

1 Douglas J. Simpson, Bar No. 133576
2 Brandon J. Vegter, Bar No. 234708
3 THE SIMPSON LAW FIRM
4 A Professional Corporation
5 1224 10th Street, Suite 201
6 Coronado, California 92118
7 Phone: (619) 437-6900 ext. 201
8 Fax: (619) 437-6903
9 dsimpson@simpsonlawfirm.com

10 Attorneys for alleged Dischargers, William and Lori Moritz

11
12
13 **CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD**
14 **FOR THE SAN DIEGO REGION**

15 IN THE MATTER OF:)
16) WILLIAM AND LORI MORITZ'S
17 THE CALIFORNIA REGIONAL WATER) ARGUMENT, EVIDENCE, AND EXHIBITS
18 QUALITY CONTROL BOARD, SAN DIEGO) FOR CONSIDERATION BY RWQCB AS TO
19 REGION, AS TO TENTATIVE CLEANUP AND) CAO R9-2008-0152
20 ABATEMENT ORDER R9-2008-0152,)
21 v.) Date of RWQCB Hearing: February 11, 2009
22)
23 WILLIAM MORITZ, and LORI MORITZ)
24)

25 William ("Bill") Moritz and Lori Moritz submit the following Argument, Evidence, and Exhibits
26 for Consideration by the California Regional Water Quality Control Board for the San Diego Region
27 (hereinafter "RWQCB") as to tentative Cleanup and Abatement Order ("CAO") R9-2008-0152.

28 **REQUESTED RELIEF**

1. The Moritzes request the following relief:
2. That RWQCB not issue tentative CAO R9-2008-0152;
3. In the alternative, that the RWQCB defer consideration to a future meeting to occur no earlier than late summer 2009;
4. In the further alternative, that RWQCB order a temporary waiver of discharge requirements;

- 1 5. In the further alternative, that RWQCB allow more time for achieving compliance, with dates of
2 no earlier than the end of summer 2009;
- 3 6. That the RWQCB add other dischargers including without limitation the City of Poway to the
4 CAO R9-2008-0152, or otherwise require the City of Poway to manage storm water flow to
5 prevent siltation, sediment, and scouring that occurs from unrestrained high-velocity storm-
6 waters entering upgradient onto the Moritz property during high-volume storm events.

7 **FACTUAL BACKGROUND**

8 Bill Moritz and his family moved into his single-family residence property at the end of Jerome
9 Drive in Poway in May 2007. The home is in an area toward the outskirts of the City of Poway. The
10 property approaches three acres in size and, like other properties in the area, has horses.

11 Bill Moritz is a Ph.D. working with divorced parents sharing custody of their children. He has
12 no prior background or experience in hydrogeology or in storm-water management.

13 The Moritz property has a shallow depression running through it, a shallow ditch that the
14 Regional Board staff characterizes as a “vegetated ephemeral drainage.” This ephemeral drainage
15 channel bisects Bill Moritz’s property in a north-to-southwesterly direction, transiting approximately
16 330 feet as it crosses from one side of the property to the other.

17 In October 2007, San Diego suffered significant fire damage in general and Bill Moritz's
18 neighborhood was particularly affected, damage that burned brush and left denuded slopes. The area
19 suffered similar damage in the October 2003 fires. In October 2007, Bill Moritz was one of few people
20 who stayed in the neighborhood to fight the Witch Creek Fire after others had evacuated their homes.
21 The City of Poway Fire Department arrived to assist Bill Moritz and others in their attempts to put down
22 the fires, but expressed disappointment and was unable to cross Bill Moritz’s property to reach Crocker
23 Road at approximately 5:45 a.m. — the ephemeral stream had been scoured by rains leaving an
24 impassable ditch. One of the firemen who had been on site during the Witch Creek fires had left a City
25 of Poway pager on the property after having spent the night recuperating on the Moritz property. Bill
26 Moritz later returned the pager to the Poway Fire Department. Exhibit 1 is photos from the Witch Creek
27 fires.

1 There were significant rain events in the fall and winter of 2007. The rain events caused scours
2 on the Moritz property, as well as the depositing of silt and sediment on the Moritz property. In one
3 storm event, silt-and-sediment laden storm water overtopped a 14 inch culvert located upgradient of the
4 Moritz property, ran unabated across the road, and ultimately down onto the Moritzes' property. The
5 upgradient property had had no grading-violation enforcement by the City of Poway, and there was no
6 erosion-controlling vegetation to hold sediment.

7 After the fires and shortly after a rain event, a dam created by the use of sand bags a few hundred
8 yards upstream on a property of currently-unknown ownership broke, sending a flood of water down the
9 ephemeral stream, nearly flooding Bill Moritz's home, and further scouring the property.

10 Given concerns about the effects of the storms, Governor Schwarzenegger declared a state of
11 emergency to exist on October 26, 2007.¹ He made an order unconditionally suspending statutes,
12 regulations, and rules related to fire debris, restoration work and for fire-related activities:

13 Statutes, rules, regulations and requirements are hereby suspended to the extent they
14 apply to the following activities: (a) removal, storage, transportation and disposal of hazardous
15 and non-hazardous debris resulting from the disaster, (b) necessary restoration, and (c) related
16 activities. Such statutes, rules, regulations and requirements are suspended only to the extent
17 necessary for expediting the removal and cleanup of debris from the disaster, and for
18 implementing any restoration plan. (Exhibit 2.)

19 Thereafter, RWQCB placed conditions on the governor's unconditional waiver. RWQCB issued
20 order R9-227-0211, placing 21 conditions on dischargers requesting the conditional waiver of statutory
21 requirements. (Exhibit 3).

22 Bill Moritz sought authority from the City of Poway to repair damage to his property by using a
23 small farm tractor to perform contour grading. He went to the City of Poway on November 7, 2007 and
24 spoke to a City employee, believed to be Samuel Azabada, about the work he envisioned. The City of
25 Poway official told Bill Moritz that no permit was necessary because he was performing contour
26

27
28 ¹ The President of the United States also declared that conditions in the affected counties constituted a major disaster.

1 grading, which falls within that exception to the grading-permit requirement in the Poway Municipal
2 Code.

3 Having sought and obtained permission to perform contour grading, Bill Moritz went forward
4 with the contour grading work on his property. Bill Moritz's neighbor to the south assisted with some of
5 the work. Bill Moritz's neighbor to the north performed similar work on his property, as he had done
6 before.

7 In January 2008, City of Poway inspector Dave Rizzuto showed up at the Moritz property, and
8 entered the Moritz property without any inspection warrant. He observed Bill Moritz moving soils
9 about the property. He saw a single stockpile, which apparently had been dumped by truck. The soil
10 did not smell or otherwise have any deleterious characteristics; it appeared to be clean soil.

11 The City of Poway inspector, Dave Rizzuto, said that the work Bill Moritz was performing
12 needed no permit. So Bill Moritz continued with the work.

13 On February 7, 2008, City inspector Donald Sharp showed up and entered onto the Moritz
14 property, without any inspection warrant. He issued a stop-work order, noting that Bill Moritz was
15 "importing fill w/out haul Rt. permit." (Exhibit 4). The stop-work notice said "contact Sam Tadros @
16 City of Poway — 668-4661 ASAP."

17 Bill Moritz went inside his home and called Sam Tadros, and set a meeting at 8:00 a.m. on
18 February 8, 2008. Bill Moritz met upstairs with Sam Tadros at City Hall and then spoke downstairs
19 with a City employee named Scott. Sam Tadros has no memory of the meeting, but noted that he was
20 working 18-hour days at that point, and was much overburdened. (Exhibit 5 at pages13-14.) City of
21 Poway personnel advised Bill Moritz that he needed no haul permit because he was performing contour
22 grading for which grading permits were not required and consequently no grading-permit number was
23 issued. The haul permits that the City of Poway issues, City officials advised, connect to grading
24 permits by number. Without a grading permit, no haul permit can issue. He was advised that so long as
25 he is doing only contour grading, he could continue with the work. Bill Moritz continued working at the
26 site.

