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Arnold Schwarzenegger
Governor

JUN - 4 2008

VIA ELECTRONIC MAIL

To: Enclosed List of Participants

PROCEDURAL ISSUE INVOLVING CONSIDERATION OF A CEASE AND DESIST ORDER AGAINST CALIFORNIA AMERICAN WATER: REQUEST BY ROBERT BAIOCCHI TO TESTIFY IN THE PENDING PROCEEDING BY TELEPHONE

Asserting he is disabled, Mr. Robert Baiocchi has requested that he be allowed to participate in this proceeding by telephone: he requests to testify and to act as counsel over the phone in a five day hearing. In response we requested that Mr. Baiocchi submit "...a declaration to the State Water Resources Control Board describing the nature and extent of his disability and explain why the disability precludes travel and testimony in Sacramento."

On May 20, 2008, Mr. Baiocchi submitted a declaration stating in pertinent part: "I am disabled and cannot travel to Sacramento to testify. My disability is the loss of my bladder and one kidney, et al, due to cancer. I have problem traveling long distances. I live about 4 hours driving time from Sacramento or 8 hours round trip. I am 77 years of age." The declaration included no other factual recitals explaining why the absence of a kidney or a urostomy precludes travel and testimony in Sacramento, and no recitals supporting the statement that he has difficulty traveling long distances.

We provided Mr. Baiocchi another opportunity to file a declaration supporting his request to testify without having to travel to Sacramento. We are in receipt of an email from Mr. Baiocchi dated Saturday, May 31, 2008. For the most part, the email cannot be considered a declaration. In addition, it is difficult to separate with confidence Mr. Baiocchi's argument from what we assume are factual statements to which he would testify under oath.

Among other matters, Mr. Baiocchi states" [m]y disability in layman terms is as follows:

1. Medical and disability problems traveling to Sacramento;
2. Medical and disability problems traveling back from Sacramento to my home;
3. Walking, disability, and medical problems from my auto to the hearing room and back to auto;
4. Walking, disability, and medical problems to and from the hearing room during lunch breaks;
5. Walking, disability, and medical problems to my auto from the hearing room;
6. Medical and disability problems at the hearing where immediate assistance is needed.
7. My age. I am 77 years of age. I am exempt from Jury duty because of my age.
8. Others not noted such as medication et al."

California Environmental Protection Agency

To qualify for a disability under Title II of the Americans with Disabilities Act (ADA), an individual must have an impairment that substantially limits a major life activity. (24 U.S.C. § 12102(2)(A).) Thus, a person must satisfy two criteria to have a qualified disability. First a person must establish that he or she has a physical or mental impairment; and second, the person must demonstrate that the impairment substantially limits a major life activity. (*Toyota Motor Mfg. v. Williams* (2002) 534 U.S. 184, 195.)

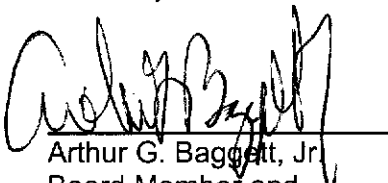
Mr. Baiocchi's second declaration makes reference to unspecified medical and disability problems that make it difficult for him to travel. As in his previous declaration, he fails to include any specifics in support of his claim. The only new fact provided in the second declaration is that Mr. Baiocchi has trouble walking. The extent of his difficulty with walking is not clear; when he says he has trouble getting from his auto to a hearing room, it is not clear whether that is due to walking or other unspecified medical and disability problems. Further, his second declaration also indicates he can use the courthouse in Quincy, California because handicap parking is next to the courthouse and the courthouse has an elevator. We wish to point out that there is a state parking garage with handicap parking directly across the street from the State Water Board's hearing rooms and that the hearing room level can be reached via numerous elevators.

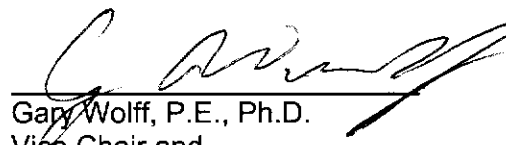
Because Mr. Baiocchi's declarations are so short on specifics, it is difficult to establish whether Mr. Baiocchi has a disability within the meaning of the ADA. However, because it appears that he does have some unspecified disability, we will allow him to submit his proposed testimony for the hearing via a deposition. (Water Code section 1100.) It is Mr. Baiocchi's obligation to arrange for his own deposition in the same manner as in civil actions.

Mr. Baiocchi's letter also requests that the hearing officers act on his motion to have the Prosecution Team's complaint against the California American Water Company referred to the Attorney General for enforcement. No action will be taken on this request until the close of the evidentiary hearing, when the full Board has had the opportunity to consider the record for this matter.

Should you have further questions in this matter, please contact Paul Murphey; Division of Water Rights Hearing Unit at (916) 341-5435 or PMurphey@waterboards.ca.gov; or Buck Taylor, Office of Chief Counsel at (916) 341-5595, or BGTaylor@waterboards.ca.gov.

Sincerely,


Arthur G. Baggett, Jr.
Board Member and
Hearing Officer


Gary Wolff, P.E., Ph.D.
Vice Chair and
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Enclosure

CALIFORNIA AMERICAN WATER CEASE AND DESIST ORDER
JUNE 19, 2008 HEARING
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