STATE OF CALIFORNIA
CENTRAL COAST WATER BOARD
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895 Aerovista Place, Ste. 101
San Luis Obispo, CA 93401-790

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

FROM: Beverley De Witt-Moylan, BDM
CDO Defendant
1516 17th Street
Los Osos, CA 93402

DATE: July 21, 2006

RE: Response to Briefs Filed By June 23, 2006

Thank you for this opportunity to comment on the briefs filed in response to the direction of Chairman Young which were due by June 23, 2006, regarding possible modifications in the CDO hearing process because of a change in the Prosecution counsel.

My comments focus primarily on Mr. Sato's brief, since it was particularly notable in exceeding the parameters of Mr. Young's procedural questions. After addressing his responses to the procedural questions, which was the totality of the response requested by Mr. Young, Mr. Sato spent considerable time in Part II of his brief outlining the changes, which he refers to as "clarification," that he recommends in procedures that had previously been delineated for Designated Parties by Mr. Young.

The Prosecution Staff has already distinguished itself by making changes to the process and the procedures beginning with the date of issuance of the CDOs to a time less than 24 hours prior to the April 28, 2006, hearing. The burden on the Designated Parties of keeping up with these changes and modifying our cases to accommodate the changes as they have occurred has been an onerous and unfair attempt by Prosecution Staff to deny due process by limiting our ability to defend ourselves in yet another way, especially given that we are ordinary citizens who have been placed in the extraordinary position of having to defend ourselves in a complex legal proceeding with extremely limited assistance from the RWQCB.

For Mr. Sato to even broach the idea of changing the procedures which Chairman Young had assured us would be followed, proposing further restrictions on our already ludicrously restricted due process, further characterizes this entire proceeding as the show trial that it is.

In short, Mr. Sato's request for "clarification" consists of his stated desire to limit the ability of Designated Parties to cross examine witnesses, to restrict the ability of Designated Parties to have access to assistance in defending ourselves, and to limit the role of the CSD as a Designated Party.

His request to "clarify" procedures limits our rights to due process and free speech. Page 7 of his document states, "...in each subhearing, no one other than the Prosecution Team or the individual respondent should be permitted to offer evidence or cross-examine witnesses." Rather than each Designated Party receiving a hearing, Mr. Sato prefers to consider site-specific cases as "subhearings" in which each Designated Party is allowed to present his or her case in the total of fifteen minutes without the inconvenience to the Prosecution Team of cross examination by other Designated Parties, who may wish to incorporate by reference specifics gleaned from cross examination related to that individual's case.

Mr. Sato states on page 8 of his brief that, "The individual respondents are not adverse to one another in the proceedings regarding the individual cease and desist orders and therefore have no standing to question or cross-examine each other's witnesses." This statement is in direct contradiction to Chairman Young's assertion in the April 28, 2006, hearing that Designated Parties would have considerably more than the allotted fifteen minutes in that they would also have the opportunity to present witnesses and cross examine witnesses. If Chairman Young were to reverse his position based on Mr. Sato's written remarks, he would be making a change in agreed upon procedures, which exceeds the parameters of his request for comment.

Continuing to "promote the orderly and prompt conduct of the hearing and prevent unnecessary and potentially time-consuming cross-examination," valuing expediency and efficiency over civil rights, by eliminating cross-examination during individual presentations Mr. Sato states on page 9 that, "...the private interest is low for the individual respondents...they are merely being ordered to undertake minimal septic tank repairs that they should be doing anyway, and to cease violating the basin prohibition and the law." In this case Mr. Sato can be given the benefit of the doubt in having had to digest so many pages of hearing transcript that he perhaps does not recall the statement by Mr. Matt Thomson of the Prosecution Team when asked what will happen to Designated Parties in 2010 when they are unable to hook up to a WWTF, because none will be available. Mr. Thomson's dire response that we will all "have to vacate the premises" would imply that these cases entail more than "merely" ordering CDO Defendants to obey the law.

Mr. Sato cannot, however, be relieved of responsibility for his statement on Page 2 that he reserves the right to impose further penalties including administrative civil liability, which includes ponderous fines referred to in a footnote on the same page. That he can in good conscience threaten this prohibitively expensive and punitive remedy and in the same document indicate that "the private interest is low for the individual respondents" is government at its most callously irresponsible. At the May 11, 2006, hearing Chairman Young responded to a CDO Defendant, that he would not want to be in the Defendant's shoes. If Chairman Young cannot imagine being in a Designated party's shoes when it means "merely" making minor repairs on a septic tank and obeying the law, in Mr. Sato's view, perhaps

the Chairman would have some clearer perspective than Mr. Sato of how cruel and unusual the remedies proposed by Mr. Sato and Mr. Thomson would be.

