Via Email/US Postal

April 12, 2007

Ms. Tam Doduc
Chair and Hearing Officer
State Water Resources Control Board
1011 I Street, 25th Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100

Re: Perchlorate Contamination at 160-Acre Site in Rialto Area (SWRCB/OCC File A-1824)

Dear Ms. Doduc:

In accordance with the instructions set forth in the March 20, 2007 Addendum to Hearing Notice and Creation of Public Repository for Party Submissions in the Matter of Perchlorate Contamination at a 160-site in the Rialto Area, the 'Center for Community Action and Environmental Justice and Environment California' [hereafter referred to as 'the community groups'] designated party submits the following policy arguments regarding SWRCB/OCC File A-1824.

As delineated in our motion for designation as a party to the proceedings, The Center for Community Action and Environmental Justice and Environment California will not present witnesses but will limit our presentation to policy arguments and documents to remediation clauses contained on pages 29-33 of Draft Amended Cleanup and Abatement Order No. R8-2005-0053 contained in the Advocacy Team's pleadings submitted February 27, 2007

The 'community groups' respectfully request that the State Board Hearing Officer recommend that the State Board affirm an amended Cleanup and Abatement Order No. R8-2005-0053 (hereafter referred to as the Order), as described in this policy brief.

In including the remediation requirements in the proposed Order, staff members of the Santa Ana Regional Water Quality Control Board make significant progress toward the ultimate remediation of perchlorate in the groundwater basin. In affirming an amended Order, the State Water Board will assume a much-needed leadership role in addressing a pressing water quality problem in California.

The 'Community Groups' support many of the remediation provisions of Draft Order 2005-0053. After nearly ten years after the first discovery of perchlorate contamination in the Rialto-Colton sub-basin, we believe the Order takes the

largest step to date toward clean up and abatement of perchlorate contamination in the groundwater basin.

This said, in order to fully restore the waters of the sub-basin to health, maintain consistency with the 'State Water Resources Control Board Statement of Policy with Respect to Maintaining High Quality of Waters in California,' and ultimately clean up and abate perchlorate contamination, the 'Community Groups' respectfully request a series of amendments and additions to Draft Order 2005-0053 that will:

1) Fulfill statutory intent to require dischargers to provide replacement water supplies for all wells impacted by contamination, not simply wells with perchlorate detection levels above the California Public Health Goal;

2) Explicitly mandate that cleanup will occur to a background level of water quality.

3) Outline a clear, automatic process for enforcement, should a failure to meet all cleanup requirements, including applicable deadlines, occur.

4) Require the deposit of funds reimbursed for past cleanup costs to impacted public water purveyors in a' Community Perchlorate Reimbursement' account dedicated to reimbursement of residents.

As described below, we believe all elements of the 'Community Groups' request are fully supported by statute and State Water Resources Control Board and Regional Water Quality Control Board precedent.

SUMMARY OF POLICY ARGUMENTS

1) It is in the public interest to issue a cleanup and abatement order that will ensure long term and immediate cleanup measures to restore the groundwater of the Rialto-Colton sub-basin to health.

2) Statutory authority and regulatory precedent exist for key remediation requirements included in Draft Order 2005-0053.

3) The addition of provisions to Draft Order 2005-0053 that ensure cleanup is required to background levels, the provision of replacement water for all impacted wells, the deposit of funds reimbursed to impacted public water suppliers in an account dedicated to reimbursement of residents and strict enforcement provisions will significantly strengthen the proposed Order and ensure comprehensive cleanup and abatement of perchlorate discharge in the Rialto-Colton groundwater basin.

POLICY ARGUMENTS

1) It is in the public interest to issue a cleanup and abatement order that will ensure long term and immediate cleanup measures to restore the groundwater of the Rialto-Colton sub-basin to health.

a. Clean groundwater is an essential public resource.

The importance of clean groundwater is underscored in the Porter Cologne Water Quality Act and a range of State Water Board policies that prioritize the maintenance of high quality waters, frown upon any degradation of the state's water supplies and require full cleanup should contamination occur.

The weight given to maintaining the high quality of California's waters in statute and State Water Board policy reflects their importance. California's water resources are an inextricable part of the state's economic, environmental and cultural vitality and clean groundwater is essential to meet the agricultural, municipal, industrial and environmental water management objectives of the state. (2005 California Water Plan Update, EXHIBIT A). In addition to meeting local water supply goals such as providing community drinking and irrigation water, the use of local groundwater supplies reduce demand for inter-basin water imports from sources such as the State Water Project and the Colorado, thereby minimizing energy and environmental costs associated with such imports and helping the state to meet its overall water supply objectives.

