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12 Attorneys for Designated Party
13 PYRO SPECTACULARS, INC.

14
15 **BEFORE THE STATE WATER RESOURCES CONTROL BOARD**
16 **OF THE STATE OF CALIFORNIA**

17 IN THE MATTER OF PERCHLORATE)
CONTAMINATION AT A 160-ACRE)
18 SITE IN THE RIALTO AREA)

SWRCB/OCC FILE A-1824

19 **MOTION NO. 8: OBJECTIONS AND**
20 **MOTION FOR ORDER THAT RIALTO AND**
21 **CITIZEN GROUPS ARE NOT "PARTIES"**

22 Date: March 28-30, 2007
23 April 4-5, 2007

24 Location: San Bernardino County
Auditorium
850 East Foothill Blvd.
Rialto, CA

25 Motion Cutoff: March 5, 2007

26
27 **I. SUMMARY OF OBJECTIONS AND MOTION**

28 The designation of the City of Rialto and Rialto Utility Authority (collectively "Rialto")

1 and Center for Community Action and Environmental Justice and Environment California
2 (collectively the "Citizen Groups") as "parties" is not proper for the following three reasons:

- 3 • Rialto and the Citizen Groups should not be designated as "parties"
4 because they each have stated publically they will advocate for
5 investigation and cleanup of groundwater in connection with the Rialto
6 Ammunition Backup Storage Point ("RABSP"), just like the Santa Ana
7 Regional Water Quality Control Board ("Advocacy Team"). Therefore,
8 their interests already are represented by the Advocacy Team;
- 9 • Rialto is a plaintiff in a federal lawsuit against the alleged dischargers named
10 in the Draft Amended Cleanup and Abatement Order in which Rialto seeks
11 the same relief in its lawsuit as the Advocacy Team seeks in this hearing.
12 Furthermore, Rialto was adjudicated to be a potentially responsible party in its
13 federal lawsuit by Judge Virginia E. Philips because Rialto transported and
14 arranged for the disposal of confiscated fireworks at the Pyrotronics' facility
15 and the Broco/Denova facility on the RABSP. Testimony and documents in
16 the federal litigation indicate that Pyrotronics and Broco/Denova disposed of
17 wastes in unlined burn pits. Permitting Rialto to be a party in this proceeding
18 as part of the prosecution, instead of as an alleged discharger, allows Rialto
19 to avoid its own liability for contributions to the contamination and to skirt the
20 Federal Rules of Civil Procedure that govern its federal lawsuit to obtain an
21 unfair advantage; and,
- 22 • The designation of Rialto and Citizen Groups as "parties" is unfair and
23 prejudicial because it effectively gives the prosecution two times more time
24 than the Advocacy Team alone would have. The Hearing Officer should
25 order that Rialto and Citizen Groups will not be allowed to participate at the
26 hearing as "parties."

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1 **II. RIALTO AND CITIZEN GROUPS SHOULD NOT BE ALLOWED TO PARTICIPATE**
2 **AS "PARTIES"**

3 **A. The Advocacy Team Adequately Represents The Same Interests As**
4 **Rialto And The Citizen Groups**

5 Rialto and the Citizen Groups should not be designated as "parties" because they
6 each have stated publically they will advocate for investigation and cleanup of groundwater
7 in connection with the RABSP, just like the Advocacy Team. Furthermore, the Advocacy
8 Team represents the people of the State of California. See e.g. Cal. Water Code § 13361.
9 By statute, it is the Advocacy Team's role to protect the waters of the State on behalf of the
10 people of the State of California. Cal. Water Code § 13001. Rialto and the Citizen Groups
11 are part of the people of the State of California. Accordingly, Rialto and the Citizen Groups
12 should not be designated as "parties" because their interests already are represented by
13 the Advocacy Team. Rialto and Citizen Groups should only be permitted to participate as
14 "Interested persons" as described in the February 23, 2007 Notice of Public Hearing.

15 **B. Rialto Is A Plaintiff Seeking the Same Relief And A Potentially**
16 **Responsible Party In Federal Court**

17 Rialto already is a party in a lawsuit to protect its alleged interests, including its own
18 role in causing the contamination. In 2004, Rialto filed a lawsuit in the United States
19 District Court, Central District of California, entitled City of Rialto v. U.S. Department of
20 Defense et al., Case No. EDCV 04-00079 -PSG, against PSI, Goodrich, the Emhart Parties
21 and at least 39 additional defendants. Rialto's lawsuit seeks all of the relief sought by the
22 Advocacy Team in the Draft Cleanup and Abatement Order. Rialto's lawsuit includes a
23 citizens suit claim under the Resource Conservation and Recovery Act which by definition
24 includes the interests of Citizen Groups. (A copy of Rialto's Fourth Amended and
25 Supplemental Complaint in its Federal lawsuit is attached as Exhibit 2 to the concurrently
26 filed MOTION NO. 6: PRE-HEARING OBJECTION AND MOTION TO DISMISS FOR
27 FAILURE TO INCLUDE ALL SUSPECTED DISCHARGERS AND POTENTIALLY
28 RESPONSIBLE PARTIES).

