California Regional Water Quality Control Board
Central Coast Region

Linda S. Adams.
Secretary for Environmental Protection

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Arnold Schwarzenegger
Governor

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 CHAIRMAN'S RULING REGARDING SUBPOENA DOCUMENTS SUBMITTED ON OCTOBER 4, 2006

IT IS HEREBY ORDERED that the Deposition Subpoena purportedly issued on behalf of Alan Martyn, Bruce Payne, Rhian Gulassa, John DerGarabedian, and William Moylan by Patrick Sparks, the Subpoena/Subpoena Duces Tecum purportedly issued on behalf of Alan Martyn and William Moylan by Alan Martyn, and the Notice of Taking Deposition of Roger Briggs, purportedly issued on behalf of Alan Martyn, Bruce Payne, Rhian Gulassa, John DerGarabedian, and William Moylan by Alan Martyn, for the deposition of Roger Briggs on October 28, 2006, are hereby quashed; the Petition for Order to Take Deposition requesting an order compelling Roger Briggs to appear and testify at the deposition is hereby denied.

The Central Coast Water Board received the above mentioned subpoena documents on October 4, 2006, requesting the appearance of Roger Briggs for a deposition on October 28, 2006.

On October 10, 2006 the Prosecution Team filed a motion opposing the proposed deposition and requesting that the subpoenas be quashed.

Subpoenas Defective

Under Sections 1086 and 13221 of the Water Code, regional boards have the power to compel the attendance and testimony of witnesses at regional board proceedings; Section 649.6 of the State Water Resources Control Board regulations governing adjudicative proceedings of the regional boards provides for the issuance of subpoenas by the regional boards:

> "(a) Upon its own motion or upon request of any person, the Board may issue subpoenas and subpoenas duces tecum for attendance at a proceeding and for production of documents at any reasonable time and place or at a hearing." [23 CCR 649.6.]

Subdivision (b) of Section 649.6 also incorporates provisions of the Government Code relating to the issuance of subpoenas into the rules governing the regional boards' adjudicative proceedings; specifically, Section 11450.20 provides that,

> "Subpoenas and subpoenas duces tecum shall be issued **by the agency or presiding officer at the request of a party, or by the attorney of record for a party**, in accordance with Sections 1985 to 1985.4, inclusive, of the **Code** of Civil Procedure." [Govt. Code 11450.20(a).]

Since both of the subpoenas submitted to the Central Coast Water Board in this instance purported to be for parties appearing *in pro per.* (*i.e.*, representing themselves), they are inherently defective inasmuch as subpoenas sought by unrepresented parties can be issued only by the Water Board or its Chairman.

Request for Deposition of Roger Briggs Not Timely

The Prosecution Team's June 19, 2006 brief stated that Mr. Briggs would be out of the country for five or six months beginning in mid-October 2006. The brief was posted on June 29, 2006, and mailed to all designated parties without internet access on July 6, 2006. The Prosecution Team's August 29, 2006 staff report, posted on September 7, 2006, clearly states that Mr. Briggs would be on sabbatical between mid-October 2006 and mid-April 2007. The designated parties had ample notice that Mr. Briggs would not be available for a prolonged period after mid-October.

Also, Mr. Briggs did agree to be deposed, and made himself available on October 4, 2006. Some of the parties mentioned above attended that deposition and participated to varying degrees. Therefore, the Deposition Subpoena, Subpoena/Subpoena Duces Tecum, Notice, and Petition, submitted to the Water Board on October 4, 2006, are untimely and unreasonable.

for Jeffrey Young, Chairman
Central Coast Water Board
October 17, 2006

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