When families draw water from backyard wells or water districts pump from local aquifers, they reflect a spirit of self-reliance and trust in natural resources that is an essential part of the cultural fabric of communities throughout the state.

b. Perchlorate is a hazardous substance present in drinking water supplies across California.

When contamination is found in local groundwater supplies, the spirit of self-reliance and trust engendered through reliance on local water sources is violated. In the case of perchlorate contamination, this violation is particularly severe. Local communities expect their drinking water sources to be free of rocket fuel ingredients.

Despite this expectation, however, perchlorate contaminates local groundwater supplies throughout the state. Monitoring data submitted by public and private water utilities to the California Department of Health Services (CA DHS) has detected the presence of perchlorate in 456 drinking water sources across the state. (EXHIBIT B)

Perchlorate is an ion most commonly manufactured in the Unites States as the primary ingredient of solid rocket propellant (EXHIBIT C) and is a "hazardous substance" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). Recent estimates of safety thresholds for perchlorate that assess potential health impacts of exposure on vulnerable populations include a 6 parts per billion public health goal issued by the California Office of Environmental Health Hazards Assessment and a 0.49 parts per billion reference dose issued by the Massachusetts Department of Environmental Protection.(EXHIBIT D)

To date, the only drinking water standard established in the United State is **2 parts per billion** promulgated by the State of Massachusetts on July 28, 2006. (EXHIBIT E). The Massachusetts Department of Environmental Protection summarizes the potential adverse health impacts of perchlorate exposure in drinking water as:

"Perchlorate inhibits iodide transport into the thyroid gland, which is hypothesized to be its primary mechanism of toxicity. The thyroid requires iodide to make thyroid hormones, which are essential for the normal growth and development of many systems in the body including the brain (MassDEP, 2004; U.S. Environmental Protection Agency, 2002a). Perchlorate is itself concentrated into breast milk in experimental animals and likely in humans as well; it may also be concentrated into thyroid cells, where it could impact other cellular functions. It may also interfere with iodide transport into breast milk, and interfere with a second iodide transporter found in the thyroid. Although not well understood, perchlorate also promotes the discharge of accumulated iodide from the thyroid gland at high doses. These effects of perchlorate, whether working in concert or independently, may, at sufficient doses, disrupt normal thyroid function and hormone dynamics, including altered synthesis of essential thyroid hormones (thyroxin (T4)and triiodothyronine (T3)).

Based on many lines of evidence premature infants and newborns are particularly at risk from perchlorate toxicity. Their sensitivity is attributable to the development of various organs, especially the brain, which occurs during fetal growth and early childhood. Appropriate levels of thyroid hormones are critical to these processes.

During the fetal and newborn periods the thyroid gland is also incompletely developed, increasing sensitivity to toxicants that disrupt the thyroid functions available. Pregnancy itself stresses maternal thyroid function increasing risks to the fetus. To further compound matters, breast milk is the sole source of the iodide a newborn needs to supply its capacity to synthesize thyroid hormones. Data suggests that maternal exposure to perchlorate may reduce iodide levels in breast milk, and thereby may increase neonatal sensitivity to perchlorate. This risk is further compounded by the fact that perchlorate is itself secreted, and may be concentrated, into the milk, presenting a double insult to the newborn's thyroid (Kirk et al. 2005)."

Impacted counties include Los Angeles, San Bernardino, Riverside, Santa Clara, San Diego, Orange, Sacramento, Imperial and Ventura counties. [Exhibit F]

c. Perchlorate pollutes the groundwater supplies of the Rialto-Colton Sub basin

The highest concentration of perchlorate detected in a California drinking water source as recorded by the California Department of Health Services is in West Valley Water District Well # 22 at 820 parts per billion [EXHIBIT G].

The detection of perchlorate pollution in the groundwater supplies of the Rialto-Colton groundwater basin is described in a July 14, 2003, U.S. Environmental Protection Agency issued an Administrative Order for Remedial Investigation that directs Emhart Industries Inc. and Goodrich Corporation to conduct a Remedial Investigation for hazardous substances, pollutants and contaminants in and adjacent to a 160 acre area formerly operated by West Coast Loading Corporation and B.F. Goodrich in Rialto, California [EXHIBIT H]. The order states that perchlorate pollutes the groundwater supplies of the Rialto-Colton groundwater basin in issuing the following 'Findings of Fact':

"5. The Site is located in the city of Rialto, California in western San Bernardino County. The Site is bounded by Casa Grande Park Avenue on the north, Locust Avenue on the east, an extension of Alder Avenue on the west, and an extension of Summit Avenue on the south. The Site lies within the Rialto-Colton groundwater basin ("the Basin").