In addition, Mr. Sato wishes to restrict the defined role of the LOCSD as a Designated Party, where Chairman Young has already delineated the parameters of its participation, most specifically that the LOCSD be able to use its resources in a way to assist other Designated Parties by their being allowed to incorporate by reference testimony gleaned through LOCSD witnesses and cross examination of witnesses. Mr. Sato believes that the LOCSD can "meet that objective in the general part of the hearing." This statement is unclear in that it is unknown what Mr. Sato believes to be the "general part of the hearing," if it is not in the presentation of cases.

In another vein, Mr. Sato's footnote on Page 4 states that, "the bi-monthly pumping has been deleted." "Deleted" is an unfortunate word choice, since Ms. Okun made it clear that this onerous, dangerous, destructive, counterproductive, exorbitantly expensive, and scientifically unproven requirement could be invoked again at any time at the discretion of the Prosecution Team. Mr. Sato makes passing reference to Ms. Okun's explanation regarding "modify[ing] the pumping language in the proposed orders to permit additional study of the impacts prior to imposing that interim restriction." But he goes on further in the next paragraph to refer to "removal of the pumping requirements." Mr. Sato seems to press the contention that bimonthly pumping as originally imposed is no longer an issue, furthering his notion that the CDO recipients are "merely being ordered to undertake minimal septic tank repairs...and obey the law," which may include bimonthly pumping, administrative civil liability, payment of impossible fines, individual bankruptcy, and abandonment of homes.

Mr. Sato appears to be tainted by old rhetoric wherein residents of the Prohibition Zone receive short shrift as willing and recalcitrant dischargers who simply need to start obeying the law. He deliberately omits the fact that it is impossible for citizens of the Prohibition Zone to obey the law, as was iterated in the report of the Water Board meeting of July 9, 2004, referred to in my initial evidence. Until a WWTF is constructed, a situation over which we have minimal to no control, citizens of the Prohibition Zone have no choices. If Mr. Sato holds the ubiquitous impression that recent political developments in Los Osos indicate a lack of commitment to clean water by residents of the Prohibition Zone, I would remind him and others on the Prosecution Team, as well as the RWQCB, that residents from outside the Prohibition Zone also voted in the recent election regarding the Tri-W site for the WWTF. To my knowledge no exit polls are available to indicate the level of support or opposition to this site in various locations in Los Osos, not to mention that neither support for nor opposition to the Tri-W site has anything to do with support for or opposition to a WWTF or clean water for the community of Los Osos.

According to Mr. Sato's response, "The Quintero objection is based on a mere appearance of impropriety." Here bias is actually clearly demonstrated by the many documented statements and discussions in public and private by the Board Chair, board members, and the staff prosecution. Ongoing prosecution against individuals was openly discussed between the prosecution and the hearing board prior to notice of individuals, (the prosecution staff's open discussion and

communication throughout the 2005 summer and fall election period, and the communications between the Staff and the recalled District board members requesting individual enforcement for purely political gain indicates the bias of the Prosecution Team and the RWQCB), which was explicitly barred, but intended to threaten and intimidate individuals and the community into submission during the ACL hearing against the district. Several examples are included in transcripts of the ACL proceedings against the LOCSD. Bias can be demonstrated, and the decision to scapegoat individuals is connected to the community election and outcome of a vote. Chairman Young's stated belief that I have control of the building of a treatment plant by my vote is ludicrous and is just one of many examples of ongoing bias of Chairman Young against me and others following the unsuccessful ACL hearing.

Mr. Sato makes the following statement on Page 3 of his response, "The Prosecution Team is confident that the evidence it presented already is more than sufficient to justify the requested orders." In contradiction to this assertion, however, a member of the Prosecution Team stated directly to a Designated Party that the RWQCB has no site specific, scientific evidence that any septic system in Los Osos is not working, that pumping intervals are inappropriate, or that any individual citizen in the Prohibition Zone is polluting ground water. Prosecution Staff has relied on what Mr. Briggs referred to as "common knowledge." It is also "common knowledge" that there are many other possible sources for the nitrates in Los Osos soil. There is no evidence that I am contributing to the ground water nitrogen levels in excess of drinking water standards. And there is evidence that I am not. Given this circumstance, Mr. Sato's statement is erroneous, and there is no basis for this prosecution.

