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17 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

18 IN THE MATTER OF PERCHLORATE
19 CONTAMINATION AT A 160-ACRE
20 SITE IN THE RIALTO AREA
21 (SWRCB/OCC FILE A-1824)

Case No.: SWRCB/OCC FILE A-1824

MOTION AND OBJECTION NO. 3

**GOODRICH CORPORATION'S NOTICE
OF MOTION, MOTION, AND
OBJECTIONS REGARDING
SUSPENSION OF THE PUBLIC HEARING
ON GROUNDS THAT IT VIOLATES DUE
PROCESS RIGHTS**

Date: TBD

Date: TBD

Place: San Bernardino County Auditorium

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

23 PLEASE TAKE NOTICE that on a day and time to be determined, before the
24 Chair of the State Water Resources Control Board, Tam Doduc, Designated Party
25 Goodrich Corporation ("Goodrich") will and hereby does move for an Order suspending
26 the public hearing pending a revision of the procedures, including the timeline leading up
27 to the hearing, the availability of discovery procedures, and the time allocations to the
28

1 parties at the hearing itself, so as to protect the parties' right to due process.

2 This motion is made on the grounds that the current timeline for the submission of
3 written materials, the time limitations imposed for the presentation of evidence and
4 rebuttal of other parties' evidence at the hearing, the lack of discovery, and the
5 appearance of prosecutors in this matter as witnesses at the hearing, violate the Due
6 Process Clause of the Fourteenth Amendment to the United States Constitution and
7 Article One, Section Seven of the California Constitution.

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

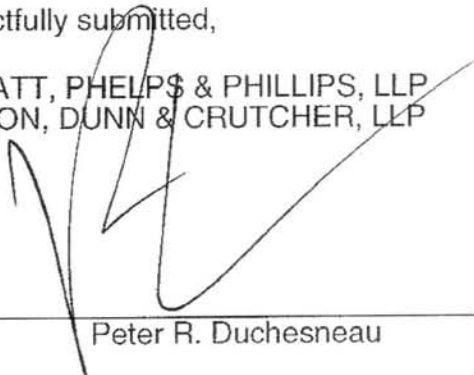
10 This motion is based upon this Notice, the attached written Memorandum of
11 Points and Authorities, and such other evidence as may be presented at or prior to the
12 hearing on this matter.

13 Dated: March 5, 2007

Respectfully submitted,

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

By: _____



Peter R. Duchesneau

Attorneys for Respondent
GOODRICH CORPORATION

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The timeline and procedures set forth in the State Water Resources
4 Control Board's (the "Board") Notice of Public Hearing in the Matter of Perchlorate
5 Contamination at a 160-Acre Site in the Rialto Area (SWRCB/OCC FILE A-1824), dated
6 February 23, 2007 (the "Notice"), violate Goodrich Corporation's ("Goodrich") federal
7 right to due process as guaranteed by the United States Constitution. At its core,
8 procedural due process encompasses the concept of "fundamental fairness" and, as
9 broadly construed by the courts, includes an individual's right to be adequately notified of
10 charges or proceedings involving him, and the opportunity to be fairly heard at these
11 proceedings. In this context, the timeline and procedures adopted by the Board deprive
12 Goodrich of its ability to receive a fair adjudication of its rights. Accordingly, the Board
13 should suspend these proceedings and adopt legally valid hearing procedures that
14 guarantee Goodrich's right to present and confront evidence on its and other parties'
15 legal responsibility for site investigation and remediation of the perchlorate
16 contamination in the Rialto area.