1 Don Sharp showed up in the afternoon of February 8, 2008. He issued a second stop-work
2 notice, indicating that grading in an ephemeral stream is not allowed. (Exhibit 6.) Bill Moritz was told
3 to contact Jim Lyon at the City of Poway.

4 Bill Moritz contacted Jim Lyon, and invited him to the site. Jim Lyon confirmed on February
5 14, 2008 that contour grading and the stone creek concept were okay. (Exhibit 7 at pages 32-33.) Bill
6 Moritz continued work outside of the ephemeral stream.

7 On March 17, 2008, St. Patrick's Day, City of Poway employee, Donald Sharp, showed up at the
8 Moritz property visibly intoxicated, yelling, and slurring his words. He threatened Bill Moritz with fines
9 of thousands of dollars per day. He called Bill Moritz a liar and told him: "You're going to jail buddy,
10 you're going to jail, heh, heh, heh."

11 Thereafter, on March 20, 2008 Bill Moritz met at the City of Poway with Donald Sharp and Jim
12 Lyon for less than 10 minutes. The City asked Bill Moritz to place BMPs at the toe of the fill (the south
13 side of the property), which he did. The City asked, for the first time, that Bill Moritz reestablish the
14 stream per the topography photographs from 2005, two years before the Moritzes moved into the
15 property. The City asked Bill Moritz to stop grading, which he did, and to meet with Danis Bechter,
16 which he did.

17 On March 21, 2008, Bill Moritz called Danis Bechter via speakerphone. Bill Moritz told Danis
18 Bechter that he was planning a "stone creek," a creek essentially following the pre-existing topography
19 but lined with cobbles to help prevent scours in storm-water events. Danis Bechter told Bill Moritz to
20 provide a sketch of what he had in mind for the creek. He said to the effect: "Bring in a sketch to me so
21 we can put this matter to bed." Bill Moritz advised that his daughter was an artist, and would prepare a
22 sketch of the stone-creek design.

23 Bill Moritz submitted a sketch of the stone-creek design on April 2, 2008. The stone-creek
24 design drawings appear to be an elevation watercolor together with a concept drawing. See Exhibit 8.
25 Bill Moritz had no reason to believe that the sketch and concept drawing were in any way deficient.

26 Thereafter, over the course of the next several weeks, having not heard back from the City of
27 Poway regarding the already-submitted sketch of the stone-creek design, Bill Moritz met with a Cal
28

1 Trans Engineer and, subsequently, with other engineers. Some of these gentlemen raised the issue of
2 whether the stone-creek design actually would work and be protective of the Moritz property. He
3 learned that HDPE double-walled, smooth-lined pipe combined with siltation basins at either end would
4 provide the best storm water, silt and debris management solution, albeit the most expensive way of
5 preventing scours and sediment transport that he had experienced on his property. He also learned that
6 the pipe was sufficiently strong that it could be driven across, so that he could have a fire road on the
7 perimeter of his property.

8 Still having never heard back from the City of Poway regarding the stone-creek sketch, but
9 having spoken with civil engineers concerning a culvert, Bill Moritz filled out and submitted a
10 Department of Fish & Game (CDFG) a Notification of Lake or Streambed Alteration on May 14, 2008,
11 paying a \$200 fee. (Exhibit 9.) City of Poway officials had already lodged a complaint against Bill
12 Moritz with the Department of Fish & Game. Bill Moritz understood that filing the notification form, as
13 with fishing permits, was both the necessary and final step in the process of obtaining approval for the
14 streambed alteration. This was confirmed, he believed, when he asked Kelly Fisher of the Department
15 of Fish & Game whether there was anything else to do, and she responded "that's it."

16 The Notification of Lake or Streambed Alteration describes the installation of a twenty-four inch
17 (24") dual wall HDPE pipe for a length of approximately three-hundred and forty feet (340'), to the
18 south side of the property, exiting within the general location of the drainage channel. (Exhibit 9 at page
19 62.13.)

20 Similar culvert drainage structures exist in the area. See Exhibit 10. Upgradient of the property
21 approximately 100 yards to the northeast is a 14" thin-walled galvanized pipe passing beneath under
22 Crocker Road. Downgradient of the property, but after another intersecting tributary, is a 30" thin-
23 walled galvanized pipe passing beneath Golden Sunset Lane. Bill Moritz reasoned that his pipe was a
24 properly sized pipe given the upstream and downstream pipe sizing.

25 Shortly before Memorial Day weekend, Bill Moritz received a letter "NOTICE OF
26 VIOLATION" from the City of Poway dated May 19, 2008 — five days after Bill Moritz had submitted
27 the streambed notification to the Department of Fish & Game. Citing two municipal code sections, the
28

1 notice of violation stated (1) that material had been deposited in a watercourse that might impede the
2 flow of water, and (2) that the capacity of the watercourse had been reduced. The notice demanded:
3 **"Please correct the above violations by June 2, 2008."** (Exhibit 11.)

4 In light of his Notification of Lake or Streambed Alteration filed five days before, he understood
5 this to be the City's demand to complete that work, and to complete that work immediately. He wrote to
6 the City of Poway in a letter dated May 21, 2008 advising that since he had not heard back from the City
7 of Poway concerning the stone creek design as submitted to Poway City Hall per Danis Bechter's
8 request, and that he had contacted the state Department of Fish & Game. (Exhibit 12.) He then
9 canceled his Memorial-Day-weekend travel plans to be with family out of state, purchased materials
10 including sand and pipe, called on a number of friends for some assistance, then installed the pipe uphill
11 and east of the natural drainage course.

12 Prior to construction of the silt basins, City of Poway employee Donald Sharp showed up and
13 issued another stop-work notice, criticizing the pipe installation and inappropriately threatening Bill
14 Moritz. Shortly thereafter, the Regional Board issued the cleanup and abatement order R9-2008-0074.

15 In an effort to begin compliance, the Moritzes retained the services of an environmental
16 geotechnical firm, Geosyntec, Inc., who prepared a stream restoration plan at the cost of over \$20,794.
17 (Exhibit 13). RWQCB staff accepted the plan.

18 To further comply with the original CAO, the Moritzes sought the assistance of a Civil engineer,
19 Don Ayles. Don Ayles estimated that civil engineering fees for grading plans to submit to the City
20 would cost approximately \$23,000, that City fees would be approximately \$12,000 plus a security
21 deposit, other consultants would be needed at a cost of approximately \$3200. (Exhibit 14.) These
22 \$38,200 estimated costs were exclusive of the cost of exporting soils. Reusing soils on site would
23 require additional engineering of approximately \$8000, but would reduce export costs that otherwise
24 might cost \$2000 or more depending on the volume. Thus, the civil engineering and soil expert costs —
25 exclusive of earthwork costs — would be between \$40,200 and \$46,200.

1 The stream restoration plan, combined with the civil engineering expense and exclusive of
2 earthwork costs, have been projected cost between approximately \$60,994 and \$66,994.² Shortly after
3 hearing this news, the market crashed, and along with it, the Moritzes' savings that had been used to
4 fund this suit. The value of their home plummeted, and their equity and ability to borrow against it
5 vanished. They became unable to complete the payment to the geotechnical firm, and have paid
6 \$10,000 of the more than \$20,000 billed to date. Notwithstanding an active civil lawsuit by the City of
7 Poway, the Moritzes' homeowners insurance carrier twice orally denied obligations of defense and of
8 indemnity, and on January 22, 2008 denied obligations of defense and indemnity, leaving the Moritzes
9 without the their own and with their insurer's resources to perform the engineering and corrective work
10 desired by RWQCB and by the City of Poway.