1 Rialto was adjudicated to be a potentially responsible party in its federal lawsuit by
2 Judge Virginia E. Philips. Furthermore, Rialto transported and arranged for the disposal of
3 confiscated fireworks at the Pyrotronics' facility and the Broco/Denova facility on the
4 RABSP. Testimony and documents in the federal litigation indicate that Pyrotronics and
5 Broco/Denova disposed of wastes in unlined burn pits. Permitting Rialto to be a party in
6 this proceeding as part of the prosecution, instead of as an alleged discharger, allows
7 Rialto to avoid its own liability for contributions to the contamination and to skirt the Federal
8 Rules of Civil Procedure that govern its federal lawsuit to obtain an unfair advantage.

9 **C. It Is Unfair And Prejudicial To Give The Prosecution Two Times More**
10 **Time Than the Advocacy Team is Allowed**

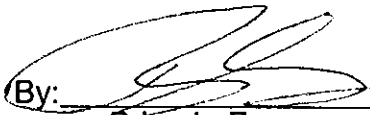
11 As "parties," Rialto and Citizen Groups will use their hearing time like the Advocacy
12 Team, to prosecute the allegations in the Draft Cleanup and Abatement Order. Rialto
13 admits this is the case on its public website where it states that Rialto "has joined in the
14 proceedings to assist in the prosecution of the polluters." (Exhibit 1). It is unfair and
15 prejudicial for the State Water Board to give the prosecution two times more time than the
16 Advocacy Team alone would have.

17 **III. CONCLUSION**

18 Based on the foregoing, PSI objects to the current designation and requests an
19 order that Rialto and Citizen Groups not be allowed to participate at the hearing as
20 "parties." Rialto's and Citizen Groups' participation should be as "interested persons" only.

21 DATED: March 5, 2007

RESOLUTION LAW GROUP, P.C.

22
23 By: 
24 Brian L. Zagon
25 Attorneys for Designated Party
26 Pyro Spectaculars, Inc.
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**PROOF OF SERVICE
(SWRCB/OCC File A-1824)**

I am a citizen of the United States. My business address is 3717 Mt. Diablo Blvd., Suite 200, Lafayette, California 94549. I am employed in the county of Contra Costa where this service occurred. I am over the age of 18 years, and not a party to this action. I am readily familiar with this firm's practice for collection and processing correspondence for mailing, facsimile, email, overnight delivery and personal delivery.

On **March 5, 2007**, following ordinary business practice, I served the foregoing documents described as:

MOTION NO. 8: OBJECTIONS AND MOTION FOR ORDER THAT RIALTO AND CITIZEN GROUPS ARE NOT "PARTIES",

On the following Person(s):

(BY PERSONAL SERVICE) I caused such envelope to be delivered by hand this date to the offices of the addressee(s).

Karen O'Haire
Senior Staff Counsel
Water Resources Control Board
1001 I Street, 22nd Floor
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On the following Person(s):

(BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Lafayette, California.

(BY EMAIL) by transmitting via facsimile the document listed above to the fax number(s) set forth above, or as stated on the attached service list, on this date.

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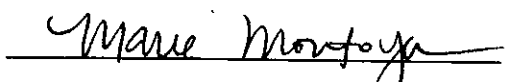
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Lyris List
Perchlorate E-Mail List

22 I declare that I am employed in the office of a member of the bar of the State of
23 California. I declare under penalty of perjury under the laws of the State of California that
24 the foregoing is true and correct.

25 Executed on **March 5, 2007** at Lafayette, California.

26 
27 Marie Montoya
28



NOTICE: Under the City Council's Zero Tolerance Policy, the City will not blend any detectable levels of perchlorate into its water system and your water is safe. To learn more about the City Council's Zero Tolerance Policy, [click here](#).

The City's Perchlorate Clean-Up Plan

Rialto is ground zero for this plume of perchlorate contamination -- one well with 10,000 ppb. (Remember, the Maximum Contaminant Level allowed in California is 6 ppb). Most wells in Rialto have two digit readings and several have three digit readings. Overall, perchlorate has been detected in 22 wells in and around the Rialto-Colton Groundwater Basin. This is one of the largest and most dense plumes in the United States. Rialto, like the surrounding water purveyors that also provide water to residents of Rialto, must serve clean, affordable, safe water. However the City of Rialto has another problem that is not shared by its neighboring water purveyors: as a general law city, Rialto is responsible for the health, safety and welfare of its residents and, as such, has a duty to do what it can to assure that the *source of the contamination* is fully remediated and the perchlorate is removed from the residents' water basin forever at the expense of the polluters. **The cost of such removal is currently estimated to be between \$200 million and \$300 million. It is Rialto's goal that its ratepayers not be left with the responsibility to pay this massive clean-up cost.**

