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Via E-Mail (commentletters@waterboards.ca.gov)

State Water Resources Control Board
1001 I Street, 24th Floor [95814]
PO Box 100
Sacramento, CA 95812-0100
Attn: Ms. Jeanine Townsend, Clerk to the Board



Re: **Comments to A-1824 – December 4 Board Meeting
By Thomas O. Peters, The 1996 Thomas O. Peters and
Kathleen S. Peters Revocable Trust, and Stonehurst Site, LLC**

Dear Members of the Board,

This office represents Thomas O. Peters, the 1996 Thomas O. Peters and Kathleen S. Peters Revocable Trust, and Stonehurst Site, LLC (collectively, “Settling Parties”) in connection with the Rialto perchlorate matters, including various litigation, enforcement efforts of the Santa Ana Regional Water Quality Control Board (“RWQCB”), and the December 4th hearing before the State Water Resources Control Board (“SWRCB”). The Settling Parties provide these comments in *support* of the settlement agreement (“Settlement”) attached to Mr. Lauffer’s November 13, 2012 letter. The Settlement represents a cornerstone to resolve this massively complex matter.

The litigation and efforts of the RWQCB, SWRCB, and later the federal Environmental Protection Agency (“EPA”) center on two groundwater plumes with two main contaminants of concern (perchlorate and the solvent TCE), originating in an area commonly known as the Rialto Ammunition Storage Point (“RASP”). The eastern plume comes from an area within the RASP described as the “160 Acre Site.” The western plume generally comes from an area within the RASP described as the “Landfill Expansion Area.” The groundwater plumes spawned lawsuits brought by two cities, Rialto and Colton, as well as numerous cleanup and abatement orders to the Settling Parties and others. The defendants in the litigation all owned or operated sites within the RASP, which started out as 2,822 acres of land acquired by the U.S. Army after the attack on Pearl Harbor. The U.S. Army used the RASP to store allegedly perchlorate-laden explosives for the balance of World War II. Afterwards, the government broke up the RASP and sold it off to various entities. Over the decades some of those entities left and were replaced by new owners and operators. Many of these parties are alleged to have handled perchlorate and/or TCE in their operations.

Our clients, the Settling Parties, are all associated with a single former RASP property – five acres at 2298 West Stonehurst Drive in Rialto (“Stonehurst Site”) which sits above the western plume. Before 1973, unrelated entities handled perchlorate at the Stonehurst Site. From 1973 through the present, the Settling Parties have been owners of, and alleged operators using perchlorate at, the Stonehurst Site. TCE was *never used* at the Stonehurst Site.

Although there are multiple entities that used or handled perchlorate within the boundaries of the old RASP, the Settling Parties believe the evidence shows only two confirmed sources of perchlorate from the surface to groundwater: the “McLaughlin Pit” (located within the 160 Acre Site north of the Stonehurst Site) and the Robertson’s Ready Mix ponds (“RRM Ponds”) in the Landfill Expansion Area (directly upgradient and adjacent to the Stonehurst Site). These two confirmed sources of perchlorate to groundwater share a critical common characteristic: massive anthropogenic water (i.e., water introduced by man made sources, not rain water). Thus, while perchlorate was used on many sites throughout the RASP, most sites – including the Stonehurst Site – lacked the anthropogenic water needed to push the perchlorate down 400 feet to groundwater.

With respect to the western plume, the RRM Ponds are key. For several years, RRM used “desilting ponds” where hundreds of millions of gallons of water settled through soil. The site of the RRM Ponds was formerly the home of a long-standing fireworks operation. Deposition testimony revealed that the owner of the fireworks operation “drank beer like water” and large quantities of perchlorate were used in his operations. The County of San Bernardino (“County”) eventually purchased the site and leased it to RRM. The County has admitted that the RRM Ponds caused massive perchlorate contamination when water percolated through the bottom of the unlined ponds and flushed the former fireworks company’s perchlorate down 400 feet to groundwater. Importantly, the County has already installed and is operating a groundwater treatment system downgradient of this western plume. The County’s system will remediate the western plume and any incidental perchlorate impacts originating from the Stonehurst Site.

Although the County’s remedial system is going to handle any minor perchlorate contamination that does stem from the Stonehurst Site, nevertheless the Settling Parties are part of the group contributing \$6 million to the overall settlement funding. This money is going towards funding the interim remedy required by EPA’s 2010 Record of Decision, to reimburse the cities of Rialto and Colton and the County of San Bernardino for past response costs, and to the RWQCB for past and future regulatory costs. As further consideration, the Settling Parties have agreed to place a basic asphalt cap on top of the entire Stonehurst Site (to prevent water infiltration and human contact with impacted soils – there are no vapor issues) and to record a land use covenant (aka deed restriction) against title to property which runs with the land (and includes obligations to maintain the basic cap).

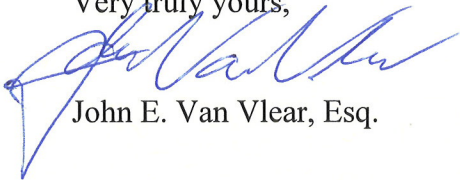
What do the Settling Parties want in return from the RWQCB and SWRCB? While the details are set forth in the Settlement, the basic consideration is a release from those entities with respect to existing, historic environmental liabilities. This is absolutely critical for the Settling Parties. The deal is fair given the above-described dynamics. Moreover, the Settlement represents a great opportunity for all parties to put an end to this multi-layered problem. In

conjunction with the deals struck by other defendants, the Settlement will terminate the litigation as to virtually all of the parties and provide permanent remediation of the impacted groundwater. Everyone, including the public, will be able to put this issue behind them in a way that makes technical, legal, political, and resource-conservation sense.

For the above-stated reasons, the Settling Parties respectfully request that the Board approve the Settlement *in its current form*, which was painstakingly crafted, as such is in the best interests of all relevant stakeholders.

I will personally be at the December 4th hearing to address any remaining questions with respect to the issues addressed herein, our clients, and/or the Stonehurst Site.

Very truly yours,



John E. Van Vlear, Esq.

cc: Clients
Daniel S. Kippen, Esq.
Designated Parties