Excerpts from January 5, 2006 Transcript

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MR. SEITZ: No. I'm sorry, maybe I
8 misstated. I think that the District, under my
9 interpretation of the rules, is a discharger for
10 the purposes of the 8313 for the three septic tank
11 systems that it operates for Vista del Oro, Bay
12 Ridge, thank you, and the fire station. I'm in
13 complete agreement.
14 I just -- but those are the only
15 discharges that we can be held responsible for.
16 *And the way that the Board has traditionally and*
*17 consistent with the State Water Quality Control*
*18 Board enforcement policies are that you issue*
*19 against individual discharges, either cease and*
*20 desist orders or clean up and abatement orders.*

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5 CHAIRPERSON YOUNG: -- within 30 days.
6 Something that all of the Board
7 discussed, all Board Members did, *and it's*
*8 something that I think was really driven home*
*9 somewhat by Mr. Seitz.*
10 And that is what to do about the kind of
11 ongoing threats to water quality and the
12 discharges by the individual homeowners. And I
13 know Mr. Briggs, in his cover letter to the ACL to
14 the District, made comment about individual
15 enforcement actions.
16 I can only tell you, Mr. Briggs, that
17 the Board would like to hear what you have in
18 mind. They're concerned about this fine. It's
19 going to be appealed. How much of it gets paid we
20 don't know.
21 It's necessary, though, to back up the
22 Board's basin plan prohibition and the violations
23 that occurred. But, we really want to know what
24 staff has in mind for individual enforcement
25 actions. So we would like to hear from you.
413
1 MR. BRIGGS: As in now?
2 CHAIRPERSON YOUNG: In now, because some
3 Board Members have expressed some concern about
4 whether this penalty is enough. And so without
5 getting into the details of that, I think there's
6 a real issue as to dealing with the ongoing
7 discharges.
8 So, whatever you can tell us about what
9 staff's plans are, what the timeframe is, when the
10 Board might see something, we would like to hear
11 about it.
12 MR. BRIGGS: Okay. I've got to b a

13 little bit careful because we're talking about
14 enforcement action that's in progress, but I guess
15 that's the first status report is that it is in
16 progress.
17 And we have been working on -- we've
18 already made some assignments in terms of putting
19 together information on individual dischargers to
20 take enforcement action against individuals.
21 And we've talked about, you know, some
22 of the logistic problems of doing that. One of
23 which, of course, is just the, one of the biggest
24 bottlenecks is this process right here, the
25 hearing.
414
1 Even using a panel of the Regional Board
2 that would be, you know, substantial time would be
3 required. So we've talked about how to deal with
4 that.
5 And we've talked about proceeding with
6 actions against individual dischargers in phases.
7 And talked about different ways that would be
8 appropriate to, you know, how do we select the
9 first group of dischargers. And --
10 CHAIRPERSON YOUNG: By dischargers
11 you're referring to individual involved --
12 MR. BRIGGS: Individual dischargers,
13 right.
14 CHAIRPERSON YOUNG: Okay.
15 MR. BRIGGS: And, you know, I suppose I
16 could go into some more detail about the different
17 methods that we've discussed on how to do that.
18 And what we favor. But I'd rather not discuss
19 that right now.
20 CHAIRPERSON YOUNG: Well, are you going
21 to be coming back to the Board with options? Or
22 are you going to decide on an enforcement process?
23 MR. BRIGGS: Our intent was --
24 CHAIRPERSON YOUNG: I mean you could do,
25 there's a number of things that staff could
415
1 propose.
2 MR. BRIGGS: Um-hum.
3 CHAIRPERSON YOUNG: Are you going to
4 come back with one recommendation, or is it going
5 to be a couple of recommendations, two or three or
6 something?
7 MR. BRIGGS: Our intent was to go ahead
8 and issue an initial batch of enforcement orders
9 against individuals.
10 CHAIRPERSON YOUNG: ACLs or what?
11 MR. BRIGGS: Not necessarily ACLs. I
12 could tell you an option is clean up and abatement