17 **II. THE SCOPE AND BREADTH OF PROCEDURAL DUE PROCESS RIGHTS**
18 **ARE RELATIVE TO THE CIRCUMSTANCES OF THE RIGHTS BEING**
19 **ADJUDICATED AND THE PROCESS IN QUESTION**

20 The Fourteenth Amendment provides that "[n]o State shall... deprive any
21 person of life, liberty, or property, without due process of law." U.S. CONST. amend.
22 XIV, § 1. The Supreme Court has repeatedly warned that because this due process
23 guarantee is a matter of federal law, it may not be diminished by state-specified
24 procedures, even if the state deems the procedures to be adequate. *See, e.g., Logan v.*
25 *Zimmerman Brush Co.*, 455 U.S. 422, 432 (1982) (holding that federal due process
26 rights "are not diminished by the fact that the State may have specified its own
27 procedures that it may deem adequate for determining the preconditions to adverse
28 official action"). "Before a person is deprived of his life, liberty or property he must be
given notice of the proceedings against him, he must be given an opportunity to defend

1 himself, and the propriety of the deprivation must be resolved in a manner consistent
2 with essential fairness.” *People v. Swink*, 198 Cal. Rptr. 290, 292 (Cal. Ct. App. 1984).

3 The measure of procedure that is necessary to guarantee a person’s right
4 to a fair adjudication of contested legal rights differs significantly according to the nature
5 of the dispute at hand. As explained by the California Court of Appeals for the Third
6 Appellate District:

7 Procedural due process is a flexible concept that does not establish
8 universally applicable procedures for the resolution of all types of issues.
9 The process which is due may depend upon a variety of factors, including
10 the nature of the interest involved, the nature of the proceeding and the
possible burden on that proceeding. While the types of procedures which
are sufficient are variable with the type of action, minimum due process
requires some form of notice and an opportunity to respond.

11 *Sommerfield v. Helmick*, 67 Cal. Rptr. 2d 51, 54 (Cal. Ct. App. 1997).

12 The United States Supreme Court has also long held that the amount of
13 due process protection necessary to pass Constitutional muster depends entirely upon
14 the nature of the dispute before the administrative body. “[T]here can be no doubt that
15 at a minimum [the Due Process Clause] require[s] that deprivation of life, liberty or
16 property by adjudication be preceded by notice and opportunity for hearing *appropriate*
17 *to the nature of the case.*” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306,
18 313 (1950) (emphasis added). *See also Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)
19 (holding that due process “calls for such procedural protections as the particular situation
20 demands”). Due process must therefore be assessed case-by-case, based on the
21 totality of the circumstances.

22 **III. THE HEARING PROCEDURES PROPOSED BY THE BOARD VIOLATE**
23 **GOODRICH’S CONSTITUTIONAL RIGHT TO DUE PROCESS**

24 More than thirty years ago, the United States Supreme Court set forth a
25 three-factor balancing test for determining whether administrative procedures are
26 sufficient for due process purposes. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)
27 (finding that “[t]he fundamental requirement of due process is the opportunity to be heard
28 at a meaningful time and in a meaningful manner.”) (internal quotations omitted). The

1 Court explained that it would analyze the adequacy of due process by looking at:

2 [f]irst, the private interest that will be affected by the official action; second,
3 the risk of an erroneous deprivation of such interest through the
4 procedures used, and the probable value, if any, of additional or substitute
5 procedural safeguards; and finally, the Government's interest, including the
6 function involved and the fiscal and administrative burdens that the
7 additional or substitute procedural requirement would entail.

8 *Id.* at 335. See *California ex rel. Lockyer v. Federal Energy Regulatory Comm'n*, 329
9 F.3d 700, 710-11 (9th Cir. 2003) (applying the *Mathews v. Eldridge* balancing test to the
10 Federal Energy Regulatory Commission's approval of a corporate reorganization of
11 certain Pacific Gas & Electric Co. subsidiaries).

12 Applying this three-pronged balancing test here leads to the unequivocal
13 conclusion that the Board's hearing violates Goodrich's due process rights. The private
14 interest in this case is great, as Goodrich is at risk potentially for substantial investigation
15 and remediation costs. Second, given the scope and nature of this particular case, the
16 timelines and procedures set forth in the Notice deny Goodrich an adequate opportunity
17 to be heard, and thus threaten its Constitutional right to due process. Lastly, the Board's
18 interest in an expedited review of this matter using truncated and informal procedures
19 cannot override the threat that Goodrich may not receive a fair hearing.

