipe at Discharge Point #1 flowing into a storm drain inlet to a culvert under Dawson Canyon Road. *See Exhibit A, Photo 1* (view from Discharge Point #1 looking up Corona Clay's driveway from Dawson Canyon Road with storm water discharging into culvert inlet). This photograph was taken at ground level near Discharge Point #1 at Corona Clay. I also documented my observations on a standard rain event inspection form Coastkeeper uses in its ordinary course of business when conducting wet weather inspections of industrial facilities. *See Exhibit A, Rain Event Inspection Form* (completed inspection form documenting observations. Includes an aerial map from Temescal Creek in the foreground to Corona Clay's Discharge Point #1 circled in red in the background).

10. Attached as Exhibit A are true and correct copies of the SWPPP BMP Map and, one photograph that was taken during the inspection at Discharge Point #1, and the rain event inspection form I completed after concluding the inspection.

11. Immediately after documenting Corona Clay's storm water discharge from Discharge Point #1 to Temescal Wash, I drove to the intersection of Park Canyon Road and Dawson Canyon Road and parked in a public turnout. This intersection is

located a few hundred feet from the entrance to Corona Clay and immediately adjacent to the upstream corner of Corona Clay's facility. There, I prepared a personal video-equipped aerial drone. The drone is remotely operated using a digital video display linked to the drone's high-definition camera allowing the pilot to make observations from the drone's perspective and control the camera and the elevation, speed and direction of the drone in real time. The digital video display also allows the pilot to remotely control a function that records video using the drone's high-definition camera. These videos are recorded on a drive within the drone can be uploaded to a computer system.

12. I launched the personal drone from my location at the intersection of Park Canyon Road and Dawson Canyon Road and directed it to an elevation above telephone poles running along Dawson Canyon Road. I flew the drone at this constant elevation above Temescal Wash towards the culvert outfall at entrance to Corona Clay and took video and still photos. I continued a path along Dawson Canyon Road towards Temescal Creek. Visibility at this time and elevation were excellent. I observed and recorded storm water flowing across Temescal Wash from different sources, some in broad defined channels and others meandering through the Wash. Near the driveway entrance to

Corona Clay, I observed and documented storm water at the outfall to the culvert draining Discharge Point #1. *See Exhibit B, Frame 1* (The outfall is partially submerged in storm water to the left of a telephone pole near the right of the screenshot). I further observed and documented storm water leading away from the outfall in a defined channel. *See Exhibit B, Frame 2* (The outfall is located near the top right of the screenshot). I also observed and documented storm water draining from the outfall along a defined stream channel roughly following Dawson Canyon Road. *See Exhibit B, Frame 3* (The outfall is near the telephone pole on the right of the screenshot with Dawson Canyon Road along the top of the screenshot); *see also Exhibit B, Frame 4* (The outfall is out of frame to the bottom right with storm water flowing from right to left towards a natural channel starting in the left foreground towards Dawson Canyon Road turning left at near the first telephone pole on the right of the screenshot). I piloted the drone back along the same route to the intersection of Dawson Canyon Road and Park Canyon Road where I prepared the for another flight.

13. Attached as Exhibit B are true and correct copies of representative frames from the aerial videos that were taken during the drone flight.

14. After retrieving the drone, I drove down Dawson Canyon Road past Corona Clay towards

Temescal Creek where I again parked my vehicle on a public turnout. This location is many hundreds of feet to the west from Corona Clay and near a large culvert directing flow from Temescal Creek under Dawson Canyon Road. I removed and launched the same drone to an elevation above the telephone poles maintaining the same elevation along a flight path from the inlet to the large culvert upstream to the outlet of Corona Clay's culvert draining Discharge Point #1. *See* Exhibit C, Frame 1 (inlet to the large culvert under Dawson Canyon Road to the lower left with water flowing from the background towards the foreground in a natural channel generally parallel to Dawson Canyon Road), *see also* Exhibit C, Frame 6 (storm water flowing in natural channel parallel to Dawson Canyon Road to Temescal Creek and continuing into large culvert under Dawson Canyon Road). I observed and documented storm water in a defined natural channel connecting Temescal Creek to the outfall at the culvert discharging storm water from Corona Clay. *See* Exhibit C, Frames 2-4 (natural storm water channel running parallel to Dawson Canyon Road flowing towards Temescal Creek from Exhibit C, Frame 1); *see also* Exhibit C, Frame 5 (natural storm water channel turning towards the lower left of the frame with Corona Clay's driveway and Discharge Point #1 in the upper left of the frame. This is a reverse angle of Exhibit B, Frame 4

which looked away from Corona Clay and towards Temescal Creek). Using the same digital display for controlling the high-definition camera and flight, I recorded aerial video of storm water in a defined unimproved natural channel with some vegetation in Temescal Wash connecting storm water flow from Corona Clay to Temescal Creek. After flying the drone to the Corona Clay outfall for Discharge Point #1 I piloted the drone back to where I was parked to prepare for another flight.

15. Attached as Exhibit C are true and correct copies of representative frames from the aerial videos that were taken during the drone flight.

16. I then relaunched the drone to an elevation above the telephone poles and flew the drone a few dozen feet upstream of the large concrete culvert diverting portions of Temescal Creek under Dawson Canyon Road. *See Exhibit D, Frame 1* (storm water from Corona Clay draining from right to left of the screenshot into large concrete culvert in Temescal Creek). From there, I began recording and documented water flowing into the culvert I piloted the drone across Dawson Canyon Road and over a natural vegetated reach of Temescal Creek. I redirected the drone's high-definition videocamera back towards the large culvert's outfall under Dawson Canyon Creek and documented portions of Temescal Creek discharge from the outfall. *See Exhibit D, Frame 2* (portion of

Temescal Creek discharging through culvert under Dawson Canyon Road); *see* also Exhibit D, Frame 3 (same). I then turned the drone's videocamera away from Dawson Canyon Road and followed the vegetated reach of Temescal Creek until it discharged into another branch of the same meandering natural waterway known as Temescal Creek. *See* Exhibit D, Frame 4 (larger branch of Temescal Creek downstream of the Dawson Canyon Road culvert).