6. The Basin is an important source of water to western San Bernardino County residents. From 1945 to 1994, water utilities pumped an average of 4.8 billion gallons of groundwater from the basin per year. Numerous municipal water supply wells draw water directly from the basin.

7. Immediately downgradient of the Site is an area of groundwater contamination more than four miles long which extends from the City of Rialto into the City of Colton, and is depicted generally on the map attached as Attachment 2. The full extent of the contamination is not known. Known contaminants in the groundwater include perchlorate and trichloroethylene (TCE). Additional groundwater investigation is needed to define the extent of contamination and determine whether other contaminants are present.

24. Perchlorate and/or TCE have been detected in and forced the closure of a number of municipal water supply wells downgradient of the Site, These wells previously had the capacity to produce 11 thousands of gallons per minute of potable water. Additional wells are at risk of contamination.

25. At the closest well downgradient of the Site, a municipal water supply well in the City of Rialto owned by West Valley Water District (Well #22), perchlorate concentrations have been as high 16 as 1,000 µg/L...

26. Perchlorate has also been detected at wells -owned by the City of Rialto downgradient of the Site. In recent samples (June 22 '2003), perchlorate concentrations were 46 µg/L at Rialto Well #2, 23 and 37 µg/L at Rialto Well #6... Perchlorate has also been detected at three wells owned by the City of Colton downgradient of the Site at concentrations exceeding the State of California action level of 4 µg/L in drinking water supplies.

28. Groundwater contaminated with perchlorate and TCE continues to spread, thereby threatening additional domestic water supply wells which may present an imminent and substantial endangerment to human health or the environment."

Furthermore, mandated pollution tests conducted by Goodrich Corporation and submitted to state water officials in July 2006 revealed elevated levels of contamination in well PW-2 of 10,000 parts per billion April 2006. [EXHIBIT I]

d. The immediate issuance of a cleanup and abatement order to Cleanup of perchlorate contamination in the Rialto-Colton Sub basin is in the public interest

The detection of perchlorate contamination in the Rialto Colton groundwater basin was first recorded by the California Department of Health Services in 1997. Nearly ten years later, the hazardous substance persists in the Rialto Colton groundwater basin.

Because the presence of hazardous perchlorate discharges degrades water quality in the Rialto-Colton groundwater basin, it is in the public interest to require clean up and remediation of the contamination. The benefits of such groundwater remediation are outlined in the 2005 California Water Plan update, which states that groundwater remediation avoids several costs of losing an aquifer as a water supply. These avoided costs include: The cost of an alternative water supply; Long-term foregone profits and taxes from businesses and activities that decide not to locate in the basin because of water shortages; and avoidance of increased remediation costs caused by migration of contamination [EXHIBIT J].

By including the remediation requirements in the proposed Order, staff members of the Santa Ana Regional Water Quality Control Board make significant progress toward the ultimate remediation of perchlorate in the groundwater basin. In affirming this proposed order, the State Water Board will assume a leadership role in addressing the pressing issue of perchlorate contamination in California water supplies and respond to a high level of public investment in the cleanup of the Rialto Colton groundwater basin.

The presence of perchlorate contamination has drastically impacted the residents of Rialto. It is estimated that residents of Rialto have paid more than $7.2 million in perchlorate surcharges. [EXHIBIT K]

The level of public investment within the Inland Empire in the remediation of perchlorate contamination in the Rialto Colton groundwater basin is reflected in extensive coverage in local media. This coverage includes multiple editorials that call for prompt remediation of perchlorate contamination and the issuance of a cleanup and abatement order [EXHIBIT L].

Public support for such an order is also extensive. Since November 2005, the Center for Community Action and Environmental Justice has conducted approximately 2,800 conversations with residents about contamination in the region and educated approximately 370 residents at local community meetings regarding the presence and impact of perchlorate contamination in the region.

In part due to public outreach efforts conducted by the Center for Community Action and Environmental Justice and Environment California Research & Policy Center, nearly 2,000 comments have been submitted to California Regional Water Quality Control Board, Santa Ana Region in support of an immediate cleanup and abatement order that contains the remediation requirements necessary to ensure the full cleanup of perchlorate pollution in the basin. An approximate additional three thousand comments to the Santa Ana Regional Water Quality Control Board in support of such an order are included in our submission [EXHIBIT M].

