California Regional Water Quality Control Board
Central Coast Region

Linda S. Adams,
Secretary for Environmental Protection

Internet Address: http://www.waterboards.ca.gov/centralcoast
895 Aerovista Place, Suite 101, San Luis Obispo, California 93401-7906
Phone (805) 549-3147 • FAX (805) 543-0397

Arnold Schwarzenegger
Governor

September 7, 2006

IN THE MATTER OF:

PROPOSED CEASE AND DESIST ORDERS AGAINST INDIVIDUAL PROPERTY OWNERS AND RESIDENTS IN THE LOS OSOS/BAYWOOD PARK PROHIBITION ZONE

NOTICE OF PUBLIC HEARING

(NOTICE OF HEARING BY HEARING PANEL IN THE ABSENCE OF A QUORUM)

NOVEMBER 2, 2006, 8:30AM TO 5:00PM
AND
NOVEMBER 9, 2006, 8:30AM TO 7:00PM

PLEASE BE ADVISED THAT The California Regional Water Quality Control Board, Central Coast Region (Water Board), will conduct a formal hearing on **November 2 and 9, 2006** to consider proposed issuance of individual Cease and Desist Orders, against selected property owners and residents in the Los Osos/Baywood Park Prohibition Zone for alleged violation of the Basin Plan prohibition against discharges of waste within the Los Osos/Baywood Park Prohibition Zone. The documentation supporting the Prosecution Team's proposed enforcement action is posted on the Water Board's site at http://www.waterboards.ca.gov/centralcoast/los%20osos/Index.htm.

The Water Board will hold a consolidated hearing on all proposed enforcement actions at the following time and place:

DATE AND TIME: November 2, 2006, 8:30am to 5:00pm,
AND
November 9, 2006, 8:30am to 7:00pm

PLACE: 895 Aerovista Place, Suite 101,
San Luis Obispo CA 93401

Scope of the Hearing

This hearing is a continuation of the hearing that began on April 28, 2006. The scope of the hearing will be limited to the proposed enforcement actions against selected individual property owners or residents of Los Osos and Baywood Park.

The only issues before the Water Board in this proceeding are those directly relevant to the determination of the following:

(1) Are individual property owners or residents of Los Osos discharging waste in violation of the prohibition; and
(2) Is the proposed remedy for violation of the prohibition appropriate.

The validity of the prohibition is **NOT** an issue in this hearing. The prohibition against discharges from sewage disposal systems was added to the Regional Water Quality Control Plan for the Central Coast Region pursuant to Section 13243 of the Water Code in 1983 and became effective on November 1, 1988. The time for challenging the prohibition has long since expired. Therefore, the Central Coast Water Board may exclude evidence or comments related to the propriety of the prohibition. Any person desiring to submit such evidence or comments will be required to justify its relevance to the issues in the hearing.

Designated Parties and Interested Persons

Designated Parties are the Prosecution Team, the selected property owners or residents of Los Osos or Baywood Park named in proposed enforcement actions, and the Los Osos Community Services District. All others are interested persons. The Water Board will not consider additional requests for designation of parties at this time.

Presentation of Evidence or Argument

Only Designated Parties or their attorneys shall be entitled to present evidence or argument to the Water Board for each Designated Party; anyone other than attorneys admitted to practice by the State Bar of California who intends to represent or speak for Designated Parties in this proceeding (*i.e.*, act as an "attorney-in-fact") must provide the Water Board with a notarized power of attorney from each Designated Party they intend to represent. The notarized power of attorney must clearly state that the person authorized to act as attorney-in-fact is specifically authorized to:

a. Represent the Designated Party's interest in the Water Board proceedings to consider proposed individual Cease and Desist Orders for Los Osos residents.
b. Speak for the Designated Party at hearings.
c. Receive service of process for the party for all documents related to the proceeding.

Designated Parties who grant power of attorney to a representative (attorney-in-fact) as noted above will be bound by their representative's statements or testimony in these proceedings.

Notarized power of attorney documents shall be sent to the address below by **October 13, 2006**:

Michael Thomas, Assistant Executive Officer
Central Coast Water Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

Hearing Format

Although this hearing is consolidated to address potential multiple enforcement actions, each party has the opportunity to present evidence that is relevant to the proposed individual enforcement action against them. Every Designated Party that received a draft Cease and Desist Order will be permitted to do the following: 1) present evidence by direct testimony, 2) call witnesses to present evidence by direct testimony, 3) introduce documents containing evidence into the record (so long as the parties have submitted the actual documents, or a list that specifically identifies any documents to be "incorporated by reference," with their testimony), 4) cross-examine other parties' witnesses, and 5) make closing arguments. (See Conduct of Hearing, below). Prior to the start of the hearing, the Chair will determine the order of presentation of evidence by designated parties,

when interested persons can address the Water Board, and when during the hearing the Board will rule on each of the individual draft Cease and Desist Orders. The Chair may limit repetitious testimony and argument; however, each designated party will have a reasonable opportunity to present evidence and argument unique to their situation.

