



NATURAL RESOURCES DEFENSE COUNCIL

May 31, 2007

*Via Electronic Mail and Federal Express*

Chair Tam Doduc  
Hearing Officer  
State Water Resources Control Board  
1011 I Street, 25<sup>th</sup> 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 Chair Doduc:

On behalf of the undersigned environmental and public health organizations, we are writing to provide comments on the draft order and administrative process in the above entitled matter. We concur with and appreciate your careful and thoughtful review of this matter and respectfully request that you recommend to the State Water Resources Control Board the adoption of a final cleanup and abatement order for the perchlorate contamination in the Rialto region. We also respectfully request that you ensure the protection of local and public participation rights at water board hearings against unfair and oppressive tactics.

Swift action by the Board is critical to protecting the public health and water supply for the Rialto area. Further delay of perchlorate cleanup in the Rialto area is unacceptable—especially given the decade of delay. As discussed below and in the separate statement submitted by the Center for Community Action and Environmental Justice and Environment California, a full cleanup of contamination in Rialto is an environmental justice priority and serves as a model State Water Board cleanup order. Adoption of this order will also establish the state leadership urgently needed to ensure the full cleanup of perchlorate contamination of drinking water sources throughout California. While the proposed order contains several strong remediation requirements, such as holding named dischargers jointly and severally liable and requiring full reimbursement for cleanup costs already expended, we respectfully request that the order explicitly include the following remediation requirements:

- 1) Cleanup must achieve a background level of water quality;
- 2) Replacement water must be provided for all drinking water wells impacted by contamination, not simply those polluted above the perchlorate public health goal;

- 3) Should a failure to meet cleanup deadlines occur, a clear, automatic process for enforcement will apply.

With these additions to an already strong cleanup order, the State Water Board will ensure the protection of public health and water supplies of the residents of the Rialto area.

### **The Board Should Safeguard Against Intimidating Practices and Ensure Active Public Participation**

We are pleased that the Board has set this matter for a hearing and has established thorough hearing procedures to address the persistent perchlorate contamination in the Rialto area. During the hearings, we urge the Board to safeguard the rights of residents, environmental organizations, and public health groups to fully participate in these matters. As groups that regularly participate in water board matters, we were very disturbed to learn about the oppressive and intimidating practices used by some of the named responsible parties. Practices such as numerous subpoenas, intimidating depositions, and burdensome discovery with the ulterior motive to limit public participation—and in some cases bar “party designation”—have no place in proceedings before the water board. Both federal and state law recognize the need to protect parties from “annoyance, embarrassment, oppression, or undue burden or expense.” Fed. R. Civ. Pro. 26(c); Cal. Code Civ. Pro. § 2023.010, *et seq.* In fact, courts recognize the chilling and devastating consequences of such abusive practices:

[T]he sort of saber-rattling, chest-thumping approach typified by the comment of [] counsel, trivializes the devastating effects on the health, reputations, and fortunes of the real people who are maliciously and abusively sued. For the ordinary citizens who are the victims of such a lawsuit, it may be the most horrific experience of their lives.

*Seltzer v. Morton*, 154 P.3d 561, 609 (Mont. 2007); *Rivera v. Nibco, Inc.*, 364 F.3d 1057, 1065 (9th Cir. 2004) (“District courts need not condone the use of discovery to engage in ‘fishing expedition[s]’ or chill public access to courts.”).

Protection against such oppressive and intimidating practices is critical to active public participation in regional decision-making. California’s water boards pride themselves in allowing local access and participation in resolving regional issues. This access is a hallmark of California’s administrative process and should not be eroded by abuses of discovery practices. Our groups look to the water board members to protect our ability to actively participate in these processes. We trust that you will appropriately exercise your discretion and protect all stakeholders from oppressive and intimidating practices at the hearings set in July.

### **Swift Action by the Board Is Necessary to Address the Persistent Perchlorate Contamination**

We respectfully request that you recommend to the State Water Board the adoption of a final cleanup and abatement order for the perchlorate contamination in the Rialto region for three

main reasons. First, the City of Rialto is one of the most heavily impacted communities by perchlorate in the nation. Perchlorate contamination in Rialto was first discovered in 1997. Nearly *ten years later*, no comprehensive cleanup plan has been established for the region by the water boards. As the delay continues, contamination continues to spread throughout the aquifer that supplies much of the community's drinking water supply. Residents continue to pay increased water rates to fund temporary cleanup measures and the pursuit of suspected dischargers while strained water supplies leave water officials grappling with the possibility of water shortages in this drought-prone region. In addition, the presence of the rocket fuel chemical in local drinking water supplies undermines the cultural, social, and economic importance of a clean drinking water supply. Outdated testing methods used in the region cannot guarantee that residents are not exposed to perchlorate at levels considered unsafe in other states; and the irrigation of local crops and gardens with potentially contaminated water that may concentrate in food increases local anxiety. It is time for cleanup. The adoption of Draft Amended Cleanup and Abatement Order No. R8-2005-0053—with the cleanup requirements outlined above—will be a much needed step toward restoring clean water to the residents of the Rialto area.

Second, full cleanup of contamination is an environmental justice priority. The City of Rialto is an environmental justice community. According to the Environmental Systems Research Institute, African Americans and people of Hispanic origin make up more than 77 percent of the population. The per capita income of the city is \$15,327. Protecting environmental justice communities is of statewide importance:

The California Environmental Protection Agency (Cal/EPA) and our Boards, Departments, and Office (BDOs) shall accord the highest respect and value to every individual and community, by developing and conducting our public health and environmental protection programs, policies, and activities in a manner that promotes equity and affords fair treatment, accessibility, and protection for all Californians, regardless of race, age, culture, income, or geographic location.

The adoption of a cleanup order for the 160-acre site in Rialto that contains the remediation requirements listed above is fully consistent with the environmental justice mission described by the California Environmental Protection Agency itself, and is in fact *necessary* to the fulfillment of this mission.

Third, a model order is necessary to establish urgently-needed State Water Board leadership to clean up perchlorate contamination in California drinking water sources. While the cleanup activities outlined in the Draft Order are limited to the Rialto-Colton basin, the full remediation of perchlorate pollution in the aquifer has several statewide implications. Perchlorate is the major ingredient in rocket fuel and, largely through inadequate industrial storage and disposal practices, pollutes more than 500 drinking water sources across California. From the well owners of San Martin to the Native American tribes of the Colorado River Basin to the residents of Rialto, perchlorate impacts the water quality of more than 16 million Californians. The ubiquity of perchlorate contamination is made more concerning by the

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growing number of studies that point toward the presence of contamination in food and milk. Studies have shown that at very low concentrations exposure to perchlorate can inhibit the uptake of iodine by the thyroid gland. Such impacts can impair development and lead to conditions such as attention deficit disorder, learning disabilities, and decreased IQ. Given the extent of perchlorate contamination in California drinking water sources and growing concerns regarding the health impacts of pollution at low levels, statewide leadership that establishes a cleanup model for contamination is urgently needed. The California Water Code provides the State Water Board with enormous authority to create such a cleanup model. By adopting a cleanup order for the 160-acre site that contains the remediation requirements listed above, the State Water Board can establish a precedent for remediation of perchlorate that may be replicated in perchlorate impacted communities throughout California and the nation.

In short, we strongly support your leadership in addressing this historic contamination of drinking water supplies. We respectfully request that the draft order be adopted with the clarification of the remediation requirements as discussed above. We also support your thoughtful and decisive actions in protecting public participation during these and future water board hearings.

Sincerely,



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