13 orders that would require specific actions towards
14 actually cleaning up the basin. Such as frequent
15 pumping so that, while that's not a practical
16 solution in terms of eliminating the discharge, it
17 would be a step towards reducing the loading on
18 the basin.
19 And it would be -- it would cost
20 individual homeowners money to do that on an
21 ongoing basis, which would be different than a
22 typical ACL, which would be a one-time deal.
23 And it would be more on-target in terms
24 of money that's actually going towards reducing
25 the loading on the basin, as opposed to just a
416
1 penalty.
2 So I guess it's fair to say that's one
3 of our top options right now.
4 Oh, I'm sorry, we talked about the
5 benefit of a cease and desist order versus a clean
6 up or abatement order, and we actually concluded
7 the cease and desist order would be preferable.
8 Although, as I was alluding to, one of the
9 consequences of that is that that the cease and
10 desist orders come to the Board, as opposed to
11 being administratively issued.
12 But, yeah, we have decided the cease and
13 desist orders would be better.
14 CHAIRPERSON YOUNG: Would be better?
15 MR. BRIGGS: Yes.
16 CHAIRPERSON YOUNG: Okay. But you
17 haven't determined yet, or decided whether it's
18 going to be clean up and abatement orders or cease
19 and desist orders, is that what you're still --
20 MR. BRIGGS: No. We've pretty well
21 settled it, cease and desist orders would be
22 better.
23 CHAIRPERSON YOUNG: On individual
24 property owners?
25 MR. BRIGGS: Right.
417
1 CHAIRPERSON YOUNG: Okay. And idea how
2 many in the first group? Can you give us a range?
3 MR. BRIGGS: No, I don't think we're
4 prepared to say that yet.
5 CHAIRPERSON YOUNG: Okay. Can you tell
6 us what timeframe? How soon would the Board be
7 looking at hearing individual CDOs?
8 MR. BRIGGS: Yeah. I had hoped that it
9 actually would progress a little bit faster than
10 it has. Like I say, we've assigned some folks, in
11 terms of putting together basically a database
12 with assessor parcel numbers. And coming up with

13 the basic information we need regarding the people
14 who are responsible for the discharge.
15 But, we have been focusing on this
16 hearing, and with essentially the same people,
17 with some exceptions, same staff people.
18 But, I'd like to say that March or May
19 would be possibilities.
20 CHAIRPERSON YOUNG: And does -- how many
21 Board Members have to weigh in on a CDO? Do you
22 need -- would it be the same five?
23 MR. BRIGGS: Well, a panel would be
24 three, but you need to have five voting to
25 validate or to adopt a cease and desist order.
418
1 CHAIRPERSON YOUNG: Okay. All right.
2 MR. BRIGGS: I believe it has to be, say
3 you only had five Members, I believe it has to be
4 unanimous.
5 MS. OKUN: Right.
6 CHAIRPERSON YOUNG: At that point, okay.
7 Mr. Jeffries, I know you had maybe some thoughts
8 on this. Did you want to weigh in at this point
9 with respect to this? You're the Vice Chair, and
10 you know, we give some direction to staff. I
11 certainly don't mind if you want to weigh in.
12 VICE CHAIRPERSON JEFFRIES: No, I don't
13 have any comments at this time. But I do want
14 this to come back as soon as possible. We talked
15 about this many years ago about doing this very
16 same thing.
17 And I'm concerned, the process that
18 we've had it's evident it's not working. So we
19 have to do something else.
20 MR. BRIGGS: That's the conclusion we
21 came to, and as I said in my transmittal letter on
22 the ACL to the District, that was our intent to go
23 that route.
24 CHAIRPERSON YOUNG: Okay.
25 MS. OKUN: If I could just add one thing
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1 on the option to use cease and desist orders
2 rather than ACLs, that's due partly to the fact
3 that there are 5000 dischargers. If we issue
4 cease and desist orders, the facts are pretty much
5 all the same for all of them. Everyone will have
6 an opportunity to defend their particular order.
7 But if we do ACLs we have to consider
8 all the factors that we've done for the last three
9 days. And I think it will slow down the process
10 quite a bit.
11 A cease and desist order can order the
12 homeowner to either hook up to a treatment plant