20 **A. The Hearing Will Impinge on Goodrich's Property Interests**

21 As stated in the Notice, the purpose of the Hearing is to "receive evidence
22 to determine whether to amend or reissue the 2005 CAO and whether to adopt the 2006
23 Draft CAO, as written or amended, for the investigation and remediation of perchlorate in
24 the Rialto area, or take such other action the State Water Board deems appropriate."
25 The Rialto Cleanup and Abatement Order ("CAO") cited in the Board's Notice purports to
26 hold Goodrich and other private parties liable for the discharge of perchlorate into the
27 groundwater and to require the private parties to "clean up the waste or abate the effects
28 of the waste, or . . . take other necessary remedial action, including but not limited to,
overseeing cleanup and abatement efforts." See Draft Amended CAO No. R8-2005-
0053 at 1.

1 A finding that Goodrich is obligated to address the perchlorate
2 contamination in the Rialto area is no small matter; it may require the expenditure of
3 great sums over the span of decades, depending upon the scope of remediation
4 required and the appropriate perchlorate action levels. For example, the Regional Board
5 and the City of Rialto allege that the cost to comply with the proposed CAO is between
6 \$200 million to \$300 million (see, e.g., [http://www.ci.rialto.ca.us/perchlorate/water_rialto-](http://www.ci.rialto.ca.us/perchlorate/water_rialto-perchlorate-plan.php)
7 [perchlorate-plan.php](http://www.ci.rialto.ca.us/perchlorate/water_rialto-perchlorate-plan.php)). Any recommendation reached by Ms. Doduc, based upon the
8 presentation of the evidence in this rushed setting, therefore places Goodrich's property
9 interests directly, and significantly, at risk. This is not a social security benefits case or a
10 license renewal hearing, but a hotly contested dispute over responsibility for the
11 remediation of releases that occurred over the past half-century. Any procedure that
12 does not resemble a full trial and that does not provide adequate time to prepare,
13 discovery, and cross-examination of all witnesses will not provide a fair and reasonable
14 adjudication of the issues.

15 B. **The Procedures Provided in the Hearing Notice Present a Significant**
16 **Risk that Goodrich's Financial Interests Will Be Unfairly Deprived**

17 Taken as a whole, the procedures established by the Board are insufficient
18 to protect Goodrich's rights. The short timelines leading up to the hearing, the lack of
19 discovery, the limitations imposed on the parties during the hearing itself, and a lack of
20 impartial prosecutors or hearing attorney fail entirely to provide the parties a full and fair
21 opportunity to present their case. "[A] fair trial in a fair tribunal is a basic requirement of
22 due process. This applies to administrative agencies which adjudicate as well as to
23 courts." *Withrow v. Larkin*, 421 U.S. 35, 46 (1975) (internal quotations and citations
24 omitted).

25 1. **The parties lack sufficient time to prepare.**

26 In light of the complex nature of the underlying dispute, the risk of an
27 erroneous deprivation of Goodrich's interests is large if the informal hearing procedures
28 set forth in the Notice are followed. The Notice indicates that the Hearing will cover the

1 following:

2 legal responsibility for site investigation and remediation; the technical
3 evidence justifying site investigation and cleanup; the feasibility and
4 propriety of cleanup and other remediation requirements; and appropriate
5 cleanup standards for protection of public health and beneficial uses of
6 waters of the state. The scope of the hearing will cover the 160-acre Rialto
7 site, including but not limited to, perchlorate and trichloroethylene (TCE)
8 contamination, sources, responsible parties, investigation, and remedial
9 actions.

