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Submitted via e-mail [commentletters@waterboards.ca.gov]



Ms. Jeanine Townsend
Clerk to the Board
STATE WATER RESOURCES CONTROL BOARD
1001 I Street, 24th Floor
Sacramento, California 95814

Re: State Water Resources Control Board Information Meeting Regarding Case No. SWRCB/OCC File A-1824; Comments Submitted on Behalf of the West Valley Water District

To Ms. Townsend and State Board Members:

I. INTRODUCTION

This firm represents the West Valley Water District (“District”) on all matters relating to the perchlorate contamination that is impacting the Rialto/Colton Groundwater Basin (“Rialto/Colton Basin”). We appreciate the opportunity to address the State Water Resources Control Board (“State Board”) on this issue. We also understand that several members of the State Board are newly appointed. We hope that the information we provide in this letter will supply you all with important details that will allow the entire State Board to be more closely acquainted with the long and difficult history of the contamination in the Rialto/Colton Basin.

II. REQUEST FOR RESUMPTION OF HEARING / ADDITION OF DISTRICT AS DESIGNATED PARTY TO THE PROCEEDINGS

For the reasons stated below in this letter, the District respectfully requests that the State Board resume its evidentiary hearings as contemplated by State Water Board Orders WQ 2008-0004 and WQ 2009-0004 (collectively “State Board Proceedings”). Should the State Board decide to resume the proceedings, the District requests that it be added as a designated party to these proceedings. In addition to being the largest water rights holder in the Rialto/Colton Basin, the District has substantial involvement in many of the historical proceedings related to the efforts to identify and develop a remedy for the perchlorate contamination. For these reasons, it makes sense that the District be elevated to ‘designated party’ status for any future proceedings on this matter.

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Finally, the District believes that because the perchlorate contamination is a basin-wide problem with many inter-connecting issues, the State Board Proceedings should be expanded to include the entire Rialto/Colton Basin, and not be limited to just the 160-Acre Site.

III. OVERVIEW OF DISTRICT'S ROLE IN PROCEEDINGS AND RESPONSE TO THE PERCHLORATE CONTAMINATION IN THE RIALTO/COLTON BASIN

To begin, the District is a public agency with an elected board of directors, established in 1962. The District serves the drinking water needs of half the residents of the City of Rialto ("Rialto" or "City") and also serves residents and businesses in adjoining areas. The District is the largest holder of water rights in the Rialto/Colton Basin.

Perchlorate contamination was detected in the Rialto/Colton Basin in the late 1990s. However, in 2002, the MCL for perchlorate was lowered from 18 parts per billion ("ppb") to 4 ppb. The perchlorate pollution forced the affected water purveyors in the Rialto/Colton Basin and other affected basins ("Affected Basins") to shut down and/or restrict the use of twenty-two (22) groundwater production wells in the area, representing approximately 52% of the region's water supply, which serves a population of over 500,000 people.

Over the years, in response to this perchlorate pollution crisis, many legal proceedings have been filed with the State Board and in federal court and State Superior Court. Some of these proceedings have been appealed to the 9th Circuit. It is important to note that the District did not participate in these costly and time-consuming proceedings.

Instead, consistent with its mission to protect water quality in the Basin, the District used its limited public resources to acquire grants, pioneer perchlorate treatment technology, and install groundwater treatment systems to clean the region's drinking water. (See Exhibit A, attached hereto, for a description of key District projects and developments.)

Since the perchlorate contamination was first detected in its drinking water wells, the District has constructed four Ion Exchange treatment systems (located at Wells WVWD-11, WVWD-WVWD 16, WVWD 18 and WVWD-42A). A fifth treatment system is on standby. The District has also designed and is constructing one biological groundwater treatment system (described in detail below). All of the District's treatment systems rated at around 2,000 gallons per minute ("gpm"), for a total of 8,000 gpm capacity for the four operating systems, and 10,000 gpm for all five (including the IX on standby).¹ Beyond the five treatment systems that are online, standby and being

¹ The State Board and the Regional Board were instrumental in facilitating seed-funding for that 2,000 gpm biological treatment system and that assistance is greatly appreciated.

