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September 30, 2004

Governor Arnold Schwarzenegger
State Capitol Building
Sacramento, CA 95814

**RE: California Performance Review Recommendations on Dissolution of Air
and Water Boards and the State Lands Commission**

Dear Governor Schwarzenegger:

"To the man who only has a hammer in the toolkit, every problem looks like a nail."

Abraham Maslow

If we are to judge by CPR cures for the problems of California commissions, the single tool in their kit must have been an axe. It appears that the only remedy considered for the unspecified problems of 117 commissions was their elimination. The authors of the Report have swung the axe without identifying the particular problems they were attacking. There is no indication that they considered whether eliminating the commission would cure problems or make them worse; whether less invasive remedies might be more effective. In the 2500 pages of text, there is no evidence that the authors entertained alternative solutions, or weighed the downside of their single solution. Nor do they provide information about which commissions CPR would retain, and why.

We do not take the position that commissions are sacrosanct and should never be eliminated. Commissions that do not serve a valid public purpose should be eliminated. But indiscriminate abolition, like clear cutting, can create more problems than it solves.

To avoid unintended consequences, we are asking you, as well as the CPR Commission and the Legislature, to approve reforms of California's commissions only if they are supported by rigorous, well-informed analysis, instead of doctrinaire adherence to a pre-determined solution. The proposed elimination of air and water boards and the State Lands Commission does not satisfy this standard.

Arc Ecology is a public interest organization providing technical assistance to disadvantaged communities on toxics remediation and sustainable development. Much of our work over the past decade has been focused on the cleanup and redevelopment of closed military bases. Many of the most critical issues have required us to interact with water and air boards and the State Lands Commission.

Because of our interest in the fate of these commissions, we attended the September 27th hearing. Like CPR Commissioners who remained after the scheduled closing time, we heard comments from members of public, selected from many who requested to speak.

After listening to public comments, we are convinced that CPR's crude approach to problem-solving was applied to commissions in addition to those created to protect the environment. Although our comments focus primarily on the environmental commissions that we are most familiar with, many of our comments about CPR's approach are more generally applicable.

CPR RECOMMENDATIONS WOULD RESULT IN ENVIRONMENTAL REGULATION BEHIND CLOSED DOORS

The CPR would

- Abolish the statewide Air Resources Board (appointed by the Governor to slots ensuring regional representation, expertise, and the perspective of the public) and the 35 local air districts. Responsibilities would be transferred to the Division of Air Quality in the new Department of Environmental Protection. The Secretary of the Department rather than the Governor would appoint ad hoc advisory committees.
- Abolish the State Water Resources Control Board (a mix of experts and general public appointed by the Governor) and 9 regional boards and transfer responsibilities to the new Division of Water Quality of the Department of Environmental Protection and 10 exempt officers appointed by the Governor (one to replace the state board and one to replace each regional board). Basin plans (three-year planning documents) would be developed by “members” (of an undefined body), appointed (by an unspecified person) on an ad hoc basis for six months, after which time the (undefined) group would be disbanded.
- Abolish the State Lands Commission (two statewide elected officials, Finance Director appointed by the Governor) and disperse responsibilities among the Department of Environmental Protection, Division of Energy within the California Infrastructure Department, Department of Natural Resources, Division of Land Management within the Department of Natural Resources, and Department of Infrastructure.

APPOINTED BUREAUCRATS ARE NOT MORE ACCOUNTABLE FOR THEIR DECISIONS THAN APPOINTED OR ELECTED COMMISSIONERS.

Currently these boards are variously comprised of elected officials, appointees of the Governor and Legislature, and experts. Although the specific composition of each board is different, all were established to make policy and permit decisions in full view of the public. All of these boards systematically solicit public participation. CPR would replace these public officials with bureaucrats buried in the bowels of new super-departments.

We are strongly opposed to these CPR recommendations. These changes would most likely produce policy and permit decisions that are less protective of the environment because the loss of these local boards will unavoidably reduce public participation. Resolution of competing interests would be far less likely to protect air, water, and tidelands against competing business interests if decisions are made behind closed doors. Replacing state boards that are currently structured to represent a variety of skills, knowledge bases, and viewpoints with state bureaucrats operating in a highly centralized executive branch will disempower Californian who cannot afford to pay expensive governmental affairs liaisons and lobbyists to advocate their interests.