10 Notice at 2. The scope of the Hearing is breathtaking considering the artificially tight
11 time constraints it adopts: it purports to decide (1) who, over the last sixty years,
12 released perchlorate and TCE at the site; (2) whether such releases reached and are
13 contributing to the current groundwater contamination; (3) whether Black & Decker and
14 Emhart are the corporate successors to the operations of West Coast Loading
15 Corporation; (4) what should be done to delineate the current groundwater
16 contamination; (5) how to clean up the contamination in question; (6) the need for water
17 replacement with respect to some ground water wells and the need for a water
18 replacement contingency plan for other wells; and (7) the reimbursement of past and
19 ongoing costs incurred by the City of Rialto, the City of Colton and West Valley Water
20 District. In addition, the Notice was served on February 23, 2007 and the hearing is
21 scheduled to begin on March 28, 2007 – a mere twenty-eight days later. In this
22 circumstance, the time constraints imposed before and during the hearing simply cannot
23 provide the parties with the necessary time to develop their factual evidence and legal
24 arguments in such a way as to provide the tribunal with an adequate basis for making a
25 fair and fully considered decision.

26 These are all complex issues, involving disputed factual issues and expert
27 testimony on highly technical matters – yet Goodrich will be required to submit all of its
28 evidence in a single two-week time span, will have only one week to prepare a 40-page
29 rebuttal to submissions by five other parties, and then will only have five hours to present
30 its case at the Hearing, including time to cross-examine witnesses. Because of the
31 enormous scope of the hearing, the six competing parties will each be forced to

1 introduce testimony of dozens if not hundreds of witnesses, and hundreds of thousands
2 of pages of relevant documents. The events that must be examined span several
3 decades. The scientific issues involved are extremely complex, and will require the
4 participation of expert witnesses who will need to form opinions, work with the parties,
5 and testify at the hearing.

6 Clearly, the process of pulling together all of this information into a
7 reasonably full and clear written submission will take significantly longer than the two
8 weeks allowed by the Notice. To fully analyze the submissions of the other parties and
9 prepare a rebuttal will take significantly longer than the one week allowed by the Notice
10 and likely more space than the 40-page limitation on rebuttal submissions. The
11 prohibition on submitting or presenting any additional evidence after the strict deadlines
12 serves to compound the unfairness of the timeline. The short deadlines and limitations
13 imposed by the Board will serve to limit Goodrich's ability to participate in the
14 proceedings and prevent it from engaging in a full dialogue on these issues in
15 contravention of its due process rights. This limitation alone violates due process. *See*
16 *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980) (holding that one of the "central
17 concerns of procedural due process" is "the promotion of participation and dialogue by
18 affected individuals in the decisionmaking process").

19 **2. The Board's failure to allow discovery and its requirement of a**
20 **simultaneous exchange of information put Goodrich at a**
21 **severe disadvantage in responding to the Regional Board's**
22 **case.**

23 The Board has created a hearing mechanism that places Goodrich and the
24 other private parties accused in the 2006 Draft CAO of liability for the perchlorate
25 contamination at a distinct disadvantage because they lack fair notice of the evidence
26 that will be presented against them, preventing a fair opportunity for them to prepare an
27 adequate defense. This violates procedural due process as Goodrich lacks adequate
28 notice of the evidence that will be presented against it, and it has been deprived of the
opportunity through discovery to investigate the legitimacy of this evidence.

1 The requirement that a party receive adequate notice is a bedrock principle
2 of procedural due process jurisprudence. *See Lambert v. California*, 355 U.S. 225, 228
3 (1957) (“Engrained in our concept of due process is the requirement of notice.”).
4 Adequate notice must be designed “to apprise the affected individual of, and permit
5 adequate preparation for, an impending ‘hearing.’” *Memphis Light, Gas & Water Div. v.*
6 *Craft*, 436 U.S. 1, 14 (1978). The notice of a hearing must, then, allow a party the
7 opportunity to contest the facts and present a defense. And if the parties are not
8 informed of the specific nature of the allegations or the government’s evidence against
9 them, then due process is violated. *See, e.g., Vanes v. United States Parole Comm’n*,
10 741 F.2d 1197, 1200-01 (9th Cir. 1984) (parolee’s due process rights were violated by
11 parole commission’s failure to notify him that a particular DWI conviction would be used
12 as evidence against him at a parole revocation hearing).