11 In December 2008, the City of Poway sought and obtained an abatement warrant relating to
12 sediment control and erosion-control measures. Under the authority of the abatement warrant, the City
13 installed a plastic creek with gravel-bag energy dissipaters along its length. (Exhibit 15.) Beyond the
14 authority of the abatement warrant, the City punctured, removed and otherwise destroyed a large portion
15 of the drainage pipe, making it unsalvageable. The plastic creek the City of Poway installed, of course,
16 performs the very same function that Bill Moritz envisioned with his 24 inch pipe: convey storm water
17 from the northerly boundary of the Moritz property to the southerly boundary without scouring the
18 property.

19 Purportedly under the authority of Water Code section 13304, the RWQCB issued tentative order
20 R9-2008-0152 which commands a specific design for the Moritz property:

- 21 [C]leanup and abate the existing and threatened pollution associated with the
22 unauthorized discharge of waste on your property by:
- 23 a. Removing the waste including sand, silt, Clay, rock or other earthen materials
previously discharged two waters of the State;
 - 24 b. Restoring the elevations of the stream channel bottom and banks and floodplain to
pre-discharge conditions;
 - 25 c. Realigning the stream channel to its pre-discharge location;

26
27
28 ² Exclusive of attorneys fees.

- 1 d. Revegetating the restored stream with native vegetation along the banks in a
2 manner to mimic the diverse and distribution of streams in the vicinity of the affected
3 area;
4 e. Removing the 24-inch HDPE drainage pipe and other associated structures; and
5 f. Removing the waste including sand, silt, clay, rock or other materials stored on
6 land where it threatens to discharged to waters of the State.

7 For the reasons set forth below, the Moritzes seek the relief requested.

8 **THE REGIONAL BOARD SHOULD REFUSE TO ADOPT ORDER**
9 **R9-2008-0152 BECAUSE IT HAS NOT TAKEN INTO ACCOUNT ECONOMIC**
10 **CONSIDERATIONS OR THE DISCHARGERS' RESOURCES**

11 The RWQCB must, but has not, considered economic issues or the dischargers' resources.
12 California Water Code section 13241 (d) requires regional boards to take economic considerations into
13 account when establishing water quality objectives in water quality control plans. This RWQCB's own
14 Basin Plan requires of the regional board no less — the board must take into account economic
15 considerations in establishing water quality objectives.³

16 "Water quality objectives," of course, "means the limits or levels of water quality constituents or
17 characteristics which are established for the reasonable protection of beneficial uses of water or the
18 prevention of nuisance within a specified area." Water Code section 13050 (h). In other words, the
19 water quality objectives here are the qualities of the water that the tentative CAO is designed to protect.

20 The tentative CAO and its findings are silent on whether the RWQCB addressed economic
21 considerations in setting water quality objectives to be achieved by its tentative CAO. In fact, those
22 issues were not even addressed, nor has other evidence been presented suggesting that the regional board
23 considered or addressed economic issues. Christopher Means testified in deposition:

24 Q Did you ever consider economic
25 considerations of the Moritzes in preparing the
26 cleanup and abatement order that was proposed?

27 A No.

28 Q How about in the preparation of the
previous cleanup and abatement order?

³ The phrase "basin plan," refers to the document entitled "WATER QUALITY CONTROL PLAN FOR THE SAN DIEGO BASIN (9) SEPTEMBER 8, 1994 (with amendments effective prior to April 25, 2007). Pursuant to 23 CCR § 648.3 this exhibit is offered by reference.

1 A No.

2 Q Do you know whether the regional board, in
3 setting its water quality objectives, took into
4 account any economic considerations?

5 MR. LEON: I'm going to object to that as
6 irrelevant and not likely to lead to any relevant
7 information. It doesn't have anything to do with the
8 case.

9 THE WITNESS: And I don't understand your
10 question.

11 But economic considerations are relevant. California Water Code section 13241 (d) requires
12 economic considerations to be taken into account when setting water quality objectives. RWQCB
13 promises the public in its Basin Plan that the regional board must consider economic considerations in
14 establishing water quality objectives.⁴ (Exhibit 16.) But the record is devoid of evidence demonstrating
15 compliance with that requirement.

16 RWQCB again in the Basin Plan promises the public that RWQCB will consider the financial
17 resources of the discharger in selecting enforcement action.⁵ Moreover, this RWQCB must also take
18 into account a discharger's resources in determining schedules for investigation, cleanup and abatement.
19 23 CCR section 2907 IV.

20 But here, RWQCB has done little to nothing to demonstrate consideration of economic issues or
21 of the dischargers' resources. This failure to take into account economic considerations and the
22 dischargers' resources comes at a time of catastrophic, unprecedented bank failures, crashing markets,
23 destruction or elimination of values of retirement and savings accounts, and the worst recession since the
24 Great Depression.

25 In light of all of those terrible economic considerations, the following is the extent of the
26 RWQCB deliberation of the issue of economics and the dischargers' financial resources, all of which
27 issues are not addressed in any of the findings set forth in the tentative order as drafted. Chris Means,
28 staff member of the RWQCB, testified:

⁴ Basin Plan at pages 3-1 to 3-2. Pursuant to 23 CCR § 648.3 this exhibit is offered by reference.

⁵ Basin Plan at pages 4-24. Pursuant to 23 CCR § 648.3 this exhibit is offered by reference.

1 Q How about the next bullet point? Does the regional board have any evidence as to
the financial resources of Bill Moritz or Lori Moritz?

2 A Yes.

3 Q What evidence does it have?

4 A What you have provided. And in regards to costs of creating the plan, though I've
never seen an invoice that proves that, I have – and you've also stated what you expect, or
a bid you've had for what it would cost to do the actual restoration work.

5 Q So at this point it has no actual dollar costs for what it would cost to do the work,
correct?

6 MR. LEON: Asked and answered.

7 THE WITNESS: I believe you stated in a letter or correspondence to me that it would
cost 60,000.

8 BY MR. SIMPSON:

9 Q Do you have any information about the financial ability of the Moritzes?

10 A I do not.

11 Q Does anybody within the RWQCB?

12 A I don't know.⁶

13 As set forth above and as will be presented at the time of the hearing herein, the Moritzes are
14 without the financial resources to achieve RWQCB's requested compliance. The projected costs are
15 expected to be a minimum of \$60,000-\$68,000, exclusive of earthwork costs, exclusive of third-party
16 biologist costs for a biological assay, if necessary, and exclusive of attorneys' fees. Simply put, the
17 Moritzes cannot perform the restoration work.

18 The Moritzes have sought coverage from their own insurer. Their insurer has denied coverage.
19 Whether at some point in the future the insurer might change its perspective is currently unknown.

20 In an effort to achieve resolution, the Moritzes discussed with the City of Poway allowing the
21 City of Poway to perform the stream restoration itself, as a way to give the City and the RWQCB the
22 stream restored to their satisfaction at minimal cost. But the City indicated that it is "not in a position to
23 perform restoration work on the property," and the opportunity to achieve stream restoration at minimal
24 cost was lost.

25 The Moritzes are not recalcitrant homeowners. They simply lack the ability to comply with all
26 of the hurdles required. In fact, Bill Moritz's fault is that he is overly willing to immediately solve
27 problems such as the scouring and siltation that occurred on the Moritz property. But labor costs here
28 are a relatively small issue and do little to mitigate the overall engineering, permitting and related costs.

⁶ Deposition of RWQCB staff member Christopher Means at 105:6-106:3

1 The RWQCB tentative order should not issue as drafted because it fails to take into account economic
2 considerations and the dischargers' financial resources.