Rialto's plan for cleaning up the perchlorate contamination has 3 prongs:

1. Pursue Litigation.

Rialto has filed a federal lawsuit against forty-two parties, including Black & Decker, Inc., Goodrich Corporation, the United States Department of Defense, and the County of San Bernardino. Rialto seeks to compel these corporations and government entities to reimburse Rialto for the costs it has already incurred to investigate and pursue the clean up of perchlorate in the Rialto-Colton Basin and to *ensure that they will continue to pay to clean up the perchlorate until it has been completely removed from our drinking water basin*. Although a group of the polluters, including the County, but not the Department of Defense, has already spent an estimated \$25 million in legal fees trying to defeat Rialto's legal efforts, the lawsuit has already paid for itself, and is making great progress.

The City of Colton has filed a similar Federal lawsuit against many of the same defendants, including the County of San Bernardino, which is also pending at this time. The City of Rialto and the City of Colton work closely together in coordinated discovery proceedings, obtaining cleanup orders from the court, and other key aspects of the litigation.

The federal litigation has succeeded in identifying over \$1 billion worth of insurance coverage money and other assets available to these corporations and government entities to pay to Rialto for the clean up. Applicable insurance law requires that litigation be filed in order to "trigger" the availability of some insurance coverage funds. Additionally, and perhaps more importantly, the City has obtained an order providing that if Emhart Industries, Inc. is adjudged liable for the cost of cleaning up the water basin, then a \$716 million fund held by Black and Decker, Inc. is available to pay such costs. If the lawsuit had not been filed by the City, it would have lost its rights to get at this money because the statute of limitations to sue the dissolved corporation

EXHIBIT 1

expired in March 2005. Without Rialto pursuing the polluters and their insurance companies, these sources of potential clean up money (over \$1 billion) would have been lost. Unless the lawsuit is successfully completed, these monies may still not be available to the community.

2. Provide Evidence Developed in the Litigation to the Regional Board for Its Administrative Proceedings.

The second prong of Rialto's plan is to provide evidence gathered from discovery in the litigation to the Santa Ana Regional Water Quality Control Board for its use in Administrative Proceedings against the potentially responsible parties to compel them to investigate and clean up the perchlorate in the Rialto Basin. Rialto is working cooperatively with the Water Quality Board to support its issuance of "Clean Up and Abatement Orders" or CAOs. Rialto has already successfully assisted the Board in its issuance of a CAO and Replacement Water Order against the County of San Bernardino. The CAO required the County to install wellhead treatment to clean up perchlorate leaking from the County's Mid-Valley Sanitary Landfill and to provide the City with replacement water. The County states that it has already spent \$6.5 million related to perchlorate treatment resulting from this order, and it is estimated that it will spend \$20 million more over the next 5 years. Therefore, Rialto citizens are already receiving a benefit from the lawsuit which is worth more than the cost of pursuing the lawsuit. You can read the [Cleanup and Abatement Order](#) here. You can read the Replacement Water Order by [clicking here](#).

However, the benefits of the lawsuit have just begun. The City is currently cooperating with the Regional Water Quality Control Board in its upcoming proceedings to issue Clean Up and Abatement Orders against other corporate polluters, including Black & Decker, Inc., Emhart Industries, Inc., B.F. Goodrich and Pyro Spectaculars, Inc. On October 13, 2006, the Regional Water Quality Control Board adopted a resolution appointing a hearing officer, and ordering the commencement of the proceedings against these very parties. The City of Rialto has joined the proceeding to assist in the prosecution of the polluters. To learn more about these further proceedings, [click here](#):

To learn more about Water Quality Board Clean Up and Abatement Orders in general, [click here](#):

3. Pursue State and Federal Funding.

The federal litigation process and the development of evidence to support the issuance of regulatory orders takes time. To continue serving clean, safe, and affordable water to its water customers, your City representatives are cooperating with neighboring water purveyors to pursue State and Federal funds to assist in equipping its wells with perchlorate removal equipment (ion exchange treatment). Your City representatives have traveled to Washington, D.C. and to Sacramento to meet with our Congressional and State delegations to ask for assistance. Funding has also been furnished by the State Water Resources Control Board and the Regional Water Quality Control Board. Unfortunately these efforts, which have spanned 7 years now, have yielded less than \$2 million to the City for treatment. But, with sound water management practices and the perchlorate surcharge paid by Rialto ratepayers, the City has been able to serve safe and clean water to its constituents and to pursue the polluters so that they, and not Rialto ratepayers, pay the massive tab at the end of the day.

From the initial detection of perchlorate in Rialto's wells, Rialto and its City Council have been fully committed to protecting public health and pursuing the polluters and their insurance carriers by every method available to make them pay to clean up perchlorate in the Rialto-Colton Groundwater Basin.

The City has and will continue each of these activities until it achieves its goals.

Last Updated: 10/17/2006

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