13 Here, the Notice and the CAOs cited in the Notice do not constitute
14 adequate notice. Although they explain the Government’s case regarding the parties’
15 alleged responsibility, they do so only in general terms without adequate citation to
16 specific evidence. For example, the 2006 Draft CAO contains 75 compound paragraphs
17 that form the basis of the Regional Water Board’s “Advocacy Team’s” case against
18 Goodrich and the other private parties. Many of the paragraphs rely only on “testimony
19 and documents” without providing specific citations as support. *See, e.g.,* 2006 Draft
20 CAO at ¶ 33 (“documents and the testimony of former Goodrich employees who worked
21 at this facility between 1957 and 1964, establishes the following facts. . .”). Moreover,
22 the 2006 Draft CAO does not provide any details concerning the prosecution’s expert
23 testimony or its theory on how the releases alleged to have occurred over the past sixty
24 years resulted in the Rialto contamination. If the Advocacy Team has prepared any such
25 expert or scientific evidence to support its case – and one must assume that they have –
26 the current procedures set forth in the Notice will not allow Goodrich time or the
27 opportunity to prepare adequate responses.

28 If the parties were entitled to discovery, they would be able to discern the

1 nature of the evidence the Government has against them, test that evidence, and be
2 able to prepare a defense that addressed that evidence. Moreover, because the parties
3 must engage in a simultaneous exchange of information on March 12, 2007, Goodrich
4 will have no opportunity to review the Advocacy Team's evidence prior to submitting its
5 own case. And, given that the charging pleading was served on Tuesday, March 27,
6 2007, there are only six days between receipt of the charging pleading and when all pre-
7 hearing motions and objections are due. Indeed, Goodrich has only two weeks to
8 prepare its case in chief given the service date of the charging pleading. Because the
9 parties have no source other than the Notice and associated documents upon which to
10 base their understanding of the charges against them – and since these documents are
11 general and vague with regard to the alleged misconduct – the parties have not received
12 adequate notice of the charges against them and are “left unprepared to contest” the
13 Government's theories, whatever those theories may be. *Smith v. California State Bd. of*
14 *Pharmacy*, 43 Cal. Rptr. 2d 532 (Cal. Ct. App. 1995) (agreeing that the failure of the
15 accusation to inform a party that the Board was going to rely upon a negligence theory
16 constituted a procedural due process violation).

17 **3. The Hearing procedures established in the Notice do not**
18 **ensure a fair hearing of the issues.**

19 To expect any party to condense all of this evidence into a presentation of
20 four and a half hours is completely unrealistic, and to insist on such artificial constraints
21 is fundamentally unfair and a denial of a meaningful opportunity to be heard, as required
22 by the Fourteenth Amendment. The same holds true for the expectation and
23 requirement that the parties sufficiently cross-examine witnesses and rebut evidence
24 from other parties on such a vast range of facts in a mere half-hour. Goodrich also lacks
25 any ability to cross-examine or respond to comments submitted by other “interested
26 parties” who choose to participate in the Hearing, see Notice at 2-3, again needlessly
27 limiting the scope of the hearing. Such a rushed and compressed procedure in a case of
28 this scope does not provide an adequate or meaningful opportunity for the parties to be

1 heard and therefore subjects the parties to a heightened risk that they will be
2 erroneously deprived of their property, constituting an impermissible denial of due
3 process.