Submitting Documents by Reference

Designated Parties may submit documents by reference, provided that the "submittal by reference" complies with Title 23, California Code of Regulations, section 648.3. A list of the documents to be incorporated by reference must be submitted with submittal of testimony **(see testimony submittal dates below)**. Designated Parties will be permitted to incorporate by reference documents that have been identified and submitted in a timely manner by the Prosecution Team, the Los Osos CSD, and any other Designated Party.

Due Dates for Submittal of Materials

The Chairman's Order dated August 4, 2006 required the Prosecution Team to re-submit its case by September 8, 2006. The Prosecution Team submitted its evidence and technical analysis on September 7, 2006; it is posted on the Water Board's website at:
http://www.waterboards.ca.gov/centralcoast/los%20osos/Index.htm

Any Designated Party, other than the Prosecution Team, can rely upon their previously submitted written testimony if they so choose. If a Designated Party wishes to submit additional evidence in response to the Prosecution Team's case, all such additional evidence, including all arguments and any anticipated testimony and documentary evidence, must be submitted by **October 13, 2006. See below for instructions on submitting electronic copies, and where to send written submissions and the number of copies required.**

Designated Parties making the same arguments, or relying on the same evidence, are encouraged to submit written or oral testimony, evidence and argument jointly, and to indicate very clearly what arguments and evidence, and which specific documents they intend to incorporate into, and rely upon for, their responses.

Upon the receipt of Public Records Act requests for the names and property addresses of all Designated Parties, the Water Board will release those names and addresses, except the names and addresses of the Designated Parties who submitted sufficient evidence of overriding privacy concerns that justify the withholding of their names under the Public Records Act.

Interested persons (*i.e.*, all persons other than Designated Parties) who wish to comment on the Prosecution Team's evidence or technical analysis and recommendations for enforcement must submit their comments in writing by **October 13, 2006.** A comment is a non-evidentiary statement. It may include (1) the policy views and position of the commenter, (2) non-expert analysis of evidence that already has been presented, and/or (3) argument concerning the contents of draft Orders presented to the Water Board for consideration. Interested persons may also submit data or other evidence regarding the proposed enforcement actions.

The Water Board Prosecution Team must submit its rebuttal, including rebuttal evidence, by **October 23, 2006.**

Designated Parties may submit written responses to interested person comments and evidence by **October 23, 2006.**

Written materials submitted after the applicable due date, or not in compliance with the directions for submitting written materials below, will not be accepted and will not be incorporated into the administrative record if doing so would prejudice any party. Any person seeking to submit late written materials must justify why the materials could not have been submitted in a timely manner. No late submissions will be made part of the record absent a ruling by the Water Board Chair.

Procedures for Submittal of Materials

Copies of all written materials, including argument, evidence, comments, and procedural objections or motions, must be received by the recipients listed below by 5:00 p.m. on the applicable due date, at the address below.

Evidence may be incorporated by reference in accordance with California Code of Regulations, Title 23, Section 648.3 as long as the request is submitted in writing by the applicable due date for evidentiary submissions. Only materials already contained in the Water Board's files or submitted to the Water Board by another Designated Party or interested person may be incorporated by reference. A request to incorporate materials by reference must describe the materials you wish to incorporate in sufficient detail to allow the Water Board to identify and locate the specific document(s), as required by Section 648.3. Section 648.3 states:

> Public records of the Board that are relevant to the subject of the hearing, and books, reports, and other evidence that have been prepared and published by a public agency, if otherwise admissible, may in the discretion of the Board be received in evidence as exhibits by reference without the necessity of supplying copies to the Board and other parties, provided the original or a copy is in the possession of the Board and the specific file folder or other exact location where it can be found is identified. The party offering an exhibit by reference shall designate the particular portions on which the party relies. Each exhibit shall be appropriately identified and designated in the record as an exhibit of the party offering the exhibit or an exhibit of Board staff.

The Chair will rule on all requests to incorporate materials by reference at or before the hearing. Any request that does not comply with Section 648.3 will be denied. Designated Parties and interested persons must provide electronic or paper copies of all evidence *except* evidence that is incorporated by reference. Also, Water Board staff will not provide the Board members with additional copies of any materials incorporated by reference. See below regarding submitting documents, and how to submit copies for Board members.

All written materials must be submitted in accordance with the following directions. Failure to follow these directions may result in the materials not being accepted and not being incorporated into the administrative record, as described above.

All written materials must be provided to the Water Board in electronic format, *i.e.*, Adobe Acrobat Portable Document Format (pdf) or Microsoft Office (Word, Excel, Access or PowerPoint) at the addresses listed below unless authorized by the Water Board to submit written materials on paper (persons requesting authorization to submit paper copies may include such a request in their submissions to the Water Board, together with reasons why they cannot submit documents in electronic format. The Water Board will post copies of all timely submissions on its website for the Los Osos enforcement proceedings, and will make all reasonable efforts to provide Designated Parties with notice of these submissions. **Designated Parties must provide an e-mail address or request written notification to receive notice of new web postings.** Contact Matt Thompson (information below) to request paper copies of submissions.