17. Attached as Exhibit D are true and correct copies of representative frames from aerial videos that were taken during the drone flight. I uploaded all aerial videos described in this declaration from the drone's drive to a computer I control. If asked, I could also provide the Court with copies of the videos described above and testify to what they show

18. The nearest government-controlled rain gauge recorded the rainfall on April 10, 2020, to measure 1.74 inches.

19. Attached as Exhibit E is a true and correct copy of the rainfall data for the Corona 12.8 SE, CA US US1CARV0008 rain gauge measured between April 1, 2020 and April 13, 2020.

20. Pursuant to 28 U.S.C § 1746, I declare under penalty of perjury that to the best of my knowledge the foregoing is true and correct.

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Executed the 11 day of May , 2020 in Garden Grove,
California.

/s/ Raymond Hiemstra
Raymond Hiemstra

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Exhibit A

S.App.35

SWPPP BMP Map

Exhibit Location Map



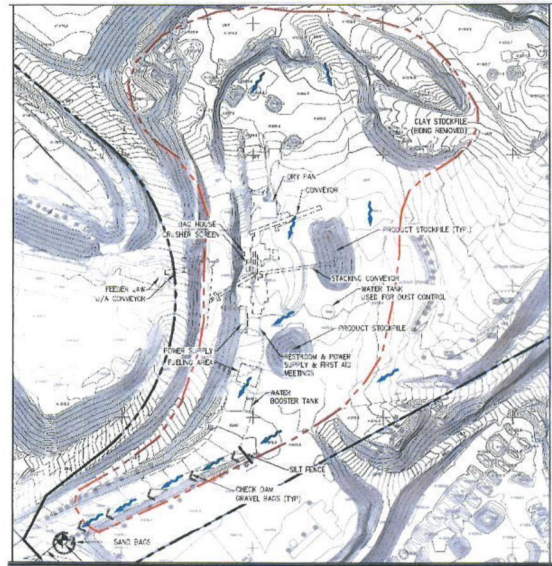
S.App.37

Rain Event Inspection Form

RAIN EVENT SHEET

Location	Facility 1
Address	Corona Clay 10600 Dawson Canyon Road Temescal Valley, CA 92883 WDID#33I025117
Number of Outfalls	2
Parameters to be sampled	No Samples Needed
NOTES Photo & Video inspection	Trace discharge from site to creek with video







Inspection Checklist

S.App.42

Question	Yes	No	N/A	Notes
Weather				
1. Is it raining?		X		
2. Is it dark outside?		X		
3. Is it night time?		X		
4. Can you see the facility?	X			
5. Is there discharge?	X			
6. Is the discharge coming from the sampling point?	X			
7. Are you able to collect a sample from the sampling point?			X	

S.App.43

8. Are employees present on site?		X		None seen
9. Does the business appear to be operating?	X			Gate open
10. Is water pooling inside of the facility?	X			
11. Is water pooling inside of the facility?	X			
12. Are straw wattles present?		X		
13. Do you notice any clay or other products running offsite?	X			
14. Are there outdoor storage barrels?				
15. If so, is there secondary containment?				
16. Are large trucks or machinery parked outside?				
17. Are there drains at the entrance/exits to the Facility?	X			
Storm Water				
18. Is the storm water running off the facility clear?		X		

S.App. 44

19.If not, describe its color:		Cloudy and Red		
20. Is there an odor to the water of air Describe		X		

Observations and Notes

Date of inspection: 4-10-20

Time of Inspection: 9:15 AM to 10 56 AM

Left at 8:30 to get to site. Arrived at 9:15 am
No raining good visibility. Observed runoff from
site to drain and drain to creek. Took photos and
video. Left at 10:56 got back at 11:45/ 78 miles
roundtrip

