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9 Attorneys for Respondent
10 Goodrich Corporation

11 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD
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14 IN THE MATTER OF PERCHLORATE
CONTAMINATION AT A 160-ACRE
15 SITE IN THE RIALTO AREA
(SWRCB/OCC FILE A-1824)
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Case No.: SWRCB/OCC FILE A-1824

MOTION AND OBJECTION NO. 10

**GOODRICH CORPORATION'S NOTICE
OF MOTION, MOTION, AND
OBJECTIONS REGARDING
PROCEDURE FOR PRE-HEARING
MOTIONS**

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20 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD IN THIS ACTION:

21 PLEASE TAKE NOTICE that on a day and time to be determined, before the
22 Chair of the State Water Resources Control Board, Tam Doduc, Designated Party
23 Goodrich Corporation ("Goodrich") will and hereby does move the Hearing Officer to to
24 change the procedure for pre-hearing motions under the February 23, 2007 Notice of
25 Public Hearing in this matter, including to allow for oppositions and replies, to allow for
26 an oral hearing on the motions, and to permit sufficient time for the Chair to consider and
27 rule on the motions and for the parties to incorporate rulings into their cases.
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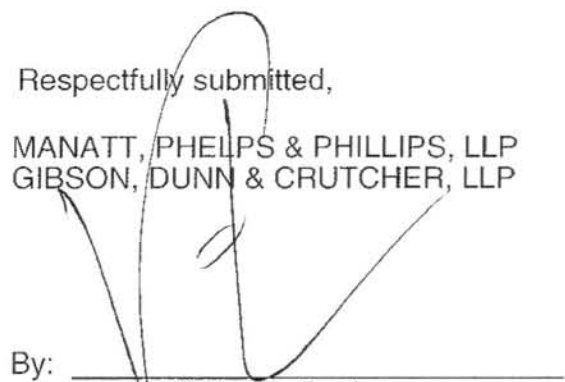
This motion is made on the grounds that the pre-hearing motion procedure is inadequate as it fails to (1) provide the parties sufficient time to prepare the motions, (2) afford the parties an opportunity to submit oppositions and replies or attending a live hearing to argue the motions, (3) provide adequate time for the hearing officer to thoughtfully consider and rule upon the motions, and (4) provide the parties adequate time to consider and incorporate rulings on motions into their written case-in-chiefs.

Goodrich also hereby objects to the Hearing Notice and the procedures set forth therein on the grounds stated herein.

This motion is based upon this Notice, the attached written Memorandum of Points and Authorities, and such other evidence as may be presented at or prior to the hearing on this matter.

Dated: March 5, 2007

Respectfully submitted,
MANATT, PHELPS & PHILLIPS, LLP
GIBSON, DUNN & CRUTCHER, LLP



By: _____
Peter R. Duchesneau
Attorneys for Respondent
GOODRICH CORPORATION

1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 Goodrich Corporation ("Goodrich") hereby respectfully requests that the
3 procedure for pre-hearing motions, as outlined in the February 23, 2007, Notice of Public
4 Hearing (the "Hearing Notice"), be changed to allow for oppositions and replies to
5 motions and to permit sufficient time for the Chair to thoughtfully consider and rule on the
6 motions prior to the parties' preparation of and submittal of their respective written case-
7 in-chief.

8 **I. THE HEARING NOTICE'S PROVISIONS FOR PRE-HEARING MOTIONS**

9 The Hearing Notice requires that by Monday, March 5, 2007 at 5:00 p.m.,
10 only 10 days after the issuance of the Hearing Notice and 6 days after the pleading by
11 the Advocacy Team is submitted, any Pre-Hearing Motions must be submitted. Merely,
12 one week later, by March 13, 2007 at 5:00 p.m., the parties' case-in-chief must be
13 submitted in hard copy. No time is allotted for the parties to submit oppositions and
14 replies to the motion, for the hearing officer to rule upon the motions, or for the parties to
15 consider the implications of any rulings by the hearing officer.

