CVAG
COACHELLA VALLEY ASSOCIATION of GOVERNMENTS

Blythe • Cathedral City • Coachella • Desert Hot Springs • Indian Wells • Indio • La Quinta • Palm Desert • Palm Springs • Rancho Mirage
County of Riverside • Agua Caliente Band of Cahuilla Indians • Cabazon Band of Mission Indians • Torres Martinez Desert Cahuilla Indians

06-1-6
11/27/06

January 26, 2006

Dr. Robert F. Sawyer, Chairman
California Air Resources Board
1001 "I" Street
P.O. Box 2815
Sacramento, California 95812

RECEIVED
JAN 26 2006
AIR RESOURCES BOARD
CLERK OF THE BOARD

FAX: (916) 327-5748
Hard Copy to Follow

Dear Chairman Sawyer:

On behalf of the Coachella Valley Association of Governments (CVAG) representing the following cities: Blythe, Cathedral City, Coachella, Desert Hot Springs, Indian Wells, Indio, La Quinta, Palm Desert, Palm Springs, Rancho Mirage, Riverside County, and three Tribal nations: The Agua Caliente Band of Cahuilla Indians, the Cabazon Band of Mission Indians and the Torres Martinez Desert Cahuilla Indians; may this serve as a letter of support for the South Coast Air Quality Management District's (AQMD's) request to rescind the June 2005 California Air Resources Board (CARB)/Union Pacific and BNSF Railroads Statewide Memorandum of Understanding (MOU).

It is this agency's understanding that following an October 27, 2005 request by your own Board to clarify the ambiguities in the agreement as well as a December 2005 request by the AQMD; and following review of your Status Report of this Agreement provided on January 13, 2006; that these ambiguities have not been adequately addressed.

Of great concern is the potential to undermine local decision making. For example, we are concerned regarding the release clause on legitimate authority of local jurisdictions to impose mitigation requirements for new and expanded rail years under California Environmental Quality Act (CEQA) or as conditions in a lease granted to a railroad to operate on public property. Instead, your clarification asserts that the release clause cannot be invoked when "one or more of the participating railroads agrees to permit conditions or other mitigation requirements in exchange for obtaining discretionary approval to operate a new or modified rail yeard facility. Your clarification further states that "a participating railroad seeking discretionary government approval in compliance with CEQA, California land use law, or other California or local laws, *has full authority to determine which conditions and mitigation actions it is willing to accept* in order to receive the discretionary government approval. Your clarification states that the railroads can still use the release clause to undermine local decision making. It can be interpreted to allow

17

73-710 Fred Waring Drive, Suite 200 • Palm Desert, CA 92260 • (760) 346-1127 • FAX (760) 340-5949

COACHELLA VALLEY ASSOCIATION of GOVERNMENTS

use of the release clause whenever a local project or CEQA approval contains conditions to which the railroad did not agree, even if they elect to move forward with the project under the terms of the local jurisdiction. Railroads, then, are likely to use this MOU release clause in an attempt to persuade local jurisdictions to drop mitigation conditions.

Another example would be the limiting of non-essential idling for locomotives without anti-idling devices to 60 minutes. For residents that live near areas where excessive idling occurs, this is an important element of the MOU. There is conflicting language, however, in the MOU that appears to exempt idling from this limitation where the railraod staff "anticipated" that idling would last less than 60 minutes. This exception will diminish or eliminate the benefit of an idling limitation because CARB's enforcement personnel cannot possibly get into the minds of railroad staff to determine what they "anticipated".

These are just two examples of areas of ambiguity in the Statewide MOU. In summary, the California Air Resources Board (CARB)/Union Pacific and BNSF Railroads Statewide Memorandum of Understanding (MOU) excludes opportunities for collaboration and meaningful public participation and limits the ability of the Legislature, air districts, and local government to control diesel pollution throughout California.

Locomotive and rail yards are responsible for a large portion of the diesel particulate pollution. These emissions are often produced in close proximity to our homes, businesses and schools. There are clean locomotive and rail yard technologies that are commercially available that can dramatically reduce locomotive emissions. However, CARB and the Railroads have chosen a grievous path through entering this voluntary MOU; developed and signed in secret without no public, agency or legislative input; producing an agreement with ambiguous language, weak provisions with inadequate and unenforceable goals and timetables.

Please find attached Resolution No. 04-002 issued back in March 2004 which examples CVAG's support for mitigation measures to reduce locomotive emissions. Given that your agency's responses are still ambiguous, we ask that the California Air Resources Board rescind the MOU with the Union Pacific Railroad and BNSF Railway Companies.