2) Statutory authority and regulatory precedent exist for key remediation requirements included in Draft Order 2005-0053.

The 'Community Groups' support many of the remediation provisions of Draft Order 2005-0053. After nearly ten years after the first discovery of perchlorate contamination in the Rialto-Colton subbasin, we believe the Order takes the largest step to date toward clean up and abatement of perchlorate contamination in the region.

Statutory authority and regulatory precedent exists for several key remediation requirements, including:

a. Cleanup should be conducted jointly and severally by multiple responsible parties.

Enshrined in federal superfund law, 'Joint and several liability' holds that multiple parties can be held jointly responsible for full cleanup of a contaminated site, after which individual dischargers can then apportion individual responsibility amongst themselves. 'Joint and several liability' is essential to effective cleanup

operations because it means that communities are not left contaminated with hazardous pollution simply because one or more additional dischargers are also responsible for contamination. In addition, joint and several liability is the easiest and most accurate method of apportioning cleanup responsibility. [EXHIBIT N]. A discharger held 'jointly and severally' responsible for a cleanup at a site such as the Rialto Colton groundwater basin is entitled to pursue full cost recovery from other responsible parties through trials that determine each wrongdoer's proportion of fault.

In addition to federal policy precedent, California Regional Water Quality Control Board orders, State Water Board policy and previously issued water quality orders also support the issuance of cleanup and abatement orders that hold dischargers jointly and severally liable for cleanup.

Order No. R8-2004,0042, issued on April 30, 2004 by the California Regional Water Quality Control Board, required that "Whittaker Corporation shall investigate and, as appropriate, cleanup and abate the effects of the discharge of waste at Lots 5 and 6 and Pyro Spectaculars, Inc., Thomas O. Peters, and the Thomas O. Peters Revocable Trust shall investigate and, as appropriate cleanup and abate the effects of the discharge of waste at Lots 5,6, and 7, at the property located at 2298 West Stonehurst Drive, Rialto, **jointly and severally**, as follows.."

State Water Resources Control Board Resolution 92-49, "POLICIES AND PROCEDURES FOR INVESTIGATION AND CLEANUP AND ABATEMENT OF DISCHARGES UNDER WATER CODE SECTION 13304," states "Where necessary to protect water quality, [regional boards may] name other persons as dischargers, to the extent permitted by law." This authority was upheld by the State Water Board in WQ 89-8 by the State Water Resources Control Board that upheld Order 88-10 issued by the Santa Ana Regional Water Board that multiple parties clean up a local PCE-contaminated site.

Multiple cleanup and abatement orders issued by the State Water Board - WQ 85-7, 87-1, 89-13, 90-2, 93-9 and 93-14 - set precedent for naming persons in orders if there is a reasonable basis for doing so. Water quality orders 85-7 and 86-16 establish regulatory precedent to name all persons who have caused or permitted a discharge at a site. In issuing cleanup and abatement orders, WQ 86-7, 88-2 and 96-2 establish precedent that generally the Regional Water Quality Control Board should not try to apportion liability between parties.

b. The requirement to reimburse local agencies and ultimately residents for cleanup costs expended

Statutory authority to reimburse local water agencies for cleanup costs expended to date is provided in §13304 of the California Water Code, which states that

"If the waste is cleaned up or the effects of the waste are abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of the waste within the meaning of subdivision (a), are liable to that governmental agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial action. The amount of the costs is recoverable in a civil action by, and paid to, the governmental agency and the state board to the extent of the latter's contribution to the cleanup costs from the State Water Pollution Cleanup and Abatement Account or other available funds."

c. Affirm following unaltered language contained in Draft Order 2005-0053

In light of the statutory authority and regulatory precedent cited above, as well as additional statutory authority included in the California Water Code, the community groups respectfully request that the following elements of Draft Order 2005-0053 are affirmed unaltered by the Hearing Officer and State Water Resources Control Board.

(i) Page 29, Remediation Requirement 5.

By xxxx, submit a conceptual work plan and time schedule for performing additional soil and groundwater investigations at the Property. The work plan shall propose work sufficient to define the lateral and vertical extent of the perchlorate and TCE at the Property that is discharging, has been discharged, or threatens to be discharged, by the plan. The interim remedial action plan shall address actions needed to be taken to cleanup or abate soil and groundwater at or adjacent to the Property, so that the Property does not pose a threat to beneficial uses of groundwater downgradient of the Property. The work plan for performing additional soil and groundwater investigations at the Property, and any subsequent work plans necessary to sufficiently define the lateral and vertical extent of the perchlorate and TCE for the purpose of developing an interim remedial action plan, is subjected to the approval of the Executive Officer, and shall be implemented in accordance with a time schedule approved by the Executive Officer.