3
4 **CAO 2008-00152 SHOULD NOT ISSUE BECAUSE IT VIOLATES WATER CODE SECTION**
5 **13360 (A) BY IMPROPERLY DICTATING THE DESIGN, LOCATION, TYPE OF**
6 **CONSTRUCTION OR MANNER BY WHICH COMPLIANCE IS OBTAINED**

7 CAO R9-2008-0152 dictates the design, location, type of construction, and particular manner in
8 which compliance must be obtained. Water Code section 13360 (a) provides:

9 (a) No waste discharge requirement or other order of a regional board or the state
10 board or decree of a court issued under this division shall specify the design,
11 location, type of construction, or particular manner in which compliance may be
12 had with that requirement, order, or decree, and the person so ordered shall be
13 permitted to comply with the order in any lawful manner.

14 The tentative order states specifically that the Moritzes must restore the stream bed channel
15 bottom to particular elevation. Likewise, the banks and floodplain must be returned to the pre-discharge
16 elevations and conditions. The stream must be realigned to where it was in 2005. The stream must be
17 revegetated specifically to match other streams are in the vicinity. Far from giving the Moritzes latitude
18 in how they might comply, the tentative order as drafted specifies one certain design for a stream bed in
19 order to achieve compliance with the order — it must match what previously existed and only that
20 design is acceptable under the terms of the order.

21 With due respect to RWQCB staff, Christopher Means, who has always conducted himself
22 professionally during handling of this matter, he rightly admitted in deposition that the RWQCB
23 tentative order specifies the design by returning the stream to the exact design it had before any
24 alteration. "That's the point," he said. But he believes that the order does allow latitude in the method of
25 construction — whether the design goal is achieved by shovels versus bulldozers, for example. Thus he
26 stated:

27 Q In other words, part of the RWQCB, if adopts this, is telling the Moritzes how
28 to restore the stream by specifying the design. And that design is the
preexisting condition, right?

A Not exactly, no.

Q How does it differ?

1 A We are requesting that the stream be restored, and then elements of the
2 restoration that are necessary to have that happen, to have the stream restored
3 to its pre-project configuration are here. How that's to be done -- we're not
prescribing how it's to be done. We're prescribing what's required to restore
the creek.

4 Q When you're saying you're not prescribing how it's to be done, you mean that
he can use bulldozers versus shovels? That's his choice? What do you mean?

5 A I mean, yes, the way he goes about it is up to him.

6 Q But the design must be the same design as it existed before he did any work,
correct?

7 A That's the point, yes.⁷

8 Ordering the Moritzes to entirely restore the stream either to 2005 or to exact pre-discharge
9 conditions specifies the exact design of the stream. This is directly contrary to Water Code section
10 13360, which permits latitude in how compliance with water-quality objectives can be achieved. The
11 Regional Board should refuse to issue the CAO as drafted, and allow compliance with water quality
12 objectives in any lawful manner.

13
14 **THE REGIONAL BOARD SHOULD REFUSE TO ISSUE CAO R9-2008-0152**
15 **BECAUSE IT FAILS TO NAME OTHER DISCHARGERS**
16 **INCLUDING THE CITY OF POWAY**

17 The state policy for water quality control, specifically for cleanup and abatement orders issued
18 under Water Code section 13304, requires that regional boards "name other dischargers as permitted by
19 law." As set forth above, Bill Moritz exerted efforts at contour grading of his property, and ultimately
20 installing the pipe in order to protect his property from uncontrolled upgradient storm waters. The
21 Crocker Road culvert and the Rattlesnake Creek tributary that bisects the Moritzes property are within
22 the City of Poway's storm water jurisdiction. The City of Poway, as a subpermittee of the RWQCB's
23 NPDES permit, per order R9-2007-0001, has a mandatory duty to properly manage storm water. But
24 during storm events of significance, silt-and-sediment laden water, together with other debris, have been
deposited onto the Moritzes' property. The Moritzes are informed and believe that the City of Poway

25
26
27 ⁷ Christopher Means deposition taken January 16, 2008, at pages 52:19-53:15. (Exhibit 20.) This is a certified copy, but an
28 as-yet unsigned transcript of Christopher Means' deposition, usable by agreement of counsel. The Moritzes request the
opportunity to augment the record with certified and ultimately with signed deposition transcripts, which are unavailable as
of this writing.

1 has failed to properly manage storm water, for example, by failing to clean out the 14 inch culvert
2 passing beneath Crocker Road which has become clogged with debris. (Exhibit 17.)

3 Storm water during significant rain events consequently flows down Crocker Road over the
4 surface of the street into the neighboring properties. (Exhibit 18.) The neighboring properties are
5 devoid of vegetation, so storm-water flows pick up vast quantities of silt and sediment before flowing
6 onto the Moritzes' property but there have been no recent City of Poway erosion-control enforcement
7 activities on such properties. The storm water picks up sediment, silt and debris, then deposits it onto
8 the Moritzes' property, a condition of nuisance or pollution for which RWQCB should hold the City of
9 Poway responsible.

10 Title 23 of the California Code of Regulations, section 2907 II provides that the regional Board
11 must name other dischargers as permitted by law. That regulation states: "The Regional Water Board
12 shall . . . Name other dischargers as permitted by law"

13 This board's tentative order seeks to name the Moritzes as dischargers because of sediment
14 leaving or potentially leaving their property, suggesting that sediment is a condition of pollution or
15 nuisance for which dischargers ought to be held liable. The logical result of course is that those very
16 same conditions of pollution or nuisance should require RWQCB to name other upgradient dischargers
17 or persons responsible for the condition of pollution or nuisance — here, the City of Poway, and perhaps
18 others. The language of the regulation set forth in 23 CCR section 2907 II is mandatory given the use of
19 the word "shall." Consequently, this board must name other dischargers, and should not adopt tentative
20 CAO R0-2008-0152 without such dischargers.

21 Moreover, the City of Poway gave conflicting instructions to Bill Moritz about how or whether
22 his contour grading was proper. Referring to discussions that Bill Moritz had with City of Poway
23 Inspector Dave Rizzuto in January 2008, Mr. Rizzuto testified as follows in his January 22 deposition⁸:

24 Q. Did Bill Moritz tell you that he had already been
25 to the city of Poway asking whether a permit was required
26 for the work that he envisioned?

26 A. I believe --

27 _____
28 ⁸ The deposition of Dave Rizzuto (Exhibit 19) at this point is a rough transcript. The Moritzes request leave to augment the record with certified copies and/or original, signed transcripts when received.

1 MS. FOSTER: Objection. I'm sorry. That calls
for hearsay.

2 You can answer.

3 THE WITNESS: Okay. That I believe was
discussed, that he said he had been in contact with the
4 city at that point.

5 BY MR. SIMPSON:

6 Q. He told you that he'd actually been down to the
city?

7 A. I couldn't tell you his exact phrasing of it, but
that he expressed an understanding of the limitations of
the ordinance at it applied to the work he was doing.

8 Q. Did you issue any stop work notice or citation?

9 A. I did not.

10 Q. Why is that?

11 A. Again, because my opinion of the work that was
ongoing at that time was that it did not exceed the
criteria of the provisions for landscaping.⁹

12 Q. Did you tell him that it was okay to proceed as
long as he stayed within the confines of the grading
13 ordinance as you described it?

14 A. As it applies to landscaping, yes.

15 Q. And when you say "as it applies to landscaping,"
what do you mean by that?

16 A. To not exceed the provisions that I described
earlier, you know, not to import more than 250 cubic
17 yards, to create vertical fills and cuts greater than five
feet in height, 3:1. Information that he relayed to me in
18 saying that he'd discussed this with city staff prior to
this work beginning, that he understood. I believe I may
19 have advised him that he might want to obtain a haul route
20 permit just in the interest of neighbors expressing
concern over the activity, that it would benefit him to
21 have an import permit.¹⁰

22 The beginning point of the problem was scouring, siltation, sediment, and debris that occurred on
23 the Moritz property because of the Witch Creek fires and storm waters, and because of what appeared to

24
25
26
27

⁹ Deposition of David Rizzuto at 14:3-14:13.