Mr. Sato revisits the Basin Plan, indicating that its propriety is not at issue. In fact, it was brought into the argument by the Prosecution Team on April 28, 2006, and is, therefore at issue. In point of fact, the Prohibition Zone was created arbitrarily, conveniently excluding certain members of the community from taking responsibility for what is to be a benefit to the entire community. Creation of the Prohibition Zone is the political basis for this very politically motivated enforcement action in which powerless citizens are now engaged. Mr. Briggs had given every quarter to the County and to previous CSD Boards for the past 23 years. Suddenly, following a particularly divisive election, following the encouragement of specific citizens of Los Osos, and following comments by specific members of the RWQCB, the Prosecution Team led by Mr. Briggs has turned to the primitively retributive remedy of individual enforcement.

With regard to Mr. Briggs, under the innocuous heading in Part III, "ADDITIONAL PRODEDURAL MATTERS," Mr. Sato announces in his response that Mr. Briggs will be out of the country for five or six months. First of all, it is unclear why the Prosecution Team did not send out an advisement to the Designated Parties regarding the lack of availability of Mr. Briggs as a witness when Ms. Okun had specifically referred to the removal of Mr. Briggs from the hearing process as "not possible" in her request for a continuance dated May 4, 2006. He had been called as a witness by the LOCSD and cross-examined at that time. Other Designated Parties have questions for Mr. Briggs in his capacity as leader of the Prosecution Team and as someone who has a history with Los Osos wastewater issues that goes back to a time before my husband and I were residents of this town.

Ms. Okun recognized the importance of Mr. Briggs's presence at the hearing. Mr. Sato wishes to nullify her position, saying that "it is hard to imagine that any further examination of Mr. Briggs would not be duplicative." It does not seem possible that Mr. Briggs's absence from the hearing could be "not possible" and his presence at the hearing be "duplicative" at the same time. It is the Chairman's decision at the time of individual questioning of Mr. Briggs by CDO Defendants to determine if what he says is "duplicative" or new and relevant. If Mr. Briggs will be unavailable for a hearing, then to proceed with due process guarantees for all Designated Parties it is imperative that either Mr. Briggs be required to return for the hearing dates to be determined by Chairman Young or that the hearing dates be set to coincide with Mr. Briggs's return. That an announcement this significant was made only as an apparent afterthought at the conclusion of Mr. Sato's presentation is another example of this Prosecution Team's dismissive attitude toward CDO Defendants and a further attempt by this Prosecution Team to limit due process to CDO Defendants. The timing and length of Mr. Briggs's absence simply adds to the continued appearances of impropriety on the part of Mr. Briggs, to which I referred in my initial evidence.

In his capacity as steward of the basin Mr. Briggs is the originator of the enforcement actions. He presided over the regulatory failures in Los Osos. His failure to provide adequate scientific information on individual properties when instituting the discharge Prohibition Zone, his failure to provide appropriate time schedules, and his support for an unsustainable project are the foundation of the situation CDO recipients find themselves in today.

As a CDO recipient and defendant in this process I have a right to know whether Mr. Briggs's absence results from his own request for a leave or if this leave is at the direction of his supervisors. CDO recipients have had to modify or completely change personal plans to accommodate the scheduling whims of the RWQCB and the Prosecution Team. If Mr. Briggs's leave is discretionary, then for the good of the process he should be denied his leave request, or the hearings should be continued and rescheduled upon his return. His absence denies my right to face my accuser and the person who created a water treatment situation in my town so dire as to result in the punishment of my neighbors and me for his failures. I reserve my right to question and cross-examine Mr. Briggs on appeal to the SWRCB.

As a CDO Defendant, it is suggested that I be denied assistance with my defense unless I can provide documented "representation" for the preparation and presentation of my case, denying my rights and limiting my ability to defend my property, family and person. As a private citizen with an advanced degree in Education and training as a clinical hypnotherapist, trauma therapist, and Reiki practitioner, I have no experience whatsoever in judicial proceedings aside from being called for jury duty, nor do I have expertise in the development or presentation of a legal "case." In the intimidating atmosphere of a quasi-judicial hearing I reserve my right to call on assistance in presenting my case, which cannot be equated to "legal representation." As Chairman Young actually requested that parties work together and assist one another, I have the right to utilize any such assistance and may, in fact, require help. Not only do I work full-time and have limited time to work on my defense, because of a chronic autoimmune disease whose symptoms have worsened since the issuance of this CDO, I cannot depend

on having the stamina to prepare my defense against a continuing barrage of changes by this Prosecution Staff, nor can I depend on my ability to withstand a hearing or series of hearings lasting twelve hours or more.

