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SENATOR DON PERATA
PRESIDENT PRO TEMPORE



October 23, 2006

Governor Arnold Schwarzenegger
State Capitol First Floor
Sacramento, CA 95814

RE: Executive Order S-17-06—Implementation of Global Warming Solutions Act of 2006

Dear Governor:

Having had time to review the executive order (EO) your administration issued on implementing the Global Warming Solutions Act of 2006 (AB 32 (Nunez et. al. Chapter 488 Statutes of 2006.)), I am writing to express my surprise, and strong disagreement, with its substance, as well as with the unexpected manner in which it was issued.

AB 32 was the product of unprecedented bipartisan cooperation and hard work. Its enactment into law has been hailed worldwide as a signature achievement of our state government, and an example of how we can, and should, work together to address important problems.

Unlike the cooperative and bipartisan process in which the bill was negotiated, the EO issued by your office appears to have been hastily issued without prior consultation with the author, the legislative leadership, or the key supporters of the bill.

Moreover, several of its provisions appear to conflict with explicit provisions of law you signed less than a month ago. I agree wholeheartedly with Speaker Nunez, who was quoted this week as saying that the order "is totally inconsistent with the intent of the law and with the way that it is written."

For example:

- The EO states that the Secretary of Environmental Protection shall coordinate "all ongoing efforts related to the implementation of greenhouse gas emission reduction policies and Assembly Bill 32..."

In contrast, the law states that the Air Resources Board (ARB) is the lead agency charged with monitoring and regulating greenhouse gas emissions under the Act [see Health and Safety Code Section 38510]. This provision was discussed extensively in the negotiations over the bill, and it was agreed that the Air Board, with its worldwide reputation, scientists, engineers, and extensive public process, would oversee implementation the state's GHG emission reduction program.

- The EO states that the Secretary of CAL-EPA should create a “market advisory committee” of unspecified membership and with no apparent public process “to advise the Air Resources Board...on the design of a market-based compliance program.”

In contrast, the law sets forth detailed standards and public processes for use by the ARB in the evaluating whether and how market mechanisms may be used, but makes no mention of the CAL-EPA Secretary or of discrete “market advisory committee” that advises the ARB. [See Health and Safety Code Part 4 (commencing with Section 38560) and Part 5 (commencing with Section 38570), both of which speak to this issue in detail.]

- The EO directs the ARB to work with the Secretary for CAL-EPA to “bring both regulatory measures and market-based mechanisms on a concurrent and expeditious schedule...”

In contrast, the law requires the ARB adopt “early action” emission reduction measures prior to the use of any market-based compliance mechanisms [see Health and Safety Code Section 38560.5]. It further specifies that regulatory measures to reduce emissions must be adopted, while market-based compliance mechanisms are left to the discretion of the ARB, and may be adopted only after extensive evaluation and determinations by the board through a public process.

In addition to these examples, the EO has other provisions that were specifically considered and either rejected or drafted differently in the final form of AB 32, and that are contrary to the law that you supported and signed last month.

Taken as a whole, this executive order is ill-timed and unnecessary, and creates confusion at this early stage in the implementation of the law. Its issuance attempts to pre-judge important issues that properly warrant careful and deliberative review and public input. Its substance and process undermines the bipartisan spirit and cooperation in which the law was passed and signed earlier this year.

I urge you to rescind this order, and instead to work with the Legislature and the public to implement the law that was enacted. It is vital that we return to the consensus approach that has demonstrated to the rest of the country that California government can work as a unified entity to reduce the threat of global climate change.

Please be assured that the Senate will ensure faithful adherence to the law through its actions in the policy, confirmation, and budget processes.

Sincerely,

DON PERATA