Name: Ray Hiemstra

Signature: Ray Hiemstra Date: 4-10-20

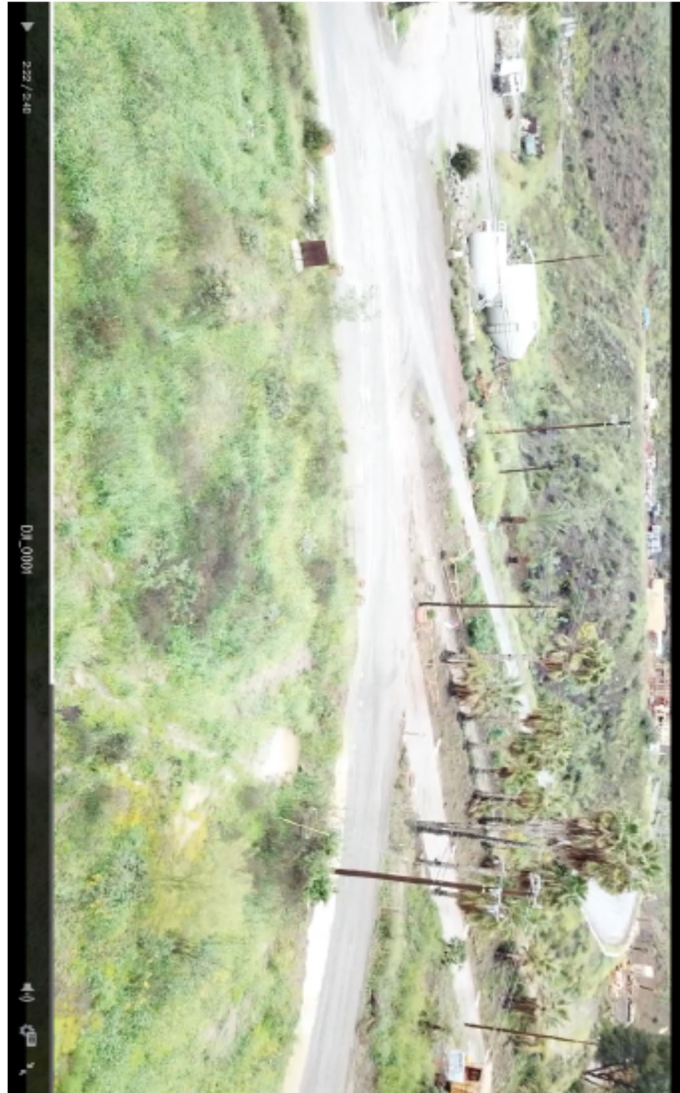
S.App. 46

Photo 1



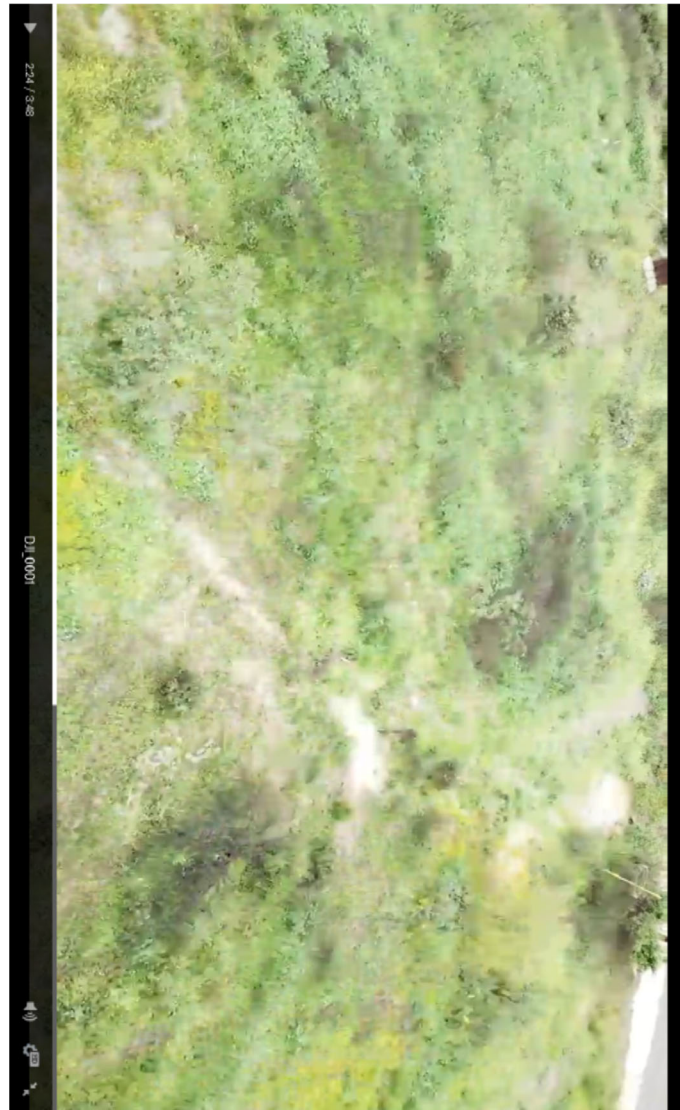
S.App. 47

Frame 1



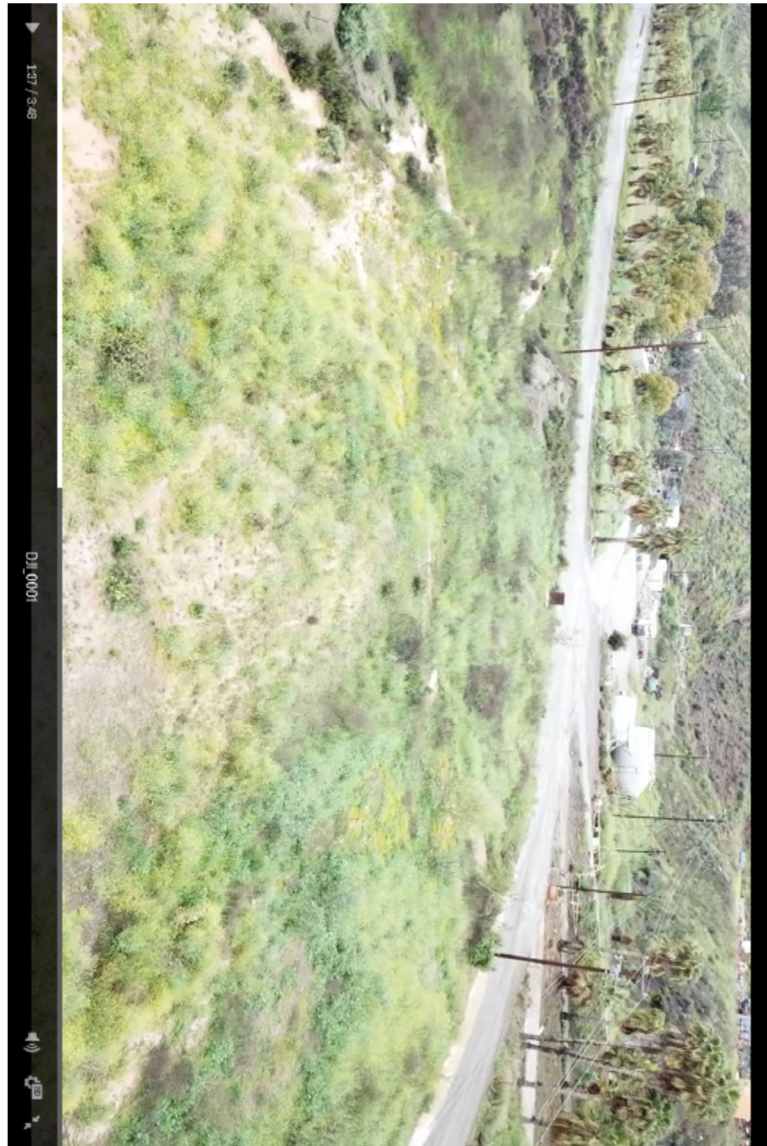