CPR AUTHORS HAVE PLACED A LOW VALUE ON PUBLIC PARTICIPATION

CPR disinterest in participation by a broad cross section of the public is most evident in the Report’s omission of serious discussion of this issue. It is also mirrored by the skewed sample of the public consulted during preparation of the Report – heavy on representatives of corporate interests, and virtually no consultation with environmentalist organizations.

It appears that no effort was made to contact organizations that regularly interact with these commissions at local and statewide levels. The perfunctory response to this Frequently Asked Question on the CPR website speaks volumes:

What efforts did you make to gain public input?

Throughout the course of their research, CPR analysts interviewed, surveyed, questioned and otherwise interacted with about 1,800 people, from government reform experts, to experienced state staff, to citizens, to business owners.

Chon Gutierrez argued at the Davis public hearing that CPR staff fulfilled their public participation obligations by accepting comments from all who offered them. This constricted and strangely passive definition of public outreach reinforces by default the influence of the most powerful interests. This view has already created at least the appearance that powerful corporate interest have wielded inappropriate influence over CPR recommendations. Proposals to eliminate the public forums where crucial environmental decisions are made would similarly favor corporate input.

Given the limited range of viewpoints considered by CPR authors, it is also not surprising that they consistently view applicants for permits as the “customer,” almost to exclusion of other stakeholders such as residents and employees, that their reorganization of the state’s environmental protection functions almost completely ignores enforcement functions; and that they have not considered the high regard with which environmentalists throughout the nation view California’s air and water boards, and the State Lands Commission.

CPR RECOMMENDATIONS ARE NOT SUPPORTED BY RIGOROUS ANALYSIS.

The lack of a robust dialog by stakeholders with varying priorities also seems to explain why the authors apparently felt no obligation to support their recommendations with a balanced analysis.

- They have not identified functions each commission is currently performing well;
- They have not diagnosed particular problems of each commission that they believe need to be fixed;
- They have not considered changes that would preserve and build on existing strengths, and
- They have not explained how the single solution of obliterating the commission and centralizing its authority in the Governor’s office will address perceived (but unarticulated) shortcomings
- They have not examined financial costs and costs to the environment of the transition between disruption of existing regulatory systems and established of new ones.

Instead of a nexus between problems and solutions, we are offered this explanation:

When state goals are pursued through un-elected boards and commissions, government is less accountable than if the tasks had been performed directly. If a program is failing Californians, good government demands that blame be easy to affix and hard to deflect. The current structure of boards and commissions creates the opposite situation. For this reason, we pursued a comprehensive review of all boards and commissions within the executive branch.

This one-size-fits-all diagnosis of the problems of state commissions and rationale for abolishing the air and water boards rests on the deceptive assumption that the Governor can be held more accountable for decisions made by bureaucrats he appoints than by commissioners he

appoints. It assumes that the head of a super department sitting in Sacramento is more accountable for projects will affect local air and water conditions than regional boards; that statewide elected officials on the State Lands Commission are less accountable for decisions affecting Public Trust lands than bureaucrats in three different departments. Even more revealing is the assumption that the key to good government is knowing whom to blame for failure rather than bringing together the diverse expertise and perspectives to make decisions that reconcile differing interests.

The Report does not indicate that the authors ever considered any advantages of the current structure that abolition would sacrifice. There is no evidence that they attach any value to the ability of local boards to be responsive to local conditions and to be accessible to the public. Instead the Report relies the dogma that centralized control over decisions will solve the problems of an unwieldy government.

THE CPR HAS NOT SATISFIED THE GOVERNOR'S MANDATE.

The CPR Report opens with your words that include the following directive: "We have boards and commissions that serve no pressing public need. I say abolish them."

The challenge for the CPR authors was to distinguish between boards and commissions that "serve no pressing public need" and those that do. The failure represented by their recommendations to abolish air and water boards and the State Lands Commission is that they do not consider protection of air quality, water quality, and state tidelands to be a "pressing public need." We could not disagree more.

Yours truly,

Saul Bloom
Executive Director

Eve Bach
Staff Economist/Planner

Cc: California Performance Review Commission
Majority Leader Don Perata
Assembly Speaker Fabian Núñez
Members of the State Lands Commission
Chairman Alan C. Lloyd and Members of the Air Resources Board,
Chairman Arthur G. Baggett, Jr. and Members of the State Water Resources Control
Board