(ii) Page 30, Remediation Requirement 6

Within 90 days after the Executive Officer determines the lateral and vertical extent of perchlorate and TCE at the Property has been sufficiently defined, submit an interim remedial action plan, including an implementation schedule, to cleanup or abate soil and groundwater at or adjacent to the Property, so the Property does not pose a threat to beneficial uses of groundwater downgradient

of the Property. The interim redial action plan and schedule shall be subject to the approval of the Executive Officer. The Dischargers shall implement the interim remedial action plan, as approved by the Executive Officer.

(iii) Page 31, Remediation Requirement 7

By xxxx, submit a work plan and time schedule to fully define the lateral and vertical extent of the perchlorate and TCE downgradient of the Property that is discharging, has been discharged, or threatens to be discharged, by the Dischargers. The work plan, subject to the approval of the Executive Officer, shall be implemented in accordance with a time schedule approved by the Executive Officer.

(iv) Page 31, Remediation Requirement 8

Prepare and implement additional work plans that the Executive Officer deems necessary to sufficiently characterize the lateral and vertical extent of perchlorate and TCE downgradient of the Property that is discharging, has been discharged, or threatens to be discharged, by the Dischargers. The work plans shall be implemented in accordance with time schedules approved by the Executive Officer.

(v) Page 32, Remediation Requirement 11

The work conducted under this Order shall be performed in a manner consistent with the National Oil and Hazardous Substance Pollution Contingency Plan, Title 42, United States Code, Section 9605 and Code of Federal Regulations, Title 40, Part 300 ("NCP"). The Regional Board agrees to assist the Dischargers with activities that may be required to demonstrate consistency with the NCP.

(vi) Page 32, Remediation Requirement 12

All feasibility studies, interim remedial action plans and remedial action plans submitted in accordance with this Order shall be subject to a public meeting and a public comment period prior to being approved by the Executive Officer.

3) **The addition of provisions to Draft Order 2005-0053 that ensure cleanup is required to background levels, the provision of replacement water for all impacted wells, the deposit of funds reimbursed to impacted public water suppliers in an account dedicated to reimbursement of residents and strict enforcement provisions will significantly strengthen the proposed Order and ensure comprehensive cleanup and abatement of perchlorate discharge in the Rialto-Colton groundwater basin.**

In order to fully restore the waters of the sub basin to health, maintain consistency with the 'State Water Resources Control Board Statement of Policy

with Respect to Maintaining High Quality of Waters in California,' and ultimately cleanup and abate perchlorate contamination, the 'Community Groups' respectfully request a series of amendments and additions to Draft Order 2005-0053 that will:

1) Explicitly mandate that cleanup will occur to a background level of water quality.

2) Fulfill statutory intent to require dischargers to provide replacement water supplies for all wells impacted by contamination, not simply wells with perchlorate detection levels above the California Public Health Goal;

3) Outline a clear, automatic process for enforcement, should a failure to meet all cleanup requirements, including applicable deadlines, occur.

5) Require the deposit of funds reimbursed for past cleanup costs to impacted public water purveyors in a' Community Perchlorate Reimbursement' account dedicated to reimbursement of residents.

1) Explicitly mandate that cleanup will occur to a background level of water quality.

Resolution 92-49, otherwise known as "POLICIES AND PROCEDURES FOR INVESTIGATION AND CLEANUP AND ABATEMENT OF DISCHARGES UNDER WATER CODE SECTION 13304" states that cleanup requirements issued by the California Regional Water Quality Control Boards and the State Water Resources Control Board "Ensure that dischargers are required to clean up and abate the effects of discharges in a manner that promotes attainment of either background water quality, or the best water quality which is reasonable if background levels of water quality cannot be restored, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible;"

To date, no studies have been conducted by potentially responsible parties to indicate that background levels of perchlorate levels in the Rialto Colton groundwater basin are anything but zero. As such, in keeping with Resolution 92-49, the cleanup threshold in the proposed order should be established at background level until such a level is proven to be higher than zero or technically feasible to attain.

Furthermore, as demonstrated by the 2 parts per billion cleanup threshold established by the Massachusetts Department of Environmental Protection, a cleanup level well below the California Public Health Goal of six parts per billion is technically achievable.