S.App.48

Frame 2



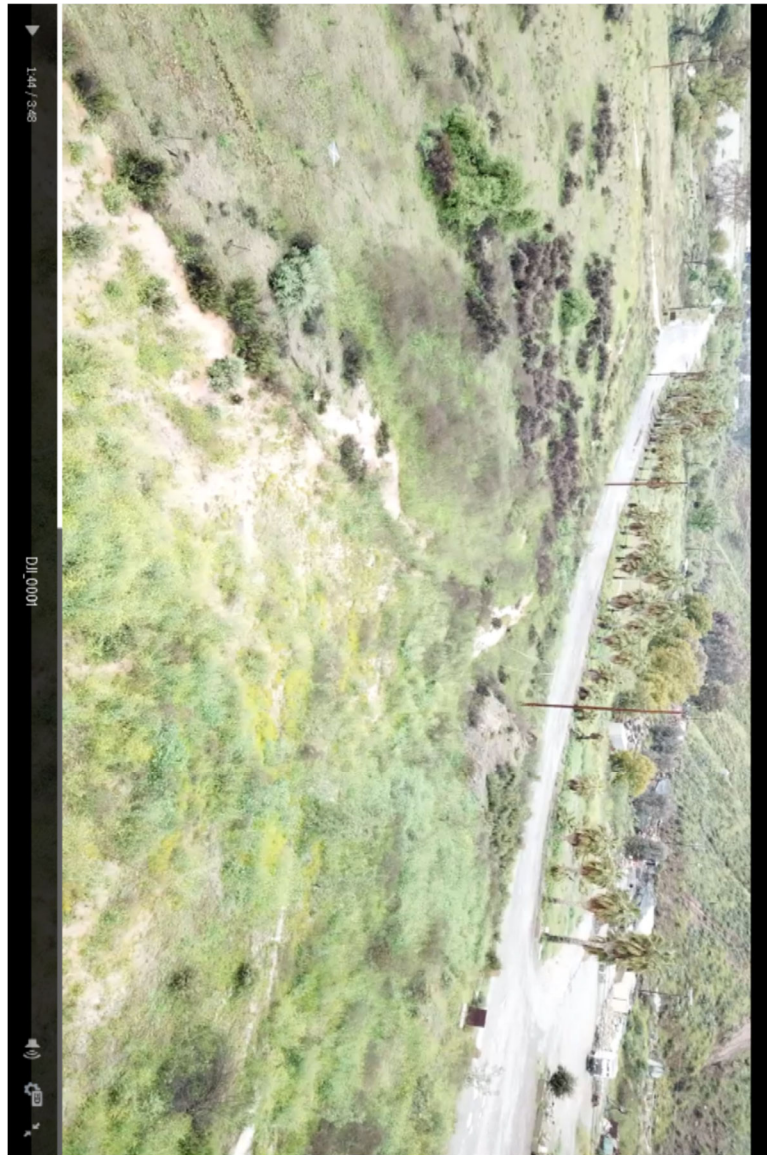
S.App.49

Frame 3



S.App.50

Frame 4

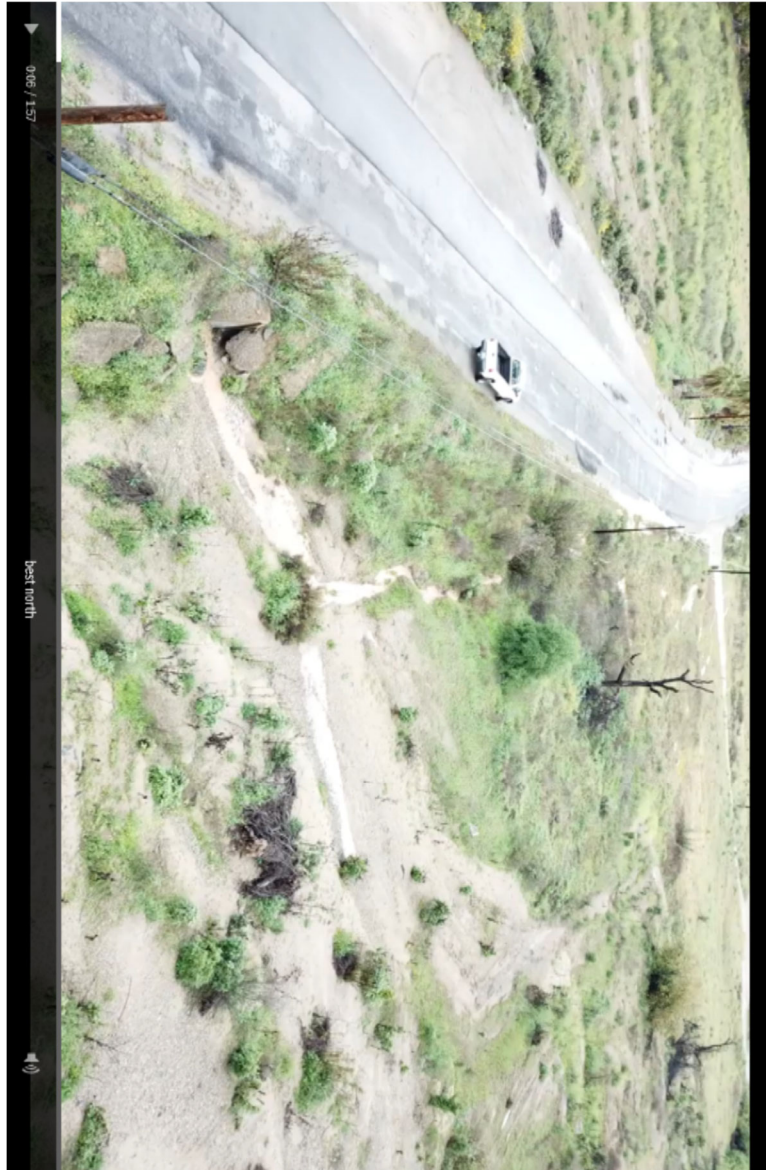


S.App.51

Exhibit C

S.App.52

Frame 1



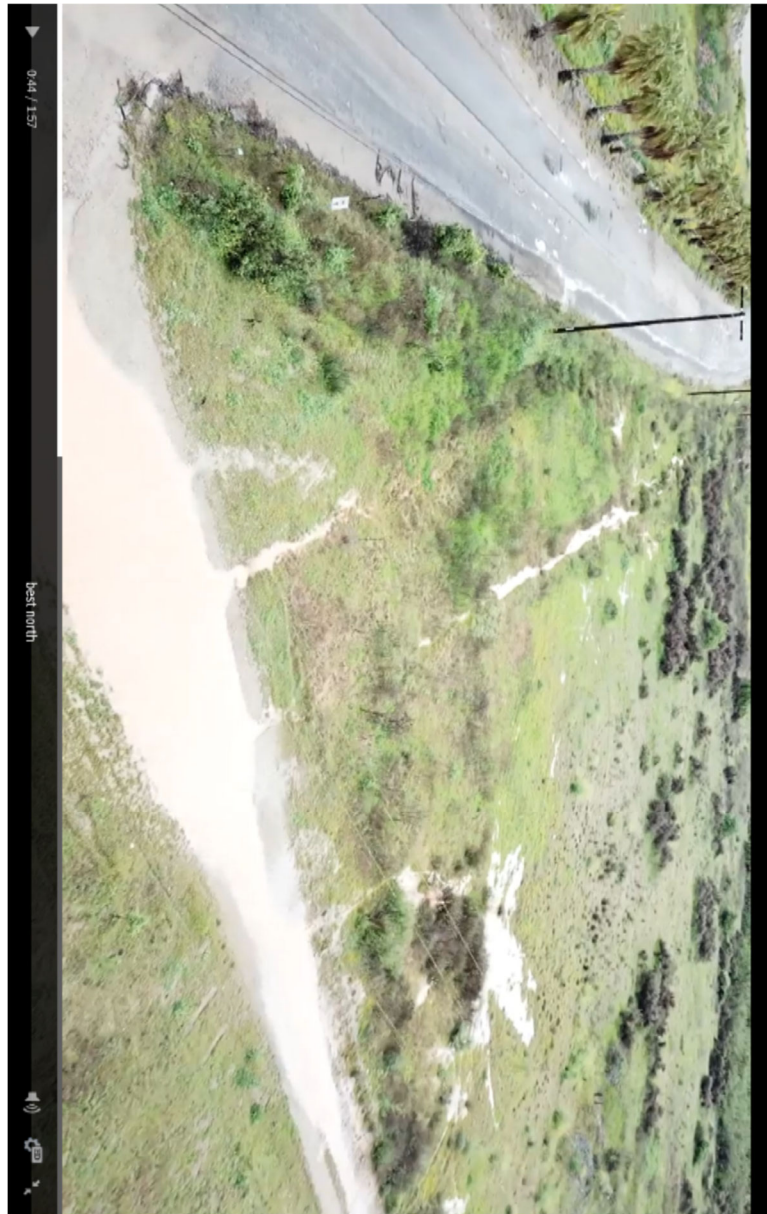