As noted in my brief submitted in response to Chairman Young's request and as further delineated in this document, my civil liberties are being attacked in many ways through this CDO prosecution. Mr. Sato's suggestions for "clarification" pose further limits on my civil rights. As I reminded you in my brief, government officers face liability in their individual capacities for violations of civil rights under §1983. Specifically, even in a quasi-judicial proceeding such as this one, the arbiters can be found liable for violation of civil rights where the proceeding lacked sufficient procedural safeguards to protect against violations (see Cleavinger v Saxner). Mr. Sato's suggestions remove, rather than replace safeguards to me as a defendant.

The rest of this correspondence addresses aspects of Mr. Sato's responses to the specific questions posed by Chairman Young in the request for briefs received by all parties in the CDO hearing process.

Mr. Sato expresses the opinion on page 2 that if the Prosecution Team must begin again, "...it should be free to represent the case as its new counsel now sees fit. This could include recommendations for additional remedies or the imposition of civil liability." If Mr. Sato wishes to revert to the composing of new remedies, proposing the issuance of ACLs instead of CDOs, logic would dictate then that a complete change in procedure would also involve a completely new random selection of recipients. If he chooses to revert to a time prior to issuance of CDOs to consider alternative enforcement, that phase would also necessarily include a new selection process.

With regard to Mr. Sato's statement on Page 2 that "it is difficult to respond to this question [#1] without any indication of how the Los Osos Community Services District (LOCSD) or individual respondents believe they are prejudiced by the hearing process to date" I would refer him and the RWQCB to my submission in response to Chairman Young's questions. That brief outlines those ways in which I believe the hearing process to date has been prejudicial.

An examination of the briefs filed by Designated Parties shows that the majority of the respondents had requested that the Board restart the prosecution from the beginning. I agree with several respondents who proposed that the prosecution should go back to a review of the very application of CDO's or "enforcement appropriateness" for issuing CDOs. Absent such a rational course of action, I request federal oversight and a review of abuses against individuals in response to political conflicts involving the RWQCB, private citizens with ties to the RWQCB, and the LOCSD. I have referred to this history in prior submissions.

Efforts at electioneering prior to the special election in September to move the WWTF site and recall certain LOCSD Board members should be investigated by an independent body. These improper actions further require removal of the Prosecution Team with a new hearing by an untainted and impartial RWQCB.

Ms. Okun's voluntary removal from the case and the reasons given does not render moot any or all other reasons requiring her removal based on bias. It was her determination that individual CDOs were appropriate and prudent actions. Her involvement here should be revisited, as well as other decisions and actions, as she designed the process initiated by Mr. Briggs and suggested by members of the RWQCB. Starting over in a neutral hearing environment would ensure appropriate and prudent action to achieve compliance goals. Such assurance is especially necessary in light of the questionable motives for issuance of CDOs in the first place and in light of the lack of evidence connecting me to the pollution of ground water.

Finally, Mr. Sato appears most interested in streamlining the process, in providing a "more expeditious adjudication of the validity of the cease and desist orders on their merits" rather than in providing adequate safeguards to due process rights for individual CDO Defendants. My right to due process is lost in his quest for expediency. As I said in my most recent correspondence, our judicial system is designed to ensure that defendants have more rights than prosecutors. This circumstance affords protections to citizens' civil rights. Mr. Young stated recently that we are not engaged in a criminal proceeding. Yet the penalties facing CDO recipients are dire, and it is merely a matter of time. 2010 is fast approaching. At that time citizens will be forced to walk away from their homes. It would be hoped that the Prosecution Team and the RWQCB can take the long view in this action, assume a sense of civic responsibility, revisit the motives for issuance of these orders, evaluate the value of CDOs and their consequences in promoting a sustainable, long term way of providing clean water for Los Osos, and devise a rational method, free of political motives, to use their authority to make a difference, instead of simply making a point.

I reserve the right to incorporate procedural arguments from the LOCSD and other defendants that I may choose to use in this hearing or upon appeal.

"The first obligation of government is to protect our people." -Senator Susan Collins of Maine