Sincerely,

John M. Wohlmuth
Executive Director

:attachment

RESOLUTION NO. 04-002

A RESOLUTION OF THE COACHELLA VALLEY ASSOCIATION OF GOVERNMENTS (CVAG) EXPRESSING CVAG'S SUPPORT FOR SENATE BILL 1397 (ESCUTIA), WHICH WOULD ENACT THE LOCOMOTIVES EMISSIONS REDUCTION AND MITIGATION PROGRAM

WHEREAS, the South Coast Air Basin is the only "extreme nonattainment" air basin in the United States and to achieve attainment of federal and state public health standards requires extraordinary effort by federal, state and local regulatory authorities working in concert; and

WHEREAS, federal and state health-based ambient air quality standards for ozone and PM10 are exceeded regularly and by a wide margin in the South Coast Air Basin; and

WHEREAS, the federal Environmental Protection Agency has recently adopted more stringent 8-hour ozone and PM 2.5 standards that will require even greater emission reductions in the South Coast Air Basin; and

WHEREAS, air pollution emissions from locomotives in the South Coast Air Basin contribute significantly to exceedances of federal and state ozone and PM 10 standards, as well as to emissions of diesel exhaust, a toxic air contaminant; and

WHEREAS, in order to attain state and federal standards for ozone and PM2.5, it is necessary that emissions from locomotives be controlled or otherwise mitigated; and

WHEREAS, the federal Environmental Protection Agency has authority to adopt regulations limiting emissions from locomotives, but state and local regulatory authority to control emission from locomotives is restricted by federal law. In order to attain state and federal ambient air quality standards, it is necessary that emissions from locomotives be controlled or mitigated by the federal government or, if necessary, by state or local governments using authorities available to them; and

WHEREAS, in 1998, the California Air Resources Board entered into a Memorandum of Understanding with the Burlington Northern and Santa Fe Railroad Company, and the Union Pacific Railroad Company, under which the railroads agreed to utilize locomotives in the South Coast Air Basin that would meet certain emissions limitations; and

WHEREAS, in 2003, the South Coast Air Quality Management District adopted the most recent revision to its Air Quality Management Plan. The 2003 Plan includes stringent emissions standards for factories, power plants, on-road and off-road mobile sources and other sources that are within the regulatory jurisdiction of the South Coast

District and the California Air Resources Board – including sources which, like locomotives, are powered by diesel engines. The percentage of emission reductions that will be achieved by significant sources subject to state and local authority is substantially greater than the percentage of emissions reductions that will be achieved by locomotives under existing federal regulations and the 1998 MOU; and

WHEREAS, the 2003 South Coast District Plan proposes a significant amount of emissions reductions through means that are yet to be specifically determined; and

WHEREAS, unless and until the federal Environmental Protection Agency adopts regulations requiring locomotives in the South Coast Air Basin to achieve all feasible emission reductions as necessary to achieve federal clean air standards, the South Coast Air Quality Management District should be authorized to adopt a locomotive mitigation fee for locomotive emissions that is proportionate to the health and environmental harms resulting from those emissions; and

WHEREAS, it is therefore necessary that legislation authorize the South Coast Air Quality Management District to implement a locomotive emission reduction and mitigation program.

NOW, THEREFORE, BE IT RESOLVED THAT: THE COACHELLA VALLEY ASSOCIATION OF GOVERNMENTS HEREBY DECLARE AND RESOLVE THAT SENATE BILL 1397

- is necessary to protect the health and welfare of our residents from cancer causing toxic air pollutants, especially children and seniors
- is essential to reduce diesel emissions from locomotives in Southern California to meet the 2010 deadline for clean air established by the federal government,
- is critical in ensuring the burden for emission reductions in the region is not unfairly placed on local businesses, and that significant future reductions are achieved from locomotives.
- ensures funding for mitigation measures to reduce emissions from trains, associated sources and for programs to address accompanying health effects from diesel emissions.

FURTHER RESOLVED, CVAG HEREBY URGES CALIFORNIA LEGISLATORS TO ENACT SB 1397 AS PROPOSED AND URGES THE GOVERNOR TO SIGN IT INTO STATE LAW WITHOUT DELAY.

APPROVED AND ADOPTED this 29th day of March, 2004.

George Stettler, Chairman,
CVAG Executive Committee

3/29/04

f:\akerr\aqmd\revisedcityreso sb1397.doc