S.App.53

Frame 2



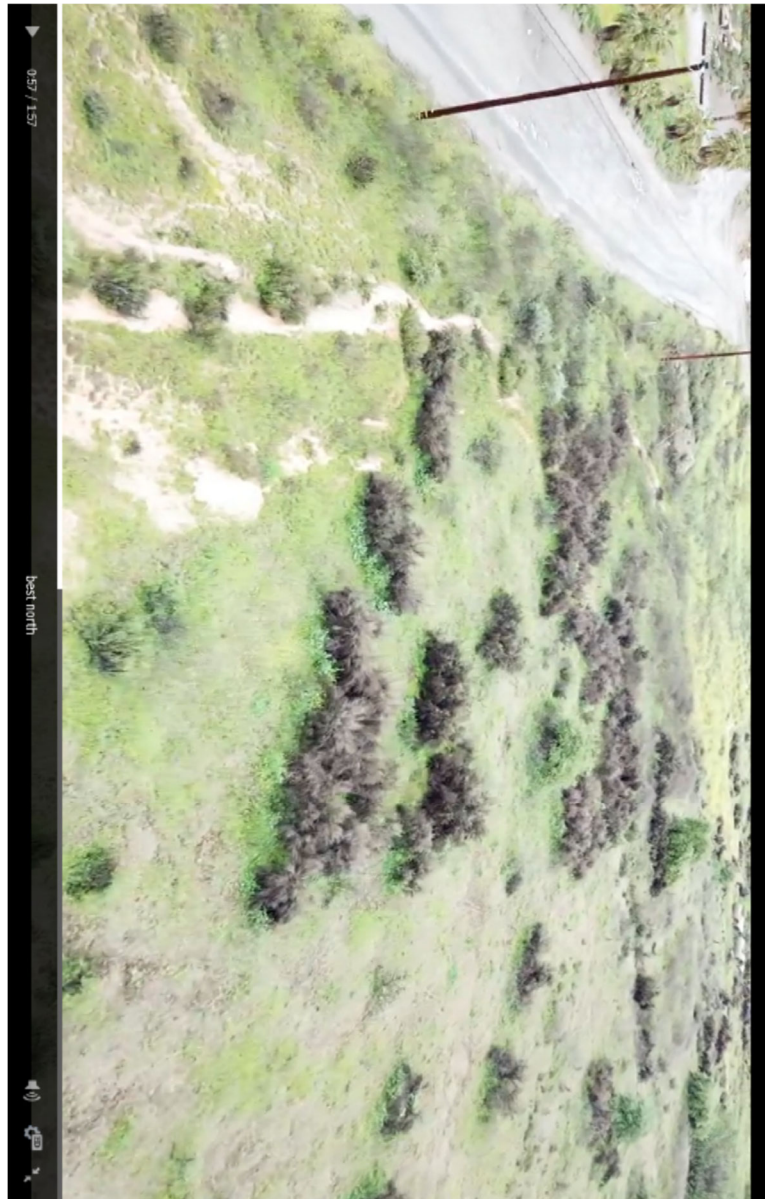
S.App.54

Frame 3



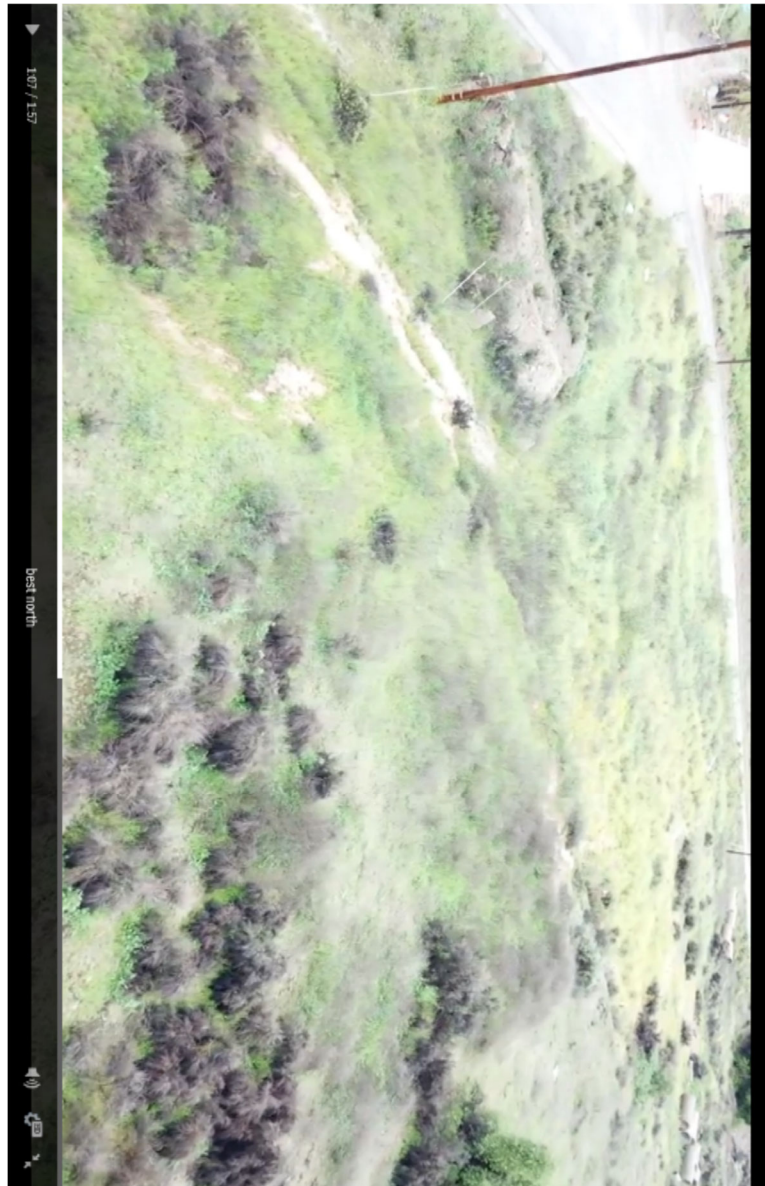
S.App.55

Frame 4



S.App.56

Frame 5



S.App.57

Frame 6

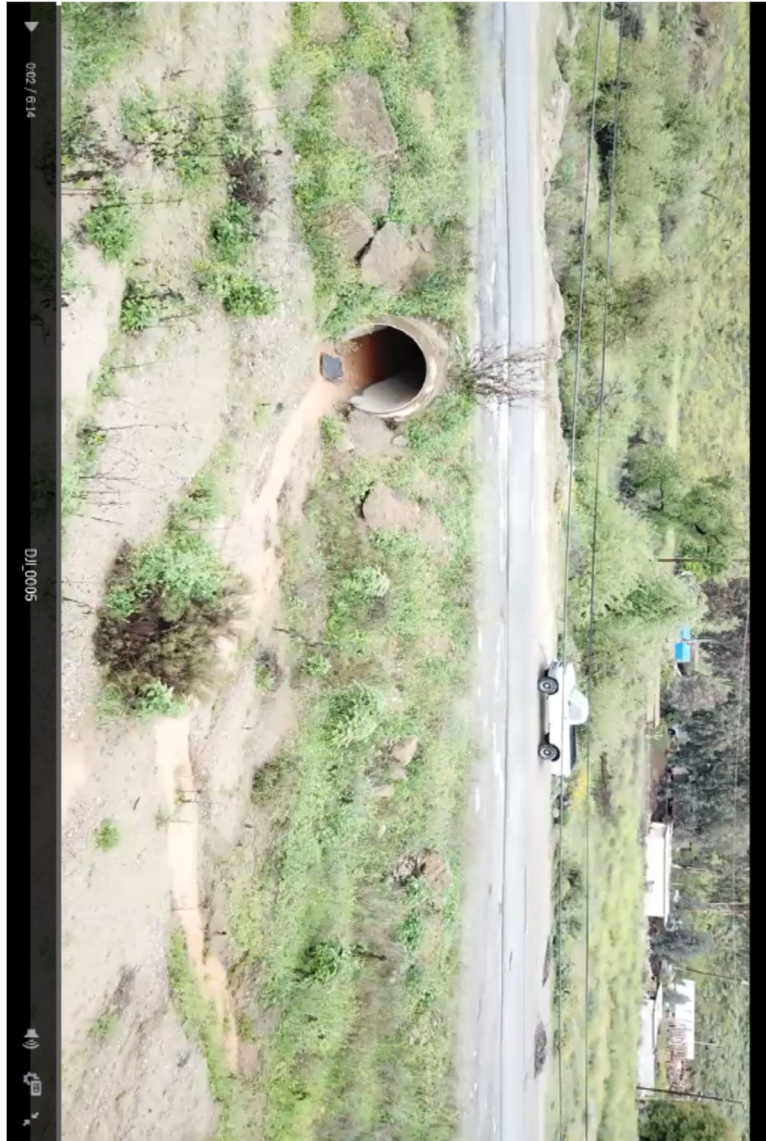