28 ¹⁰ Deposition of David Rizzuto at 19:12-20:2.

1 be a broken gravel-bag dam upgradient that dumped debris and caused flooding on the Moritz
2 property.¹¹

3 Bill Moritz checked with the City of Poway desk clerk, and understood he had the permission to
4 do the work described. He was told he needed no permit because what he was doing was contour
5 grading. So Bill Moritz began contour grading. Dave Rizzuto later personally observed the work, then
6 affirmed the City of Poway's position that the work was permissible contour grading, so Bill Moritz
7 continued grading.

8 Faced with a stop work notice on February 7 and a demand to see Sam Tadros, Bill Moritz did so
9 the following day, complying with the stop-work notice. Again he was told that what he was doing was
10 contour grading that needed no permit. Work stopped.

11 Later that day, a City of Poway inspector , Don Sharp, returned a second time, contradicting
12 what the City of Poway had told Bill Moritz earlier that day. Bill Moritz stopped work, and consulted
13 Jim Lyon has requested. This ultimately resulted in meeting at which Bill Moritz was asked to prepare a
14 sketch of his intentions, which he prepared and submitted. Thereafter, he consulted with civil engineers
15 who recommended a pipe to protect against unrestrained storm waters, and submitted a notification of
16 streambed alteration. Five days later, he received notice to immediately eliminate the problem of
17 transmitting water across the property, and understood that to be a directive to install the pipe for which
18 he had had submitted paperwork. He advised the City that this was his plan, then proceeded with the
19 work in order to comply by the City's June 2, deadline. One of the problems has been the multiplicity of
20 City of Poway personnel involved in this matter including the following: Dave Rizzuto, Jim Lyon, Sam
21 Tadros, Donald Sharp, Dennis Bechter, Thomas Borobia, Sam Arabzadeh, and others. The City of
22 Poway should be encouraged to protect the Moritzes property from unrestrained storm waters by
23 properly managing upgradient storm waters, and by being named as a discharger on the instant tentative
24 CAO.

25
26
27 ¹¹ These are issues related to the City of Poway's management or mismanagement of storm waters, an issue that might later
28 be addressed by evidence from its consultant, D-Max Engineering, about whether the City properly addressed storm water
issues related to its Jurisdictional Urban Runoff Management Plan. This evidence is not available and cannot yet be
presented; the Moritzes request leave to augment the record with that information when available.

1 **CAO R9-2008-1052 SHOULD NOT ISSUE BECAUSE THERE**
2 **IS NO CONDITION OF POLLUTION OR NUISANCE JUSTIFYING**
3 **THE APPLICATION OF WATER CODE SECTION 13304**

4 Water Code section 13304 requires a finding that the discharger creates or threatens to create a
5 condition of pollution or nuisance.¹² ""Pollution" means an alteration of the quality of the waters of the
6 state by waste to a degree which unreasonably affects either of the following: (A) The waters for
7 beneficial uses. (B) Facilities which serve these beneficial uses."

8 Here, the Regional Board knows neither the quality of the water as it enters onto the Moritzes'
9 property, nor the quality of the water as it exits the Moritzes' property. There is no evidence of
10 background levels of water. Moreover, temporary exceedances are allowed under the Basin Plan.
11 Whether the Moritzes' property affects waters of the state in any way whatsoever, let alone unreasonably
12 affects waters for beneficial uses or facilities that serve those beneficial uses is speculative and without
13 evidence in the record.

14 Here, RWQCB has no record evidence establishing a condition of pollution or nuisance.
15 RWQCB staff Christopher Means testified as follows:

16 Q It's possible for people such as Dr. Moritz to change the quality of water
17 without unreasonably affecting beneficial uses, right?

18 A I don't understand the question.

19 Q Do you know what the quality of water is, storm water is, as it enters onto
20 Bill Moritz's property in a rain event?

21 A No.

22 Q Never measured it?

23 A No, I have not.

24 Q Do you know whether the regional board has ever done any inspection or test
25 by which it could determine the quality of the water as it enters onto Bill Moritz's
26 property during a rain event?

27 _____
28 ¹² (a) Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge
requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted,
causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be,
discharged into the waters of the state **and creates, or threatens to create, a condition of pollution or nuisance**, shall upon
order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or
nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts. A
cleanup and abatement order issued by the state board or a regional board may require the provision of, or payment for,
uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or
private well owner. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the
request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to
comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either
preliminary or permanent, as the facts may warrant. (Water Code section 13304 (a), emphasis added.)

1 A I don't know.

2 Q How about as it -- as water comes off of the property? Has the regional board
3 ever done any inspection or test to determine the quality of water as it exits the
4 Moritz property?

5 A Only that I have seen pictures of the property by the city of Poway putting in
6 their interim BMPs. I have seen it during a rain event, a picture of it.

7 Q What did you conclude based upon the picture?

8 A That water was going across his property, there was some sediment in it from
9 upstream.

10 Q Did you make any determination whether the water quality was degraded as it
11 exited his property?

12 A I don't have enough information to make that determination.¹³

13 Q As we sit here today, does the regional board have any evidence that there
14 were any exceedances of any of these constituents of concern or these water
15 quality objectives, rather, at any time?

16 A Not that I -- not that I know of.¹⁴

17 Moreover, the California legislature and this board's Basin Plan state specifically that it may be
18 possible for the quality of water to be changed to some degree *without unreasonably affecting beneficial*
19 *uses*. (Water Code section 13241; RWQCB Basin Plan at page 3.1) In other words, not every change in
20 the quality of water is an *impermissible* change where change for which a cleanup and abatement order
21 ought to issue. Or shall any visible change in water quality here, there is simply no evidence of adverse
22 effects of the Moritzes' property on water quality. The suggestion that there might be is pure conjecture,
23 particularly in light of upgradient sources of silt and sediment that are more significant than exist on the
24 Moritzes' property. Tentative CAO 2008-0152 should not issue because there is no evidence of a
25 degradation of water quality, which is RWQCB's primary objective.

26
27 **CAO R9-2008-1052 SHOULD NOT ISSUE BECAUSE THERE HAS**
28 **BEEN NO DISCHARGE OF WASTE TO WATERS OF THE STATE:**

California Water Code sections 13260 and 13264 in essence preclude discharges of wastes to
waters of the state absent appropriate reporting and issuance of waste discharge requirements (WDRs).
But the California legislature does not define waste in such a way as to necessarily include clean fill soil.
""Waste" includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive,
associated with human habitation, or of human or animal origin, or from any producing, manufacturing,

¹³ Deposition of RWQCB staff member Christopher Means at pages 59-60.

¹⁴ Deposition of RWQCB staff member Christopher Means at 82:12-17

1 or processing operation, including waste placed within containers of whatever nature prior to, and for
2 the purposes of, disposal." Water Code section 13050.

3 The definition of "waste" does not necessarily include fill soils. Although that might be
4 RWQCB expedient, the statute itself will does not extend so far. Indeed, the specific enumeration of the
5 types of things that constitute waste suggest deleterious, harmful, or toxic substances, distinguishable
6 from clean fill soils. A plain reading of the statute does not lead to the conclusion that clean fill dirt
7 voluntarily acquired and serving a useful purpose of preventing harm to one of his property is a waste or
8 a disposal thereof. Had the California legislature wanted to extend the definition to clean fill soils, it
9 could have and should have said so in the definitional statute.