4 Moreover, although a prosecutor is entitled to be a zealous advocate, it is a
5 commonly accepted canon that a prosecutor may not have a personal interest in the
6 outcome of the case. "Appointment of an interested prosecutor is... an error whose
7 effects are pervasive. Such an appointment calls into question, and therefore requires
8 scrutiny of, the conduct of an entire prosecution..." *Young v. United States ex rel.*
9 *Vuitton et Fils S.A.*, 481 U.S. 787, 812 (1987). Here, two members of the "Advocacy
10 Team" that is "prosecuting" the current case – Gerald Thibeault and Kurt Berchtold – are
11 members of the Regional Water Quality Control Board ("RWQCB"), which has overseen
12 the regulation and permitting of the 160-acre site in the past. These regulators have
13 been on-site in the past and thus are not only witnesses to the events at issue but have
14 been actively participating in those events and making certain determinations that are
15 now in controversy. Therefore, they are not disinterested in the resolution of the case,
16 and should not be permitted to participate in the prosecution. Their involvement in a
17 prosecutorial capacity thus violates the parties' due process rights.

18 As this is a quasi-judicial hearing, Goodrich is entitled to a fair and impartial
19 decision-maker. *See Sommerfield*, 67 Cal. Rptr. 2d at 54 ("The exercise of a quasi-
20 judicial power requires an impartial decision maker. . . ."). The manner in which the
21 Board has convened this Hearing calls into question the motivation for its decision to
22 hurry this matter to completion. Indeed, the existence of the perchlorate contamination
23 in the Rialto area has been known since August 2001, when RWQCB staff sent a letter
24 to Goodrich directing Goodrich to investigate and clean up the Rialto area, and it is
25 uncertain why the Board feels that it is necessary to hold a hearing within a month after
26 deciding to become involved in this dispute. Despite the fact that numerous other
27 potentially responsible parties have been identified with respect to the Rialto
28 contamination and federal litigation has been filed by the Cities of Rialto and Colton, the

1 Board continues unfairly to pursue only Goodrich, Pyro-Spectaculars, and the Emhart
2 entities.

3 In the past year, a Draft CAO regarding the Emhart entities (the first part of
4 a bifurcated proceeding) was scheduled to be heard before the RWQCB. In May 2006,
5 Emhart commenced a challenge to the Board regarding the RWQCB's authority to hear
6 the Draft CAO, alleging bias. In response, on October 13, 2006, the RWQCB passed
7 Resolution No. R8-2006-0079, allowing Gerald Thibeault to appoint Walt Pettit as an
8 independent hearing officer with the authority to conduct hearings and consider
9 investigation and/or cleanup and abatement orders in this matter. Immediately following
10 this appointment, the RWQCB added only two additional parties – Goodrich and Pyro
11 Spectaculars, Inc. – to the Draft CAO.

12 On January 10, 2007, Mr. Pettit, purportedly acting as Deputy Executive
13 Officer for the RWQCB, issued to Goodrich an Order Requiring Prehearing Statements,
14 a draft Notice of Public Hearing, and a draft Hearing Procedure. The deadline for
15 designated parties' pre-hearing statements (cases in chief) was scheduled, following an
16 extension, for February 2, 2007. Goodrich, as well as other parties, petitioned the Board
17 for review of Mr. Pettit's Order. On January 30, 2007, the State Board declined to review
18 Goodrich's administrative petition. But the Acting Executive Director of the State Board
19 advised the Regional Board to "revise the resolution" and to limit Mr. Pettit's authority.
20 Shortly thereafter, Mr. Pettit resigned his position as independent hearing officer, and the
21 hearing dates were vacated. In February 2007, the State Board determined, by its own
22 motion, that it would hold a hearing on the existing Draft CAOs. On February 22, 2007,
23 the State Board held a pre-hearing conference, providing the dates of the hearing. The
24 next day, the Notice was issued, outlining the curtailed procedures for the Hearing.

25 The Board's rush to establish these informal hearing procedures, and its
26 inflexibility and refusal to entertain or negotiate any suggestions from the parties at the
27 February 22nd pre-hearing conference, call the Board and the Hearing Officer's
28 impartiality into question. It is clear that no rush to judgment is needed to resolve this

1 matter. The parties have known about the Draft CAO for some time – any deadlines
2 now imposed are artificial and unnecessary. To ensure due process, the Board should
3 select an impartial, third-party decision-maker to ensure that no appearance of
4 impropriety attaches to the Hearing's final recommendations, and adopt a more formal
5 hearing process designed to address the due process concerns outlined herein.