S.App.58

Exhibit D

S.App.59

Frame 1



S.App.60

Frame 2



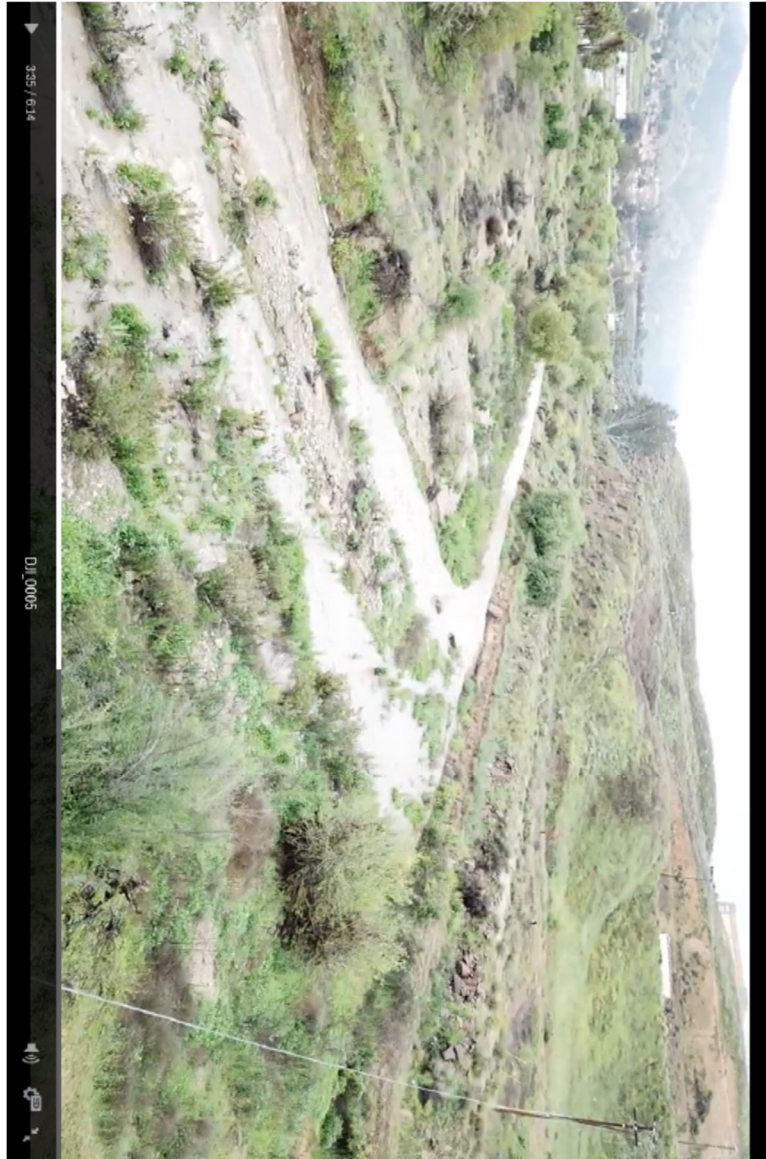
S.App.61

Frame 3



S.App.62

Frame 4



S.App.63

Exhibit E

S.App.64

U.S. Department of Commerce
National Oceanic & Atmospheric Administration
National Environmental Satellite, Data, and
Information Service
Current Location: Elev: 1404 ft. Lat: 33.7307 ° N
Lon: *117.4276 ° W
Station: **CORONA 12.8 SE, CA US 1CARV0008**