2) **Fulfill statutory intent to require dischargers to provide replacement water supplies for all wells impacted by contamination, not simply wells with perchlorate detection levels above the California Public Health Goal;**

As established in water quality order 2005-007, the California State Water Resources Control Board and Regional Water Quality Control Boards have broad authority to require replacement water as part of a cleanup plan.

Adopted by the California legislature in 2002 and sponsored by Environment California, SB 922 (Soto), added explicit language in the California Water Code that provides the clear statutory authority to require the provision of uninterrupted replacement water supplies is outlined in §13304 (a), which states "*A cleanup and abatement order issued by the state board or a regional board may require the provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or private well owner,*"

By including adopting this language in §13304 of the California Water Code, the California Legislature intended that replacement water be considered a cleanup requirement. As such, the standards for what water supplies are eligible for replacement water are the same standards that trigger other cleanup requirements – the presence of *any* hazardous discharge. Whether a well is impacted or not is guided by the state's non-degradation policy which authorizes cleanup of contamination in the presence of any amount of hazardous discharge.

Contained in the a completely separate statute – the Health and Safety Code - public health goals and maximum contaminant levels fulfill regulatory function separate from establishing cleanup requirements. Public health goal and maximum contaminant levels established by the California Environmental Protection Agency and the California Department of Health Services respectively establish minimum water quality thresholds that must be met by water providers and do not define whether a well is impacted by contamination. These thresholds *are not applicable* to cleanup or abatement requirements issued to parties responsible for the discharge of hazardous substance to California waters.

In fact, resolution 92-49 states that "The Porter-Cologne Water Quality Control Act allows Regional Water Boards to impose more stringent requirements on discharges of waste than any statewide requirements promulgated by the State Water Board (e.g., in this Policy) or than water quality objectives established in statewide or regional water quality control plans as needed to protect water quality and to reflect regional and site-specific conditions;

3) **Outline a clear, automatic process for enforcement, should a failure to meet all cleanup requirements, including applicable deadlines, occur.**

The presence of perchlorate contamination in the Rialto Colton groundwater basin was first discovered by local water providers in 1997. Today, a decade later, a comprehensive cleanup effort has yet to begin. Given the extensive delay in issuing a cleanup and abatement order against parties responsible for discharge of perchlorate in the groundwater basin, it is essential to ensure that all milestones and timelines established in Cleanup and Abatement order are met. As such, the 'Community Groups' request the addition of the following language in Draft Order 2005-0053.

"If a Discharger fails to meet a requirement for cleanup and abatement contained in this order, the discharger will be subject to an Administrative Civil Liability of $10,000 per day, as authorized under §13308. The discharger in violation may request a hearing to challenge the issuance of this penalty, at which the amount of the Administrative Penalty may be revised."

The authority for this cleanup requirement is included in §13308 of the California Water Code, which states:

13308. (a) If the regional board determines there is a threatened or continuing violation of any cleanup or abatement order, cease and desist order, or any order issued under Section 13267 or 13383, the regional board may issue an order establishing a time schedule and prescribing a civil penalty which shall become due if compliance is not achieved in accordance with that time schedule.

(b) The amount of the civil penalty shall be based upon the amount reasonably necessary to achieve compliance, and may not include any amount intended to punish or redress previous violations. The amount of the penalty may not exceed ten thousand dollars ($10,000) for each day in which the violation occurs.

(c) Any person who fails to achieve compliance in accordance with the schedule established in an order issued pursuant to subdivision (a) shall be liable civilly in an amount not to exceed the amount prescribed by the order. The regional board may impose the penalty administratively in accordance with Article 2.5 (commencing with Section 13323). If the regional board imposes the penalty in an amount less than the amount prescribed in the order issued pursuant to subdivision (a), the regional board shall make express findings setting forth the reasons for its action based on the specific factors required to be considered pursuant to Section 13327.

(d) The state board may exercise the powers of a regional board under this section if the violation or threatened violation involves requirements prescribed by an order issued by the state board.

(e) Funds collected pursuant to this section shall be deposited in the State Water Pollution Cleanup and Abatement Account.

(f) Civil liability may be imposed pursuant to this section only if civil liability is not imposed pursuant to Section 13261, 13265, 13268, 13350, or 13385.

