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### **CA Court of Appeal Reverses Decision on Port of Stockton, Orders Retrial**

**–Key Documents Withheld by the Port Must Be Considered by the Trial Court**

STOCKTON (December 13, 2006) – An attempt by the Port of Stockton to hide, from both the public and the courts, critical documents about the extensive environmental impacts of the Port's massive expansion project got a stern rebuke from the California Court of Appeal for the Third Circuit yesterday.

In an unanimous order, the court sided with the plaintiffs, including the Deltakeeper Chapter of Baykeeper, Natural Resources Defense Council (NRDC), and homeowner groups, and ordered that key documents be included as part of the "administrative record" and that the case be reconsidered. The documents shed light on the Port's compliance with the California Environmental Quality Act (CEQA) and its obligation to disclose all potentially significant impacts from the project.

The Port's enormous expansion project, which includes marine terminal, commercial and industrial development on over 1400 acres, would triple the size of the port and result in more than 13 million additional vehicle trips annually.

"This important ruling will help us restore and protect the Delta, and one of its most degraded stretches, the Port of Stockton shipping channel. The public seeks government transparency, not secrecy. Now, at least the full record about the Project's environmental problems will be available to the courts," said Deb Self, Executive Director of Baykeeper, which has had a Stockton-based office since 1994.

In a lawsuit filed in July 2004, environmental and community groups sued the Port of Stockton after it approved a massive expansion on Rough and Ready Island without accurately assessing the environmental impacts of the project in its Environmental Impact Report (EIR) or adopting meaningful pollution mitigation measures as required by CEQA.

In reversing the previous decision by the State's Superior Court, the Court of Appeal stated: "The trial court abused its discretion by failing to consider plaintiffs' motion on its merits. (...) We cannot see any grounds for excluding plaintiffs' proffered evidence from the administrative record. (...) The documents are relevant to the Port's approval of the EIR."

"Earlier this fall, the Port was also reprimanded by a federal court for trying to minimize the environmental impacts of its expansion," said Robert 'Perl' Perlmutter, a partner with the San Francisco law firm of Shute, Mihaly & Weinberger and lead counsel for the plaintiffs in the case.

One of the key documents describes the Regional Water Quality Control Board's (RWQCB) concerns over the project's water quality impacts. That document revealed that the state agency advised the Port on how it could avoid discharging up to 4.25 million gallons of toxic water each day. The Port not only refused to adopt the Region Board's proposal, but refused to disclose the proposal to the public. Another document, prepared by the Port's own consultant, revealed that the Port's EIR grossly inflated the project's estimated job creation by more than thirty-fold.

"This decision gives us hope that the court will now review our case, taking into consideration all the environmental and public health consequences of the Port's expansion project," said Melissa Lin Perrella, Senior Project Attorney for the NRDC.

The Port's expansion project involves upgrading seven wharves; constructing and operating a 105-acre container terminal and a 300-acre auto processing facility; developing an intermodal rail yard; dredging to provide access to 75 percent of the world's large ocean-going vessels; and bridge and road improvements to accommodate increased port operations.

The project would result in an additional 130 vessel calls to the Port each year, likely more than 8,500 diesel truck trips and 42,000 other vehicle trips each day, and the significant use of heavy-duty diesel equipment, such as yard tractors and tugboats, causing extremely noisy, highly polluting shipping activities nearly around-the-clock, and only 400 feet from the closest residences.

The original lawsuit seeks to stop the port expansion project until it fully complies with California environmental laws. It was filed in San Joaquin County Superior Court by NRDC, Baykeeper and its DeltaKeeper Chapter, Friends of Riviera Cliffs, and Brookside Concerned Citizens Group.

"I am pleased that the court of appeal has recognized that the Port has failed to fully comply with the laws designed to protect the environment," said Ann Chargin, a member of Friends of Riviera Cliffs.

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The Natural Resources Defense Council is a national, nonprofit organization of scientists, lawyers and environmental specialists dedicated to protecting public health and the environment. Founded in 1970, NRDC has 1.2 million members and online activists nationwide, served from offices in New York, Washington, Los Angeles and San Francisco.

Founded in 1989, Baykeeper is an on-the-water advocacy organization dedicated to protecting the San Francisco Bay-Delta watershed. Since 1994, its Stockton-based Deltakeeper Chapter has provided educational programs on the Delta to schools and community leaders, conducted water quality sampling, and enforced environmental regulations to ensure a healthy Delta.