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constructed by the District, the District has, at its own cost, developed preliminary plans and options to act as the work party to design, construct and operate the pending United States Environmental Protection Agency (“US EPA”) Interim Remedial Action, both using Ion Exchange and GAC treatment, or by expanding its biological groundwater treatment system (which is discussed in detail in Exhibit A).

The District believes that it has been and will continue to be uniquely positioned with all necessary infrastructure, pipelines, land and – most importantly – water rights, to work with all necessary parties, including the participating responsible parties (“PRPs”), the US EPA, the Regional Board and the State Board to immediately begin implementation of a basin-wide remediation project.

III. STATEMENT CONCERNING THE STATE BOARD’S ROLE IN HELPING RESOLVE THE PROTRACTED DELAY IN DEVELOPING A REMEDY FOR THE PERCHLORATE CONTAMINATION

The District and its Board – and the public that they represent – are very frustrated with the delay in cleaning up the Rialto/Colton Basins’ water supply. As the record and chronology of events in this matter clearly demonstrate, the excessive amount of litigation (which the District has never been a part of), and the history of stops and starts, false beginnings and inability to move the ball forward, must be carefully evaluated before taking another step. As the US EPA knows, the District has a ‘shovel ready’ project and could proceed quickly and efficiently – if necessary – in a joint effort with all parties, including all willing PRPs and federal and state agencies to implement the US EPA’s interim remedial action, and greatly accelerate and optimize the startup date for this important project.

Notwithstanding the foregoing, the District believes it makes sense for the State Board to continue this hearing for 30 days in order to reflect on the input and request information and detail about the proposed settlements. If a settlement and/or consent decree can alleviate some of the District’s concerns (and key concerns of other stakeholders), then the District would consider dropping any opposition and would be willing to participate and contribute its support, resources and expertise to a proposal backed by the US EPA.

As a major problem solving gesture, the District requests that the State Board use its influence by forcing the designated parties and the District to come together to see if the time frames can be dramatically reduced and the costs can be saved by moving forward with: (1) the District’s project; (2) a compromise of the two projects; or (3) the District’s assistance with a proposed PRP/US EPA Project. The District has enormous resources, water rights and expertise and can help accelerate a US EPA-backed project. The District’s credibility with the public can also provide value to moving this problem to a resolution and obtaining “buy-in” from critical stakeholders and

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community leaders. The District's water rights solve many issues related to implementation of a remedy. The District's staff are experts in managing drinking water operations and have an excellent track record with all relevant agencies including the US EPA, the California Department of Public Health, the DTSC and the Regional Board.

However, timing is critical to this effort and the District believes that the deal being negotiated between the US EPA and certain designated parties must be brought to a speedy resolution. We think after all of this, forcing the key parties – *including the District* – to work through their differences is worth the effort.

V. CONCLUSION

Procedurally, the District believes that the State Board Proceedings should be resumed. In addition, the District believes the proceedings should include the entire Rialto/Colton Basin, and not be limited to just the 160-acre Site. Further, the District respectfully requests that it be added as a 'designated party' to the proceedings, as it is the largest water rights holder in the Rialto/Colton Basin and it has played a substantial role in many of the prior proceedings related to the perchlorate contamination.

On a substantive level, the District's primary concern is the amount of time that has passed since the perchlorate contamination crisis began. The District supports the State Board's resumption of the proceedings in order to move the key parties to a speedy resolution so that a remedy can be constructed and implemented. Once the proceedings are resumed, the District believes an immediate 30-day continuance should be put in place and the designated parties should be required to meet. If the key parties, including US EPA, Rialto and key designated parties do succeed in coming to a settlement with a proposed remedy, the District stands by to assist such a project with its resources.