10 Moreover, there was no discharge to "waters of the state." The Water Code defines "waters of
11 the state" to mean "any surface water or groundwater, including saline waters, within the boundaries of
12 the state." By definition, an ephemeral streambed is not "water;" a streambed is a solid, liquid. In San
13 Diego, most of the year is devoid of any precipitation whatsoever. Only in infrequent high-volume
14 flood events does the depression in the Moritzes' yard gather water. Most of the time, it is just a field,
15 completely dry. Had the legislature intended "waters of the state" to mean an ephemeral streams that
16 only flow during significant rain events, the legislature could have and should have said so. It could
17 have said "'waters of the state" means surface water, groundwater, and ephemeral stream beds," for
18 example. Dry stream beds are not what people typically viewed as "waters of the state." There are other
19 regulatory agencies who have responsibility for managing solid waste, such as the Integrated Waste
20 Management Board.. RWQCB's charge, on the other hand, is responsibility for the coordination and
21 control of water quality. California Water Code section 13001. Had the California legislature intended
22 to confer jurisdiction over all land upon which rain falls, it could have and should have done so. But
23 instead, it defined waters in such a way as to specifically mention only surface water and groundwater.

24 Similarly, a plurality of the United States Supreme Court recently concluded similarly that
25 "waters of the US" do not necessarily include ephemeral, intermittently flowing streams. Rapanos v.
26 United States 547 U.S. 714 (2006). In order to determine whether streams bearing water that flows only
27 during precipitation events, given the plurality nature of the Court's opinion, there must be a

28

1 determination of whether there is a significant nexus between wetlands and navigable waters of the
2 United States. Here, there has been no assertion of jurisdiction by the United States, and whether the
3 United States would or could assert jurisdiction is speculative and without supporting evidence in the
4 record.¹⁵

5 Here, as discussed elsewhere above, RWQCB has no evidence about the water quality as it
6 enters onto the Moritzes' property, and no evidence as it leaves back property. It has no evidence about
7 whether the Moritzes' property degrades water quality, its only information is speculative. That does not
8 establish a significant nexus between this ephemeral drainage area or potential harm from it to a
9 receiving body of water.

10 The primary purpose of statutory interpretation is to ascertain the intent of the lawmakers so as to
11 effectuate the purpose of the law. Scripps Health v. Marin (1999) 72 Cal.App.4th 324, 332 [85
12 Cal.Rptr.2d 86].) "Statutory interpretation begins with the text and will end there if a plain reading
13 renders a plain meaning: a meaning without ambiguity, uncertainty, contradiction, or absurdity." Oden
14 v. Board of Administration (1994) 23 Cal.App.4th 194.

15 Although the State Water Board has taken the position that "waters of the state" extends to
16 perennial, to intermittent and to ephemeral watercourses, from headwater regions to lowland river
17 mouths, this appears to be an interpretation beyond what the legislature intended. Fill soils such as those
18 involved in the current manner, are not necessarily "waste." Absent a discharge of waste to waters of
19 the state, the tentative CAO should not issue.

20
21
22 ¹⁵ Q Now, as far as this stream is concerned, have you heard from any source that the United States is asserting jurisdiction
over that particular ephemeral stream?

23 A No.

24 Q Have you determined from any source whether the United States can assert jurisdiction over that ephemeral stream in
light of existing precedent?

A It's possible.

25 Q Have you heard that the United States is not going to assert any jurisdiction over that ephemeral stream?

26 A I have heard from Robert Smith at the Army Corps of Engineers, and through you, that the Army Corps is
overwhelmed right now, and I believe in an e-mail that I can't remember the date of, they offered for your client to accept
27 jurisdiction, which you declined, but that a jurisdictional delineation has not been done. So it's -- it could potentially be
waters of the U.S. under federal jurisdiction. It could not.

Q We just don't know as we sit here today?

28 A Right. I think it would take a forensic jurisdictional determination to determine that.

1 **CAO R9-2008-1052 SHOULD NOT ISSUE BECAUSE THE MORITZES ARE**
2 **CONSTITUTIONALLY ENTITLED TO PROTECT THEIR PROPERTY**

3 The Moritzes are citizens of the State of California, and have rights guaranteed by the California
4 Constitution, article I, section 1, including the rights to protect their property, to obtain their safety, and
5 to have privacy:

6 "All people are by nature free and independent and have inalienable rights.
7 Among these are enjoying and defending life and liberty, acquiring, possessing,
8 and protecting property, and pursuing and obtaining safety, happiness, and
9 privacy." California Constitution, Article I, Section 1.

10 Here, the Moritzes had concerns about damage to their property and the threat of future damage,
11 particularly related to fires and scouring, sediment, and debris that had occurred after the Witch Creek
12 fires. Consequently, the notification of streambed alteration contained a drawing showing the property
13 ringed with fire roads, to permit access to fire trucks to allow the defense of the property. (Exhibit 9, at
14 page 62.13.) The Moritzes are constitutionally entitled to protect their property from storm waters and
15 to take reasonable measures to protect themselves from future fires. Accordingly, the tentative CAO
16 should not issue.

17 **THE REGIONAL BOARD SHOULD ISSUE A TEMPORARY WAIVER AS TO WDRS**

18 California Water Code section 13269 permits the regional board to authorize a waiver of Waste
19 Discharge Requirements if the regional Board determines that the waiver is consistent with any
20 applicable state or regional water quality control plan and is in the public interest. There is no evidence
21 that the Moritzes' property degrades water quality. There is no record evidence of the quality of water
22 upgradient or downgradient at the boundaries of the Moritzes' property — no background levels from
23 which to judge whether the quality of water is affected.

24 The sediment-control measures taken pursuant to the City of Poway's abatement order, and
25 previously taken by Bill Moritz himself, are controlling sediments — the site is stabilized. RWQCB
26 staff person Christopher Means testified:

27 Q Do you know today whether the site is
28 stabilized as far as erosion control and sediment

control is concerned?

A From the photographs I've seen of the abatement work that was performed by the city of Poway, so far to date those BMPs seem to be preventing erosion and discharge of sediment off-site from your client's property.¹⁶

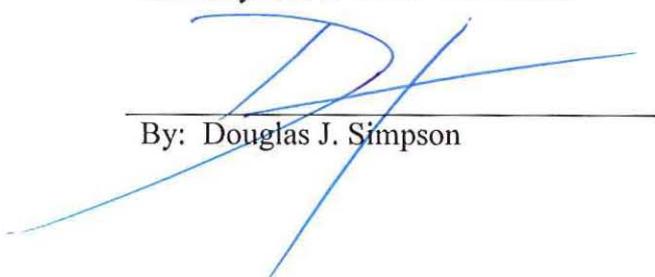
There is no evidence of an imminent threat to water quality. Time might assist the alleged dischargers in finding the resources to respond to the tentative CAO, as might occur if they are capable of persuading their carrier to respond to the City of Poway's lawsuit.

LIST OF WITNESSES

Bill and Lori Moritz each intend to testify at the February 11, 2008 hearing. Bill Moritz intends to testify to the facts set forth herein and facts relating to the proposed CAO, except for subjects about which Lori Moritz intends to testify. Lori Moritz intends to testify as to economic considerations and as to the dischargers' resources to respond to the CAO. Given the time limitations imposed, we expect these witnesses to provide their direct testimony in approximately 15 minutes and five minutes respectively, exclusive of cross examination and rebuttal.

Dated: January 23, 2009

THE SIMPSON LAW FIRM,
A Professional Corporation
Attorneys for Bill and Lori Moritz



By: Douglas J. Simpson

¹⁶ Deposition of Christopher Means at 85:6-13.

Exhibit 1

Poway Fire 2007

Redneck Fire Dept
21-27 Oct 2007



Western sky says it all



Smoke building at the North



Getting darker on the North side



Burn approaches from the North east



Fire Dept comes by to join the Lookie-loos
.... and leaves ...