6 **C. The Board's Interest in an Expedited Hearing Does Not Outweigh the**
7 **Danger of Unfairness to Goodrich**

8 As fully explained in the Notice, the fact that groundwater contamination
9 exists in the Rialto area has been publicly known for years. Indeed, it is currently the
10 subject of several ongoing concurrent federal lawsuits that will determine responsibility
11 for investigation and remediation. Additionally, in July 2003, the United States
12 Environmental Protection Agency issued a Unilateral Administrative Order under Section
13 106 of CERCLA, 42 U.S.C. § 9606, against Goodrich and Emhart covering the same
14 issues that are of concern here. The fact that the Board may be impatient with the
15 Regional Board's failure to act or the pace of the federal litigation is not sufficient
16 justification to hold a shotgun hearing without full procedural protections and adequate
17 process.

18 In contrast to the huge financial burden potentially facing the parties should
19 the informal hearing proceed as outlined in the Notice, the fiscal impact on the
20 government would be extremely small if this matter were to proceed as a more formal
21 administrative procedure, and in fact the administrative burden on the government would
22 arguably be lessened if a formal procedure was employed, as the structure of such a
23 procedure would be better equipped to accommodate a case of this magnitude and
24 would be more likely to withstand any review or appeal. Further, in evaluating the
25 government's interest in this circumstance, there is no exigency that would justify such
26 an exaggeratedly expedited procedure, as has been used to justify such procedures in
27 other circumstances, such as war or other crises requiring urgent action. *Cf. Yakus v.*
28 *United States*, 321 U.S. 414 (1944) (allowing for the use of expedited proceedings to

1 prevent severe economic damage during World War II); *Tur v. Federal Aviation Admin.*,
2 4 F.3d 766 (9th Cir. 1993) (government had a strong interest in instituting emergency
3 license revocation proceedings against a pilot whose reckless operation of a helicopter
4 created a danger of collisions). Indeed, both the City of Rialto and the RWQCB have
5 repeatedly informed the citizens of Rialto and Colton that the "water is safe." Allowing
6 additional time in the present case would not pose any such sort of economic disaster or
7 threat to life and limb that could possibly justify the current rush to judgment.

8 **IV. CONCLUSION**

9 A hearing to determine the rights and liabilities associated with the Rialto
10 contamination is an immense undertaking, and one that cannot be decided fairly under
11 the existing informal procedures set forth in the Notice. Taken as a whole, the current
12 procedures set forth in the Notice will violate Goodrich's right to due process. The short
13 notice period prevents Goodrich from adequately preparing its case in chief or its rebuttal
14 before the Hearing. The lack of discovery and the simultaneous exchange of
15 information, including highly technical expert testimony, prevent Goodrich from receiving
16 fair or adequate notice of the charges against it or the evidence relied upon by the
17 Advocacy Team. The hearing procedures unduly restrict Goodrich's ability to present
18 evidence or to cross-examine and rebut other parties' evidence. Lastly, the participation
19 of interested prosecutors and the circumstances surrounding the creation of the Hearing
20 call the impartiality of the proceedings into question. These concerns, paired with the
21 significant financial interest of Goodrich, far outweigh any interest the Board may have in
22 holding an expedited hearing.

23 Accordingly, the Board should suspend the Hearing pending revisions to
24 the hearing procedures that will ensure adequate due process, including sufficient time
25 to prepare for the hearing, discovery and an opportunity to investigate the Advocacy
26 Team's evidence, including any expert testimony, and hearing procedures that would
27 allow the presentation of evidence and cross-examination in front of an impartial decision
28 maker to ensure fairness.

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Dated: March 5, 2007

Respectfully submitted,

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GIBSON, DUNN & CRUTCHER, LLP

By: _____

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