**RECORD OF CLIMATOLOGICAL
OBSERVATIONS**

These data are quality controlled and may not be
identical to the original observations.
Generated on 05/08/2020

National Centers for Environmental Information
151 Patton Avenue
Asheville, North Carolina 28801

Observation Time Temperature: Unknown
Observation Time Precipitation: Unknown

S.App.65

Year	Month	Day	Temperature (F)		At O B S E R V A T I O N
			24 Hrs. Ending at Observation Time		
			Max.	Min.	
2020	04	01			
2020	04	02			
2020	04	03			
2020	04	04			
2020	04	05			
2020	04	06			
2020	04	07			
2020	04	08			
2020	04	09			
2020	04	10			
2020	04	11			
2020	04	12			
2020	04	13			
2020	04	14			
2020	04	15			
2020	04	16			
2020	04	17			

S.App.66

2020	04	18			
2020	04	19			
2020	04	20			
2020	04	21			
2020	04	22			
2020	04	23			
2020	04	24			
2020	04	25			
2020	04	26			
2020	04	27			
2020	04	28			
2020	04	29			
2020	04	30			
Summary					

Precipitation				
24 Hour Amounts Ending at Observation Time				At Obs. Time
Rain Melted Snow, Etc. (in.)	Flag	Snow, Ice, Pellets, Hail (in)	Flag	Snow, Ice Pellets, Hail, Ice on Ground (in)
0.00		0.0		
0.00		0.0		
0.00		0.0		
0.00		0.0		
0.00		0.0		

S.App.67

0.10				
1.14				
0.43				
0.13				
1.74				
0.08				
0.00		0.0		
0.02				
3.64		0.00		

[illegible]

S.App.69

[illegible]

S.App.70

Empty, or blank, cells indicate that a data observation was not reported.

*Ground Cover: 1=Grass; 2=Fallow; 3=Bare Ground; 4=Brome grass; 5=Sod; 6=Straw mulch; 7=Grass much; 8-Bare muck; 0=Unknown

“S” This data value failed one of NCDC’s quality control tests.

“T” values in the Precipitation or Snow category above indicate a “trace” value was recorded.

“A” values in the Precipitation Flag or the Snow Flag column indicate a multiday total, accumulated since last measurement, is being used.

Data value inconsistency may be present due to rounding calculations during the conversion process from SI metric units to standard imperial units.

S.App. 71

SUPPLEMENTAL APPENDIX E

S.App.72

ACCO,(DFMx),DISCOVERY,MANADR,REOPENE
D,STAYED

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
(Southern Division – Santa Ana)
CIVIL DOCKET FOR CASE #:
8:18-cv-00333-DOC-DFM**

Inland Empire Waterkeeper et al v. Corona Clay
Company
Assigned to: Judge David O. Carter
Referred to: Magistrate Judge Douglas F. McCormick
Case in other court: Ninth Circuit, 20-55420
9th CCA, 20-55678
Cause: 33:1319 Clean Water Act

Date Filed: 02/27/2018
Jury Demand: Defendant
Nature of Suit: 893 Environmental Matters

Jurisdiction: Federal Question
Plaintiff
Inland Empire Waterkeeper
a project of Orange County Coastkeeper

represented by **Armita Amanda Ariano**
Orange County Coastkeeper
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Costa Mesa, CA 92626
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California Department of Toxic
Substances Control

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Cypress, CA 90630

714-484-5300

Email: colin.a.kelly1@gmail.com

TERMINATED: 07/01/2020

Jennifer Faye Novak

Law Office of Jennifer Novak

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719-850-1965

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Plaintiff

Orange County Coastkeeper
represented by **Armita Amanda Ariano**
(See above for address)

ATTORNEY TO BE NOTICED

Colin A Kelly

(See above for address)

TERMINATED: 07/01/2020

Jennifer Faye Novak

(See above for address)

ATTORNEY TO BE NOTICED

Lauren D Chase

(See above for address)

ATTORNEY TO BE NOTICED

Sarah J Spinuzzi

(See above for address)

ATTORNEY TO BE NOTICED

V.

Defendant

Corona Clay Co

a California Corporation

represented by **Rodric A Pacheco**

Pacheco and Neach PC

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S.App.75

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TERMINATED: 10/25/2019

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Date Filed	#	Docket Text
10/11/2019	<u>107</u>	AMENDED DOCUMENT filed by plaintiffs Inland Empire Waterkeeper, Orange County Coastkeeper
10/15/2019	<u>108</u>	PROPOSED JURY VERDICT filed by Plaintiff Inland Empire Waterkeeper, Orange County Coastkeeper. (Novak, Jennifer) (Entered: 10/15/2019)
10/15/2019	<u>109</u>	PROPOSED JURY INSTRUCTIONS (Annotated set) filed by Plaintiff Inland Empire Waterkeeper, Orange County Coastkeeper.. (Novak, Jennifer) (Entered: 10/15/2019)
10/15/2019	<u>110</u>	Proposed Voir Dire Questions filed by Plaintiff Inland Empire Waterkeeper, Orange County Coastkeeper.. (Novak, Jennifer) (Entered: 10/15/2019)
10/15/2019	<u>111</u>	TRIAL BRIEF filed by Plaintiff Inland Empire Waterkeeper, Orange County Coastkeeper.. (Novak, Jennifer) (Entered: 10/15/2019)
10/16/2019	<u>112</u>	PROPOSED JURY INSTRUCTIONS (Annotated set) filed by Plaintiff Inland Empire Waterkeeper, Orange County Coastkeeper.. (Novak, Jennifer) (Entered: 10/16/2019)