North side lights up

Poway Fire 2007

- Page 2 -

Redneck Fire Dept
21-27 Oct 2007



Bill's horses hang out in his back yard while the fire heads for Ed



Fire dudes crash out in the front yard



Sean and Bill work the north side while they rest



Coming down from the East



Look out Ed, here it comes



Tuesday am end of break - 0545 hrs
Hot 'n heavy at the Constables

Poway Fire 2007

- Page 3 -

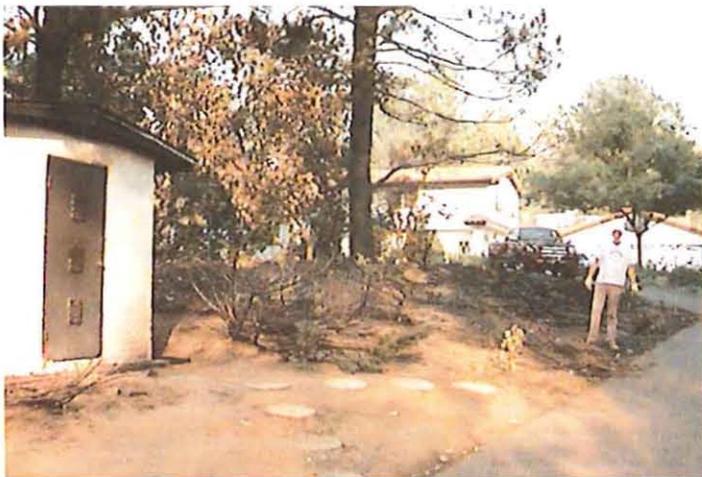
Redneck Fire Dept
21-27 Oct 2007



The little stump that wouldn't give up



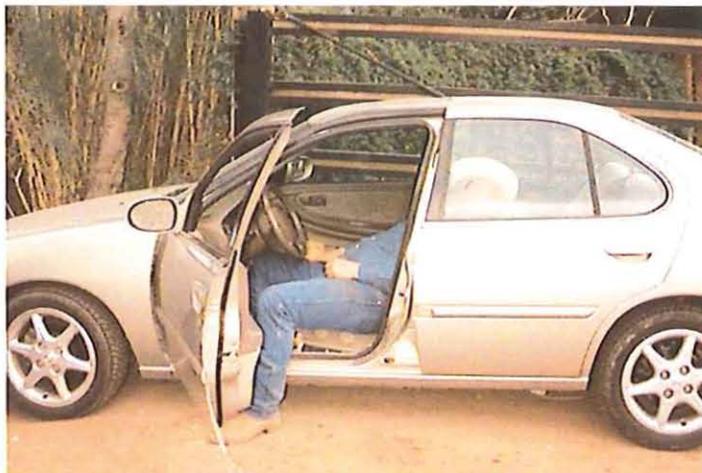
Gilligan Fire Truck
Jamie and fire dog, Holly



Ken finally figures out we DO need water



For a good time horsing around
call



Sean snags a few winks
between hot spot patrol



The Redneck Volunteer Fire Brigade
Sean, Randy, Ed and Bill

Exhibit 2



Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR

TRACK _____ EXHIBIT _____
DATE _____
WITNESS: _____
PAGE(S) _____

EXECUTIVE ORDER S-13-07

10/26/2007

EXECUTIVE ORDER S-13-07

WHEREAS on October 21, 2007, I proclaimed a State of Emergency to exist in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara and Ventura as a result of major wildfires fanned by extremely high winds; and

WHEREAS at least 13 out of more than 20 fires continue to burn in Southern California, which have already killed one person and injured dozens of others, including firefighters; and

WHEREAS the fires have displaced hundreds of thousands of persons in the largest evacuation in California history, including those taking refuge in more than 50 shelters, which have housed more than 20,000 people; and

WHEREAS these fires have burned over 450,000 acres of land and more than 1,600 structures, and caused the loss of valuable personal and business records; and

WHEREAS more than 10,000 firefighters are fighting the fires; and

WHEREAS the President of the United States declared that the conditions in the affected counties constitute a major disaster; and

WHEREAS the State Employment Development Department and my Office of Emergency Services estimate that thousands of workers are, or will be, unemployed as a result of the wildfire disaster and are in need of immediate financial assistance; and

WHEREAS the suspension of the statutory one-week waiting period for unemployment insurance applicants who are unemployed due to the wildfire disaster would provide these unemployed workers with immediate financial assistance; and

WHEREAS hospitals, mobile hospitals, temporary hospital annexes, mass care centers, first-aid stations, or other similar temporary facilities established by public entities in the affected areas to care for persons displaced by the fires may be subject to licensing requirements that may prevent, hinder or delay the establishment of those facilities or their ability to provide health care services; and

WHEREAS existing state law does not permit former health care professionals who retired in good standing, or inactive health care professionals in good standing, to practice their professions, even though these persons can play a helpful role in providing emergency health care services where insufficient licensed personnel are available; and

WHEREAS other statutes, regulations, rules or orders governing the delivery of medical care may prevent, hinder or delay the delivery of health care services to persons displaced by the fires; and

WHEREAS those who have lost family members, and those who have lost or sustained damage to their homes, property, businesses or places of employment, may need to obtain or replace important government records such as certificates of birth, death, fetal death, or marriage, as well as marriage dissolution records, driver's licenses, identification cards, vehicle registration certificates, and certificates of title, to obtain assistance from federal, state and local governmental agencies, make claims for and collect insurance, find new employment, and for other purposes related to losses suffered in the fire; and

WHEREAS those who need to obtain or replace important government records to mitigate their losses and rebuild

their lives as a consequence of the wildfire disaster require immediate assistance from state and local governmental agencies to replace those records; and

WHEREAS existing law requires the Office of Vital Records of the Department of Public Health, along with local registrars, county recorders and county clerks, to impose fees upon persons requesting copies of certificates of birth, death, fetal death, and marriage, and marriage dissolution records, and existing law requires the State Department of Motor Vehicles to impose fees upon persons requesting replacement driver's licenses, identification cards, vehicle registration certificates, and certificates of title; and

WHEREAS existing law requires the State Department of Motor Vehicles to impose late fees on persons who are late in renewing their vehicle registration or late in transferring ownership of a vehicle; and

WHEREAS existing law requires the State Department of Housing and Community Development to impose fees on persons who are late in renewing their manufactured home registration or late in transferring ownership of a manufactured home; and

WHEREAS the suspension of statutory requirements for imposition of fees would assist fire victims; and

WHEREAS my Office of Emergency Services has successfully used Local Assistance Centers during previous emergencies to coordinate and expedite disaster assistance by providing "one-stop" centers where those affected by an emergency may obtain all services provided by governmental and community organizations; and

WHEREAS the California Military Department, through the California National Guard, has the capability to protect the lives and property of the people of the state during periods of natural disaster and civil disturbances, and to perform other functions required by the California Military Department or as directed by the Governor.