4) **Require the deposit of funds reimbursed for past cleanup costs to impacted public water purveyors in a' Community Perchlorate Reimbursement' account dedicated to reimbursement of residents.**

Given the unfair burden placed on Rialto residents to pay elevated water utility rates that in part fund cleanup efforts that should be borne by dischargers, we respectfully request that language is inserted into Draft Order 2005-003 that requires that reimbursement funds for past costs incurred in cleaning impacted water supplies recovered by public water purveyors from responsible parties are deposited in a 'Community Perchlorate Reimbursement Fund' in order to ensure timely and transparent reimbursement to impacted residents. Such language should be inserted into Page 32, in remediation requirement 13 and should read:

"Funds reimbursed to the West Valley Water District and the Cities of Rialto and Colton for past reasonable costs incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial action, in accordance with Section 13304(c)(1) of the California Water Code shall be placed in dedicated "Community Perchlorate Reimbursement" accounts established by impacted water purveyors for distribution to affected residents.

5) **Consistent with the recommendations outlined above and in order to fully clean up and abate the discharge of perchlorate into the Rialto-Colton Sub groundwater basin restore the waters of the sub-basin to health, maintain consistency with the 'State Water Resources Control Board Statement of Policy with Respect to Maintaining High Quality of Waters in California,' and ultimately cleanup and abate perchlorate contamination, the 'Community Groups' respectfully request the following series of amendments and additions to Draft Order 2005-0053:**

(i) Page 29, Remediation Requirement 1 (Amendments red-lined)

In order to cleanup and abate the impacts of the discharge of perchlorate into the waters of the Rialto-Colton subbasin, the community groups respectfully request that the following elements of Draft Order 2005-0053 are amended:

i. By March, 2007, submit a proposed water replacement plan, including a time schedule for implementation, for the provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to the West Valley Water District and the City of Rialto. The water replacement plan shall address all wells impacted by dischargers named in Draft Order 2005-0053. The replacement water shall meet all

applicable federal, state, and local drinking water standards, and shall have comparable quality to that pumped by the public water supply system to the approval of the Executive Officer. Following approval by the Executive Officer, the Dischargers shall implement the water replacement plan.

(ii) Delete Page 29, Remediation Requirement 2

(iii) Delete Page 30, Remediation Requirement 3

(iii) Delete Page 30, Remediation Requirement 4

(iv) Page 30, Remediation Requirement 5

By February, 2007, submit a conceptual work plan and time schedule for performing additional soil and groundwater investigations at the Property. The work plan shall propose work sufficient to define the lateral and vertical extent of the perchlorate and TCE at the Property that is discharging, has been discharged, or threatens to be discharged, by the Dischargers, for the purpose of developing an interim remedial action plan. The interim remedial action plan shall address actions needed to be taken to cleanup or abate soil and groundwater at or adjacent to the Property, so that the Property does not pose a threat to beneficial uses of groundwater downgradient of the Property and that cleanup achieves background levels of water quality. The work plan for performing additional soil and groundwater investigations at the Property, and any subsequent work plans necessary to sufficiently define the lateral and vertical extent of the perchlorate and TCE for the purpose of developing an interim remedial action plan, is subject to the approval of the Executive Officer, and shall be implemented in accordance with a time schedule approved by the Executive Officer.

(v) Page 30, Remediation Requirement 6 (Amendments red-lined)

Within 90 days after the Executive Officer determines that the lateral and vertical extent of perchlorate and TCE at the Property has been sufficiently defined, submit an interim remedial action plan, including an implementation schedule, to cleanup or abate soil and groundwater at or adjacent to the Property, so the Property does not pose a threat to beneficial uses of groundwater downgradient of the Property and so that cleanup achieves background levels of water quality. The interim remedial action plan and schedule shall be subject to the approval of the Executive Officer. The Dischargers shall implement the interim remedial action plan, as approved by the Executive Officer.

(vi) Page 31 Remediation Requirement 8

Within 90 days of the Executive Officer's approval of the feasibility study, submit a remedial action plan, including an implementation schedule, to cleanup or abate the effects of the perchlorate and TCE that is discharging, has been discharged, or threatens to be discharged, by the Dischargers. The remedial plan shall ensure that cleanup achieves background levels of water quality. The remedial action plan and schedule shall be subject to the approval of the Executive Officer. The Dischargers shall implement the remedial action plan as approved by the Executive Officer.