13 within x number of years, if one exists. And if
14 one doesn't exist, to otherwise cease discharging
15 or face penalties.
16 CHAIRPERSON YOUNG: You're talking about
17 the CDOs?
18 MS. OKUN: Um-hum.
19 CHAIRPERSON YOUNG: Well, wouldn't it
20 require that they begin some periodic pumping
21 schedule?
22 MS. OKUN: Right, right. There would be
23 interim tasks.
24 CHAIRPERSON YOUNG: And, do you have any
25 idea, because I know people probably are listening
420
1 to this, any idea at this point from staff as to
2 what kind of periodicity with the pumping?
3 MR. BRIGGS: We've talked about possibly
4 quarterly. Also talked about monthly. And we
5 think that we would enforce that through requiring
6 submittal of receipts indicating pumping.
7 CHAIRPERSON YOUNG: Okay. All right.
8 Why don't we do this. Did you have anything else
9 to add related to that? Okay.

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BOARD MEMBER PRESS: I have always been
12 less interested in money than in water quality.
13 In my view we could have imposed larger fines; we
14 could have looked at a schedule of suspended fines
15 and tried to get some of the fines if we get some
16 progress.
17 But I'm not so interested in the money.
18 I'm interested in water quality, and that is why
19 we are instructing staff and urging staff to come
20 back with individual enforcement actions. Because
21 that's the only way that I can see at this moment
22 that there will be a water quality improvement in
23 anything like, remotely like a reasonable period
24 of time.
25 So, to me that's the even bigger story,
423
1 I think, tonight, is that movement. And I would
2 like to be on the record as strongly supporting
3 that.

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BOARD MEMBER SHALLCROSS: I concur with
7 Dr. Press. The one thing I wanted to address is
8 something that the CSD attorneys brought up.
9 There seemed to be an implication that
10 the -- and if you carried your argument to its,

11 actually you didn't have to take too much of a
12 leap to get there, that *basically you were saying*
*13 that the CSD can't be fined.*
*14 And what that does is that basically,*
*15 you know, one of the attorneys was saying you*
*16 can't be fined, and the other was saying give us*
*17 cease and desist orders.* Well, if you can't fine
18 them, then cease and desist orders are worthless.
19 So I just wanted to say that if we can't
20 fine someone then all of our enforcement tools are
21 out the window, if we don't have fines to back it
22 up. So I didn't buy that argument, obviously.
23 The other thing I just wanted to say is
24 I think it's probably one of the saddest things
25 that's come before the Board, just to see a
424
1 community like this sort of going at each other's
2 throats in a really ugly way. It hasn't been fun
3 to watch.
4 At first maybe it was sort of
5 entertaining, but, you know, the more I learned
6 about it, the more I read about it, the more I saw
7 what was going on with the community, it sort of
8 makes me sick to my stomach really. I really feel
9 sorry for the folks who are there and have to go
10 through it, no matter which side you're on. It's
11 really very sad.
12 Hopefully at some point you guys can all
13 get together and hold hands and sing kumbaya.
14 But, it doesn't look like it's going to happen
15 anytime soon.
*16 Again, just to reiterate the other*
*17 sentiments, it looks like our enforcement*
*18 abilities going down the path we have been have*
*19 been ineffectual. For many years now we've tried*
*20 to work with the CSD. We tried to work with the*
*21 folks prior to the CSD.*
*22 We don't seem to be able to get*
*23 anywhere, and so hopefully going after the*
*24 individual dischargers may create the political*
*25 will for something to happen in a reasonable*
*425*
*1 amount of time.*