The District appreciates the State Board's consideration of these matters and we are available to answer questions and provide additional information as necessary.

Very truly yours,

K. Ryan Hiete

Ryan Hiete, Partner
MUSICK, PEELER & GARRETT, LLP

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ATTACHMENT A

KEY LEGAL AND TECHNICAL DEVELOPMENTS SINCE FEBRUARY 2007

The following are key legal and technical developments that the District has been actively working on or involved in since February 2007:

A. US EPA's IROD

On September 30, 2010, the US EPA issued its Interim Record of Decision for the Source Area Operable Unit for the B.F. Goodrich Superfund Site ("IROD"). US EPA expects that the remedy adopted in its IROD will operate for an extended period of time, perhaps several decades. As set forth in the current IROD, the primary objective of the remedy ("remedial action objective") is to "protect water supply wells and groundwater resources by limiting the spread of contaminated groundwater from the 160-acre area."

US EPA expects the remedy will need to operate until water supply wells and groundwater resources downgradient of the remedy are no longer threatened by the spread of contaminated groundwater from the "160-acre area" described in the IROD. Although US EPA has not yet identified performance standards to be used to determine when the remedy will no longer need to operate, it is anticipated that this will occur when contaminant concentrations in the area of groundwater contamination targeted by the remedy have decreased to below "Applicable or Relevant and Appropriate Requirements" (ARARs). Key ARARs are likely to be EPA and State Maximum Contaminant Levels ("MCLs").

US EPA expects to determine final remedial action objectives in a subsequent ROD or ROD Amendment for the site. This subsequent decision document will also adopt performance standards for determining when those remedial action objectives have been met and the remedy no longer needs to operate. The District will have the opportunity to comment on any proposed performance standards before they are adopted.

The District understands that the US EPA currently is negotiating with Emhart Industries and other responsible parties in a federal lawsuit concerning the implementation of the IROD. The District understands that Emhart is currently the likely candidate to be the "work party" that will actually oversee the design, construction and operation of the remedy.

The District further understands that the IROD will need to operate most of the time at a rate of 1,840 gpm, and at higher rates up to 3,200 gpm during extended wet periods (subject to available water rights), when there are higher than average groundwater levels and groundwater hydraulic

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gradients in the regional aquifer in the area targeted by the remedy. The District expects that the US EPA will refine these rates early in the design process.

We anticipate that the US EPA will complete the negotiations with Emhart this year. If those negotiations are unsuccessful, the District anticipates that US EPA will identify another work party to complete the remedy. The District stands by to assist with either result.

B. THE DISTRICT'S AGREEMENTS WITH THE CITY OF RIALTO

In March 2009, the District and Rialto entered A Memorandum of Understanding ("MOU"). The MOU between Rialto and the District defines terms between the City and the District concerning State Board/Regional Board Cleanup and Abatement Account ("CAA") funding as contemplated in the funding application and identifies further agreements between the City and District regarding the Proposition 84 grant application and the operation of the wells and the proposed wellhead treatment system. Under the MOU, the proposed project is to be designed to handle up to 2,000 gpm from Rialto Well No. 6 and District Well No. 11.

Following the MOU, on July 13, 2010, the District and Rialto entered a Lease Agreement to implement the MOU and agreed on a joint project to address the perchlorate contamination that has impacted certain drinking water wells ("Lease Agreement"). Pursuant to the terms of the Lease Agreement, the District has taken a lead on constructing and operating a groundwater wellhead treatment system.

Specifically, the District and Rialto's joint project is approximately one-mile downgradient of the US EPA interim source-area remedial action location. The primary objective of this joint project is to remove contaminant mass from the aquifer, stabilize District and City water supplies by recovering lost Rialto/Colton Basin capacity and to enhance the operational flexibility and independence of existing groundwater supplies. In addition to accomplishing mass-removal, given the elevated concentrations of perchlorate, the groundwater will be treated using biological treatment. This project is already more than 50% constructed and is expected to be operational in early 2013.