(vii) Page 31 Remediation Requirement 9

After the Executive Officer determines that the lateral and vertical extent of perchlorate and TCE downgradient of the Property that is discharging, has been discharged, or threatens to be discharged by the Dischargers has been sufficiently defined, submit a feasibility study that evaluates effective long term remedial alternatives, and includes a recommended long term remedial alternative. In accordance with State Water Resources Control Board Resolution No. 92-49, the recommended long term remedial alternative shall clean up and abate the effects of discharges in a manner that promotes attainment of either background water quality, or the best water quality which is reasonable if background levels of water quality cannot be restored, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible. The feasibility plan shall also ensure that cleanup achieves background levels of water quality. The feasibility study shall be submitted within 150 days of the Executive Officer's notification to the Dischargers that the definition of the extent of perchlorate and TCE is sufficiently complete. The feasibility study shall be subject to the approval of the Executive Officer.

(viii) Page 31, Remediation Requirement 10

Within 90 days of the Executive Officer's approval of the feasibility study, submit a remedial action plan, including an implementation schedule, to cleanup or abate the effects of the perchlorate and TCE that is discharging, has been discharged, or threatens to be discharged, by the Dischargers. The remedial action plan shall ensure that cleanup achieves background levels of water quality. The remedial action plan and schedule shall be subject to the approval of the Executive Officer. The Dischargers shall implement the remedial action plan as approved by the Executive Officer.

(ix) Add to Page 31, Remedial Requirement 11

If a Discharger fails to meet a requirement for cleanup and abatement contained in this order, the discharger will be subject to an Administrative Civil Liability of $10,000 per day, as authorized under §13308. The discharger in violation may request a hearing to challenge the issuance of this penalty, at which the amount of the Administrative Penalty may be revised.

(x) Add to Page 32, Remediation Requirement 13

The Dischargers shall reimburse the West Valley Water District and the Cities of Rialto and Colton for past and ongoing reasonable costs incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial action, in accordance with Section 13304(c)(1) of the California Water Code, as follows:

Within 30 days after notification by the Executive Officer that the West Valley Water District, the City of Rialto, the City of Colton or the State Water Resources Control Board have provided past costs incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial actions, the Dischargers shall submit a Reimbursement Plan for Past Costs for that agency, for the approval of the Executive Officer. The Reimbursement Plan for Past Costs shall include a schedule for providing complete cost reimbursement for past costs for that agency within 90 days from the Executive Officer's approval of the Reimbursement Plan for Past Costs.

By February __, 2007, the Dischargers shall submit a Reimbursement Plan for Ongoing Costs for the approval of the Executive Officer. The Reimbursement Plan for Ongoing Costs shall include a plan and schedule for providing ongoing cost reimbursement to the West Valley Water District and the Cities of Rialto and Colton for costs incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial actions. The Reimbursement Plan for Ongoing Costs shall be implemented following the approval of the Executive Officer.

"Funds reimbursed to the West Valley Water District and the Cities of Rialto and Colton for past reasonable costs incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial action, in accordance with Section 13304(c)(1) of the California Water Code shall be placed in dedicated "Community Perchlorate Reimbursement" accounts established by impacted water purveyors.

Conclusion

Despite the seemingly endless series of procedural motions that have been submitted in the course of the current State Water Board proceeding and the previous Regional Water Board proceeding, the key decision before the State Water Board is to determine what parties, if any, should be held responsible for discharges of perchlorate and TCE in the Rialto-Colton groundwater basin, and what remediation requirements, if any, should be assigned to those responsible dischargers.

As outlined in this policy brief, perchlorate contamination is a pressing water quality issue that impacts more than 400 drinking water sources across the state.

The major ingredient in rocket fuel, perchlorate interferes with thyroid function. Such impacts have been linked to several developmental health effects. The highest detection of perchlorate in a California drinking water source has occurred in the Rialto Colton groundwater basin. Despite the discovery of perchlorate contamination approximately ten years ago, perchlorate contamination persists in the Rialto Colton groundwater basin.

It is time for cleanup.

The 'community groups' believe that Draft Order 2005-0053 contains several key remediation requirements essential to cleanup of the Rialto Colton groundwater basin, and that the Order will take a significant step forward in restoring the region's water supply to health. The incorporation of amendments that require cleanup to background levels, the provision of replacement water for all impacted wells, the deposit of funds reimbursed to impacted public water suppliers in an account dedicated to reimbursement of residents and strict enforcement provisions will significantly strengthen the proposed Order and ensure comprehensive cleanup and abatement of perchlorate discharge in the Rialto-Colton groundwater basin.

The affirmation of such an order is essential to establish the State Water Board's much-needed leadership in the cleanup of perchlorate contamination of groundwater supplies throughout the state, and also to reaffirm public confidence in the Rialto region in the ability of our state officials to ensure cleanup of hazardous contamination in local drinking water sources.

Respectfully Submitted,

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