# LOS OSOS SEPTIC TANK PUMPOUT

4-17-06
R. BRIGGS
RWQCB3

4993 RESIDENCES[1]

BAYRIDGE EST. 11[2] TANKS FOR 466 HOMES
VISTA DE ORO 3[2] " " 74 "

| | |
|---|---|
| RESIDENCES | 4993 |
| BAYRIDGE EST (SEWERED) | −466 |
| VISTA DE ORO " | − 74 |
| BAYVIEW HTS - EXCLUDED | − 122 |
| MARTIN TRACT | − 47 |
| TANK TO PUMP | 4284 |
| PUMPOUTS PER YR | × 6 |
| " " " " | 25704 |
| | + 28 ← (11 BAYRIDGE + 3 VISTA DE ORO TANK)(× 2 EXTRA PUMPOUTS PER YEAR) |
| P.O.'S PER YEAR → | 25,732 |

TRUCKS PER DAY

$$\frac{25{,}732 \text{ P.O.'s/YR}}{(6 \text{ d/wk})(52 \text{ wks/YR})} = 82 \text{ P.O.'s/d} \rightarrow \frac{82}{3 \text{ P.O.'s/TRUCK}} = 27 \frac{\text{TRUCKS}}{\text{DAY}}$$

$$\frac{27 \text{ TRUCKS/DAY}}{10 \text{ HRS/DAY}} = 2.7 \text{ TR/HR} \qquad \frac{60 \text{ min/hr}}{2.7 \text{ TR/hr}} = 22 \text{ MIN'S BETWEEN TRUCKS}$$

$$\frac{27 \text{ TRUCKS/DAY}}{19{,}700 \text{ VEHICLES/DAY}^4} = 0.1\% \text{ INCREASE}$$

FOR A TWO BLOCK STREET, ASSUMING 13[3] RESIDENCES EACH SIDE, 26/BLOCK, 52 HOMES/TWO BLOCK AREA × 6 P.O.'S/YR = 312 P.O.'S/YR

$$\frac{312 \text{ P.O.'s/YR}}{(3 \text{ P.O.'s/TR})(52 \text{ WKS/YR})} = 2 \text{ TRUCKS PER WEEK}$$

CURRENT P.O.'S/YR = $\frac{4284 \text{ TANKS}}{3 \text{ YRS/P.O.}}$ = 1428 P.O.'S/YR
+ 56 ← (11 + 3) 4 P.O.'S/YR BAYRIDGE & VISTA DE ORO
1484 P.O.'S/YR

$$\frac{1484 \text{ P.O.'s/YR}}{(6 \text{ DAYS/WK})(52 \text{ WKS/YR})} = 5 \text{ TANKS PER DAY}$$

$$\frac{5 \text{ TANKS/DAY}}{3 \text{ TANK/TR}} = 2 \text{ TRUCKS/DAY CURRENTLY}$$

1. M&E TASK G REPT FOR LOCSD, TABLE 3-2A 7-95
2. WDR'S FOR BAYRIDGE EST. & VISTA DE ORO
3. SATELLITE PHOTOS OF LOS OSOS
4. LOS OSOS VALLEY ROAD - 19,700 VEHICLES/DAY, SLO PLANNING.ORG 5.3 SOCIOECONOMIC IMPACTS 5.3.1 TRANSPORTATION

# State Water Resources Control Board

Alan C. Lloyd, Ph.D.
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Arnold Schwarzenegger
*Governor*


February 16, 2006

Mr. Abraham Hyatt
Staff Writer
*The Tribune*, San Luis Obispo
P.O. Box 112
San Luis Obispo, CA 93406

Dear Mr. Hyatt:

PUBLIC RECORDS ACT REQUEST

This letter responds to your appeal of Roger Briggs' February 8, 2006, letter regarding your Public Records Act request. Your letter also includes a request for statements from homeowners. You clarified yesterday that you were seeking the forms with the names and addresses redacted. We will produce the requested documents, with the names and addresses redacted, and with other identifying information redacted where we conclude that doing so is necessary to protect privacy or security. (See Gov. Code, § 6255.) I expect that we can provide all the non-exempt information by March 3, 2006, although I am hoping to do so sooner than that.