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, in accordance with the authority vested in me by the Constitution and statutes of the State of California, including the Emergency Services Act and in particular Government Code sections 8567 and 8571, do hereby issue the following orders to become effective immediately:

IT IS ORDERED THAT:

1. The California National Guard shall mobilize under California Military and Veterans Code section 146 (mobilization in case of catastrophic fires) to support disaster response and relief efforts and coordinate with all relevant state agencies, including my Office of Emergency Services, and all relevant state and local emergency responders and law enforcement within the impacted areas. Sections 147 and 188 of the Military and Veterans Code are applicable during the period of participation in this mission, exempting the California Military Department from applicable procurement rules for specified emergency purchases, and those rules are hereby suspended.
2. The provisions of Unemployment Insurance Code section 1253 imposing a one-week waiting period for unemployment insurance applicants are suspended as to all applicants who are unemployed as a result of the wildfire disaster in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara and Ventura, who apply for unemployment insurance benefits during the time period beginning October 21, 2007 and ending on the close of business on April 21, 2008, and who are otherwise eligible for unemployment insurance benefits in California.
3. Any hospital, mobile hospital, temporary hospital annex, mass care center, first-aid station, or other similar facility established in the affected area for disaster response shall be exempt from the requirements set forth in Health and Safety Code sections 1200 through 1799.207 (licensing provisions) and sections 127125 through 130070 (health policy planning, health professions development, health care demonstration projects, health data, facilities loan insurance and financing, facilities design review and construction). Such facilities shall be established and operated in accordance with the State Emergency Plan and local emergency plans. The Licensing and Certification Division of the State Department of Public Health shall, to the extent reasonably possible, advise public entities on reasonable and appropriate measures under the circumstances to protect the health and safety of persons in the facility.
4. Business & Professions Code sections 702 (inactive healing arts license) and 2439 (retired license) are suspended and without effect in the counties subject to the proclamation of emergency, provided that, at the time the practitioner retired or became inactive, his or her license was in good standing.
5. The provisions of Health and Safety Code sections 103525.5 and 103625, and the provisions of Penal Code section 14251, requiring the imposition of fees, are hereby suspended with regard to any request for copies of

certificates of birth, death, fetal death, and marriage, or marriage dissolution records by any resident of the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara or Ventura who suffered a loss of a family member, or who suffered loss or damage to property, business, or employment, due to the wildfire disaster. Copies of certificates of birth, death, fetal death, and marriage, and marriage dissolution records, shall be provided to such persons without charge.

6. Health and Safety Code section 18114, requiring the imposition of fees, is hereby suspended with regard to any late renewal of registration certificate or certificate of title for a manufactured home by any registered owner who lost these documents as a result of the wildfire disaster. Those documents shall be replaced without charge.

7. The provisions of Vehicle Code sections 9265(a), 9867, 14901, 14902 and 15255.2, requiring the imposition of fees, are hereby suspended with regard to any request for replacement of a driver's license, identification card, vehicle registration certificate or certificate of title by any resident of the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara and Ventura who suffered a loss of such documents in the wildfire disaster. A replacement driver's license, identification card, vehicle registration certificate, or certificate of title shall be provided to such persons without charge.

8. The provisions of Vehicle Code sections 4602 and 5902, requiring the timely registration or transfer of title, are hereby suspended with regard to any registration or transfer of title by any resident of the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara and Ventura who suffered a loss of such registration or title documents in the wildfire disaster. The time covered by this suspension shall not be included in calculating any late penalty pursuant to Vehicle Code section 9554.

9. My Office of Emergency Services shall immediately establish and support Local Assistance Centers where needed to provide "one-stop" emergency assistance services to those affected by the wildfires in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara and Ventura.

10. My Office of Emergency Services shall coordinate assistance programs offered by all relevant federal, state and local agencies and departments, including, but not limited to, the Federal Emergency Management Agency, the California Conservation Corps, the Department of Public Health, the Department of Health Care Services, the Department of Mental Health, the Department of Social Services, the Department of Consumer Affairs, the Employment Development Department, the Department of the Highway Patrol, the Department of Forestry and Fire Protection, the Department of Veterans Affairs, the Department of Aging, the Department of Transportation, the Department of Insurance, and the Franchise Tax Board.

11. All State agencies with responsibility, regulatory authority or expertise related to recovery efforts in connection with these fires shall cooperate fully and act expeditiously in coordination with the California Resources Agency and the California Environmental Protection Agency, to facilitate the mitigation of the effects of the fires and the environmental restoration of the affected areas.

12. State agencies shall expeditiously enter into contracts and arrange for the procurement of materials, goods, and services necessary to quickly remove dangerous debris, repair damaged resources, and restore and protect the impacted watershed. Because strict compliance with the provisions of the Government Code and the Public Contract Code applicable to state contracts would prevent, hinder, or delay these efforts, applicable provisions of those statutes, including, but not limited to, advertising and competitive bidding requirements, are suspended to the extent necessary to address the effects of this emergency.

13. Statutes, rules, regulations and requirements are hereby suspended to the extent they apply to the following activities: (a) removal, storage, transportation and disposal of hazardous and non-hazardous debris resulting from the disaster, (b) necessary restoration, and (c) related activities. Such statutes, rules, regulations and requirements are suspended only to the extent necessary for expediting the removal and cleanup of debris from the disaster, and for implementing any restoration plan. The Secretary for the California Environmental Protection Agency, and the Secretary for the California Resources Agency, shall use sound discretion in applying this suspension to ensure that the suspension serves the purpose of accelerating cleanup and recovery, while at the same time protecting public health and the environment. The Secretaries shall maintain a public list of all statutes, rules, regulations and requirements that are suspended, and shall post the list prominently on their websites. This order shall apply to, but is not necessarily limited to, solid waste facility permits, and waste discharge requirements for storage, disposal, emergency timber harvesting, stream environment zones, emergency construction activities, along with waste discharge requirements and/or Water Quality Certification for discharges of fill material or pollutants. To the extent it is within their administrative authority and discretion, the boards, departments and offices within the California Environmental Protection Agency shall expedite the granting of other authorizations, waivers or permits necessary for the removal, storage, transportation and disposal of hazardous and non-hazardous debris resulting from the fires, and for other actions necessary for the protection of public health and the environment.

14. My Office of Emergency Services and all affected State agencies and departments shall provide assistance to the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara and Ventura. Support provided by the State for implementation of the California Disaster Assistance Act shall include, but shall not necessarily be limited to, the use of state personnel and state contractors to support recovery operations.

15. State agencies and departments shall work with local officials to put into place and implement a comprehensive structural debris removal plan that will treat the removal of structural debris as a single organized project.

16. The Department of Forestry and Fire Protection, the California Department of Corrections and Rehabilitation, and the California Conservation Corps, shall use inmate and ward labor, where appropriate, to protect public health, safety, and water quality on public lands or where otherwise requested by private property owners.

17. Standby order numbers one and three are invoked to allow sufficient state personnel to address disaster response and recovery, clean-up and restoration efforts. Standby order number one provides: "It is hereby ordered that the period of employment for State Personnel Board emergency appointments, as provided in Section 19120 of the Government Code and State Personnel Board Rules 301-303, be waived for positions required for involvement in emergency and/or recovery operations. The requirements and period of employment for such appointments will be determined by the Director, California Office of Emergency Services, but shall not extend beyond the termination date of said State of Emergency." Standby order number three provides: "It is hereby ordered that during the proclaimed State of Emergency appropriate parts of Sections 18020-18026 of the Government Code and State Personnel Board Rules 130-139 be waived to permit cash compensation to personnel whose work is designated by the Director, California Office of Emergency Services, as essential to expedite emergency and recovery operations for all time worked over the employee's regular workweek, at a rate of 1-1/2 times the regular rate of pay. The Director, Office of Emergency Services, will also designate the beginning and ending dates for such overtime for each individual involved. This waiver shall not extend beyond the termination date of said State of Emergency."

IT IS FURTHER REQUESTED THAT:

1. The Public Utilities Commission direct utility companies with transmission lines in the affected area to ensure that all dead and dying trees and vegetation are completely cleared from their utility right-of-ways to mitigate the potential threat to human health and safety and public property.

2. The Franchise Tax Board and the Board of Equalization consider using their administrative powers where appropriate to provide those individuals and/or businesses impacted by the wildfires extensions for filing, audits, billing, notices, assessments and relief from subsequent penalties.

This Executive Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

I FURTHER DIRECT THAT, as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given to this order.



IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 25th day of October 2007.

ARNOLD SCHWARZENEGGER
Governor of California

ATTEST:

DEBRA BOWEN
Secretary of State