To achieve this objective, the District is constructing a wellhead treatment system to remove nitrate, perchlorate and TCE from groundwater from two drinking water production wells located in the northern half of the Rialto/Colton Basin, relatively close to the contaminated source areas. The wellhead treatment system will use a fluidized-bed bioreactor ("FBR") to treat perchlorate and nitrate. The anticipated blended influent TCE concentration from Rialto Well No. 6 and District Well No. 11 is expected to be less than the California drinking water standard; however, there is a contingency for the addition of granular activated carbon ("GAC") or other treatment if excessive TCE is encountered. The FBR is one of two perchlorate treatment technologies listed as a "Best

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Available Control Technology” by the CDPH.² Because the proposed project will be the first full-scale application of an FBR for drinking water in California, an additional objective of the proposed project is to collect cost and operational data for other utilities considering the use of this technology.

The FBR project was designed with an initial capacity of 2,000 gpm, with piping and footprint sized to treat 4,000 gpm, either using Ion Exchange or additional biological treatment for perchlorate. More detail about the expandability of the District’s bioreactor project to treat water from the US EPA IROD remedial action is provided in subsection II.C, below.

C. THE DISTRICT’S BIOREACTOR PROJECT

As stated in the prior section, the District has designed and is currently constructing a state-of-the-art biological groundwater treatment system to address perchlorate and nitrate contamination in the Rialto/Colton Basin (“Bioreactor Project”), to treat groundwater from District Well 11 and City of Rialto Well 6, approximately 1-mile downstream of the US EPA IROD location.

The Bioreactor Project has been designed to be expanded, and the District has performed preliminary engineering and costing activities that illustrated expanding the Bioreactor Project can cost-effectively fulfill the requirements of US EPA’s IROD. As identified in the IROD, the Remedial Action Objectives (“RAOs”) for this remedy are to: 1) protect water supply wells and groundwater resources by limiting the spread of contaminated groundwater from the 160-acre source area; and 2) remove contaminants from the groundwater. The B.F. Goodrich Superfund Site includes soil and groundwater contaminated with perchlorate, TCE and other chemicals that have spread from a 160-acre area near the corner of West Casa Grande Drive and Locust Avenue in Rialto.

The District’s Expanded Bioreactor Project will consist of the following main components:

- Groundwater extraction wells capable of pumping beyond a combined flow rate of 4,000 gallons per minute (gpm) of contaminated water. This is under average/current conditions anticipated to consist of 1,840 gpm from the US EPA IROD wells, and the remainder from Rialto Well 6 and District Well 11.

- Pipelines and pumps to convey groundwater from the extraction wells to the expanded treatment system at the headquarters of the District, located at 855 West Base Line Road in the City of Rialto, County of San Bernardino, California.

² California Code of Regulations, Chapter 15, Article 12, Section 64447.2.

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- Water treatment equipment designed to remove perchlorate using an additional 2,000 gpm of fixed bed biological treatment (“FXB”) (for a total capacity of 4,000 gpm using FXB and FBR biological treatment) and 3,200 gpm capacity of volatile organic compounds (“VOCs”) treatment using GAC for water from the US EPA IROD system.

Although the District is confident that the costs-savings realized by treating groundwater from the US EPA IROD groundwater remedial action using biological technology are substantial, the District also is amenable to designing, constructing and operating ion exchange treatment for perchlorate treatment and has performed preliminary work evaluating this option as well. It is hoped that all parties can work collectively in relation to all four primary groundwater treatment systems in the Rialto/Colton Basin (the Mid-Valley Landfill Unit 1 remediation [overseen by the Regional Board]; the Mid-Valley Landfill perchlorate cleanup [overseen by the Regional Board]; the US EPA IROD remedial action; and, the District/Rialto Well 6/11 Project) to optimize cleanup, and accelerate restoring the groundwater to its full and most beneficial use as quickly as possible.