Submission to Water Board (Electronic Format):

Los Osos Enforcement Proceeding; California Regional Water Quality Control Board, Central Coast Region, 895 Aero Place, Suite 101, San Luis Obispo, CA 93401; Attention: Michael Thomas, Assistant Executive Officer

Submission to Water Board (Paper Format, with Request for Waiver of Electronic Submission):

Submit twelve (12) copies to:

Michael Thomas, Assistant Executive Officer, Central Coast Water Board, 895 Aerovista Place, Suite 101, San Luis Obispo CA 93401; Fax (805) 543-0397, mthomas@waterboards.ca.gov.

Submit one copy each to:

John Richards, Senior Staff Counsel, State Water Resources Control Board, Office of Chief Counsel, PO Box 100, Sacramento CA 95812; Fax (916) 341-5199, jrichards@waterboards.ca.gov.

Reed Sato, Director, State Water Resources Control Board, Office of Enforcement, PO Box 100, Sacramento CA 95812; Fax (916) 341-5199
rsato@waterboards.ca.gov.

Harvey Packard, Division Chief, Central Coast Water Board, 895 Aerovista Place, Suite 101, San Luis Obispo CA 93401; Fax (805) 543-0397
hpackard@waterboards.ca.gov.

Conduct of Hearing

All Designated Parties and interested persons may speak at the Water Board hearing to summarize their written submissions, to rebut submissions of other Designated Parties and interested persons, or both. **Designated Parties and interested persons providing, or relying on, the same information or arguments are encouraged to make joint presentations.** The Chair will limit repetitive comments, testimony or cross-examination. All persons testifying at the hearing must take an oath to tell the truth, under penalty of perjury under the laws of the State of California.

The Water Board has heard, and recorded, prior statements by interested persons. Therefore, statements by interested persons who are not Designated Parties will be limited to **one minute each**. Interested persons may not donate their time to other speakers. At the discretion of the Chair, questions may be addressed to interested persons making comments.

Designated Parties may testify, present witnesses, cross-examine other parties' witnesses and make closing statements. Interested persons do not have these rights. Cross-examination is not limited to matters covered in direct testimony or written submissions. Testimony, cross-examination and argument by Designated Parties must be relevant to the proposed CDOs and may only address matters within the Board's jurisdiction.

Testimony may include expert opinions and analysis by qualified witnesses provided that any assumptions, studies, reports and scientific literature relied on for such opinion or analysis are clearly identified and included in the administrative record or subject to administrative notice by the Water Board (any person seeking to introduce such testimony must provide copies of these materials by the due date for written submissions).

The Water Board Chairman will issue a procedural notice prior to the hearing to establish the order of proceedings, including the time allotments for Designated Parties and the order of presentations.

All Designated Parties will be subject to time limits for presentations at the hearing, including cross-examination. The Water Board will set the time limits in a separate notice or at the hearing. Board members and the Board's advisors may ask questions of Designated Parties, including members of the Prosecution Team, or interested persons at any time during the hearing. The questions and answers will not count toward any time limits.

The procedures governing Water Board hearings are at Title 23, California Code of Regulations, Division 3, Chapter 1.5 (commencing with Section 647), and are available upon request or at the Water Board office. The California Code of Regulations is also available at www.oal.ca.gov. Hearings before the Regional Water Board are not conducted pursuant to Government Code Section 11500, *et seq.*

NOTICE OF HEARING BY HEARING PANEL (W.C. 13228.14)

In the absence of a quorum, the hearing on this matter will be conducted by a hearing panel of the Water Board, pursuant to California Water Code Section 13228.14. In such event, the panel will consist of at least three of the following Board members: Jeffrey Young, Daniel Press, Gary Shallcross, John Hayashi and Russ Jeffries. The panel will take evidence and make recommendations to a quorum of the Water Board for final action at a future Water Board meeting. The Water Board may adopt, modify, or reject the Hearing Panel's recommendation. The Water

Board will not, ordinarily, accept new evidence after the hearing; thus, Designated Parties and interested persons should submit and present all evidence and argument at the hearing as provided in this Notice.

Hearing Facilities

The hearing facilities will be accessible to persons with disabilities. Individuals requiring special accommodations are requested to contact Carol Hewitt at (805) 549-3503 at least 5 working days before the hearing. TTY users may contact the California Relay Service at 1-800-735-2929 or voice line at 1-800-735-2922.

How to Obtain Additional Information

Anyone having questions about the proposed enforcement actions should contact **Matt Thompson at (805) 549-3159 or mthompson@waterboards.ca.gov**. The proposed enforcement actions and related documents are available for downloading from the Water Board's website at http://www.waterboards.ca.gov/centralcoast. Persons who do not have Internet access or would like to receive a hard copy of these documents may review and/or copy these documents at the Water Board's office at the address on page 1 of this notice, weekdays between 8:00 a.m. and 5:00 p.m.

Please bring the above information to the attention of anyone you know who would be interested in this matter.

Michael Thomas, Assistant Executive Officer
September 12, 2006

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