16 **II. THE PRE-HEARING MOTIONS PROVISIONS OF THE HEARING NOTICE ARE**
17 **ENTIRELY INADEQUATE**

18 **A. The Parties have not been Provided Sufficient Time to Prepare**
19 **Motions**

20 The parties have not been provide adequate time to prepare pre-hearing motions.
21 The motions are due merely six days after the pleadings or charging papers are
22 confirmed by the Advocacy Team and only 10 days after the Hearing Notice was issued.
23 To begin with, given the short time frame, there is no opportunity for the parties to
24 attempt to conduct any reasonable meet and confer efforts to resolve issues. More
25 importantly, while the parties have to work around the clock to identify, research and
26 prepare their motions concerning the proceedings that were only first noticed on
27 February 23, it further prejudices them by taking away precious time to prepare their
28 case-in-chief that must be submitted by March 13.

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B. The Hearing Notice Does not Afford the Parties an Opportunity to Submit Oppositions or Replies or Attend a Hearing to Argue the Motions

No opportunity for oppositions to motions or replies to oppositions is afforded in the Hearing Notice nor an opportunity for holding a live hearing for argument on the motions. The opportunity to submit oppositions and responses to motions is an important component of due process. See, e.g. Cal. Rules of Court 3.1340, 3.1350. As with cross-examination and rebuttal, the availability of such responsive pleadings allows each party to better present its case and clarify the matter for the hearing officer. The goal of this adjudicative proceeding is to secure relevant information expeditiously. 23 Cal. Code Regs. 648.5(a). By not providing an opportunity for parties to respond to motions, the hearing officer is not only depriving herself of relevant information, but is depriving Goodrich of its right to due process. It is further proper under California Government Code section 11425.10(b) to allow for such responses to be more protective of the rights of the persons against which the agency action is directed. Likewise, permitting an opportunity for responses to the pre-hearing motions will allow for the uncovering of essential facts that could help the hearing officer determine whether this proceeding should be a formal or informal one, or whether certain procedural rights shall be granted. See Cal. Govt. Code § 11445.60(b); see also Cal. Govt. Code § 11507.7(c).

C. There is No time Permitted for the Hearing Officer to Thoughtfully Consider and Rule Upon the Motions Prior to the Parties' Submittal of their Case-In-Chief

Aside from the inability to submit responses to motions, a fundamental error of the hearing schedule is that it fails to not allow time for the hearing officer to thoughtfully and thoroughly consider and rule on prehearing motions in time for the parties to take such rulings into account in preparing their written cases-in-chief. In fact, the schedule does not specify any deadline by which the hearing officer must rule on these motions. Thus, it is possible that the deadline for written cases will arrive before the motions are fully addressed. Moreover, it is reasonable to predict that there will be

1 numerous pre-hearing motions submitted covering a wide range of subjects, the
2 disposition of which could adversely affect the basic due process rights of the parties.
3 Moreover, as separately filed by Goodrich, Goodrich has timely requested that the formal
4 hearing procedures of Chapter 5 of the Government Code be invoked. Until there is a
5 ruling on such a motion, the existing informal hearing procedures set forth in the Hearing
6 Notice may not be used. Title 23, Cal. Code, Reg., Section 648.7. Even should the
7 hearing officer rule upon the motions prior to the due date for parties to submit their
8 cases, there will not be sufficient time afforded for the parties to consider the implications
9 of such rulings. Thus, the eight days afforded by the current schedule is insufficient time
10 for the hearing officer to properly consider the motions and provide Goodrich with its
11 right to due process.

12 **III. CONCLUSION**

13 For the reasons above, Goodrich requests that the hearing schedule is
14 amended to allow sufficient time for the filing of oppositions to the pre-hearing motions
15 and responses to these oppositions and a live hearing, followed by a period for
16 consideration of these papers by the hearing officer, followed by a sufficient amount of
17 time to incorporate the hearing officer's rulings into the parties' written cases-in-chief.

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19 Dated: March 5, 2007

Respectfully submitted,

MANATT, PHELPS & PHILLIPS, LLP
GIBSON, DUNN & CRUTCHER, LLP

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23 By: _____

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GOODRICH CORPORATION

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