Mr. Briggs' February 8 letter stated that the Public Records Act exempts disclosure of records where an individual's privacy or security interests outweigh the public interest in disclosing documents. His letter also stated that we would disclose non-exempt documents after we completed our investigation into the individuals' claims that their information is exempt, and the statutory basis for exempting information. We have not completed that investigation because we did not expect that anyone would have legitimate reasons for non-disclosure. Once we learned that some of these claims might have merit, it became necessary to investigate further. Disclosure of any individual's information before that investigation is complete would waive all exemptions. As we indicated, assuming we hear back from the affected individuals, we will determine which documents or portions of documents must be redacted before disclosing them. As I stated to you in my February 9, 2006, e-mail, we have not determined which portions of documents are exempt and therefore have not denied your request. In fact, we granted your request because the February 8 letter stated that we would provide all non-exempt public records (or redacted public records) after we are able to contact the affected residents. As stated in Mr. Briggs' letter, we expect to complete that balancing test in approximately two weeks, i.e., by February 23, 2006, at least for those individuals who received our request for an explanation.

The Public Records Act does not require disclosure of documents by any particular date where there is reason for the delay.

I am surprised at *The Tribune's* disregard of asserted risks to individuals who have raised concern about their personal safety. Your letter cited *New York Times Company v. Superior Court* (1990) 218 Cal.App.3d 1579. I reviewed that case before Mr. Briggs issued his letter. *New York Times* held that a water district must disclose the addresses of water customers who exceeded their water allocation in violation of local law. In that case, the threat of verbal or physical harassment was purely speculative. The interest in public disclosure was high because disclosure was necessary to determine whether the water district properly determined which customers were "chronic water abusers." (*Id.* at 1585.) Disclosure would ensure that no individuals received special treatment or, conversely, discriminatory treatment. Finally, the court held that publication of the customers who exceeded their allocation in a given period "will discourage profligate use of water during the ensuing months and encourage customers to bring their consumption within the guidelines of the ordinance." (*Id.* at 1586.)

The facts in the Los Osos situation are different. *All* residents within the prohibition zone are violating the law, so there is no reason to single out particular abusers. As you know, the process of selecting the recipients of the first cease and desist orders (CDOs) was random. The only reason we did not include the entire prohibition zone was procedure. Some of the residents have asserted legitimate safety concerns that are more than mere speculation. For example, peace officers have an increased expectation of privacy in disclosure of their names with their home addresses, as evidenced by the numerous statutes prohibiting disclosure of information regarding peace officers. Although those statutes do not apply here, they establish a public policy in favor of protecting such information.

Section 6255 requires a balancing of the public interest in disclosure against any asserted interest in non-disclosure. *Gilbert v. City of San Jose* (2003) 114 Cal.App.3d 606 required a public entity to take reasonable steps to notify the persons whose information was requested in order to give them time to object. *Teamsters Local 856 v. Priceless, LLC* (2004) 112 Cal.App.4th 1500 held it was proper to withhold employee names in a request for salary information, where general salary information was provided by job classification. The court noted that disclosure of names and addresses is not required where the disclosure sheds no light on an agency's performance of its statutory duties. Where the risk of harassment or social stigma is more than mere speculation, an agency may withhold information identifying a person's name, address and/or telephone number (*City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008; 84 Ops. Cal. Atty. Gen. 55 (2001)).

In this case, even where a resident raises legitimate privacy concerns, we may be able to resolve those concerns by providing information that is not individually identifiable, e.g., addresses or assessors' parcel numbers only. However, since premature disclosure would waive the

section 6255 exemption, the affected residents should have the opportunity to voice and justify their objections first.

We expect to provide you with more information next week. In the meantime, I hope the foregoing addresses your concerns.

Sincerely,

Lori T. Okun
Senior Staff Counsel

cc: Mr. Roger Briggs **[via email only]**
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