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June 22, 2006

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

Dear Mr. Thomas,

It is our sincere belief that the entire prosecution against me and my wife should be dropped in its entirety and against the community of Los Osos. Should your views be different than ours and the rest of the Los Osos community in the prohibition zone, we would then like to insert the following statement previously provided to you.

On May 18, 2006, the Central Coast Regional Water Quality Control Board ("RWQCB") issued a request for written arguments regarding a number of procedural items stemming from the replacement of Lori Okun on the Prosecution Team in the above-referenced action. This letter represents our official comments on those matters.

It is our position that the RWQCB prosecution of the individual citizens in Los Osos and Baywood Park must be completely stopped and restarted from the very beginning. Ms. Okun was involved in the prosecutions from the start, and her influence on them is pervasive. From Ms. Okun's letter regarding her removal from the Prosecution Team, and from Stephen Onstot's comments at the April 28th hearing on the matter, we understand that the reason for Ms. Okun's removal is to remove the conflict of interest created by her both advising the RWQCB and prosecuting the individuals. Clearly, this conflict cannot be fully removed unless the prosecutions are cancelled and restarted from the very first steps.

Restart the Prosecution from the Beginning. Ms. Okun's involvement and influence over the prosecution pervades the entire process to date. She presented a substantial portion of the Prosecution Team's argument, and she represented the Team in arguing legal points before the RWQCB. The only way to purge this influence is to start a completely new prosecution with completely new personnel involved.

Mr. Briggs Must be Removed from the Prosecution. In addition, the *Quintero* and *Morongo* cases cited by Mr. Onstot at the hearing and by Ms. Okun in her letter state that the purpose of removing legal counsel from a Prosecution Team stems from the fact that they regularly advise the board, and that the advisory role is completely incompatible with the prosecutorial role. Applying this rationale, senior staff (in this case, Roger Briggs)

should also be removed from the Prosecution Team.

The Board Itself Must Step Aside. Ms. Okun has tainted the entire prosecution. Mr. Briggs has done so as well. Both should be removed from the Prosecution Team and the prosecution restarted from the very first steps. But this leads to another problem. The RWQCB has already heard the entire prosecutorial argument from the persons who have, according to *Quintero* and *Morongo*, tainted the prosecution, and the RWQCB has made procedural rulings that shaped the scope of the case- and done so in reliance on what Ms. Okun and Mr. Briggs have advised or argued. It seems to us, therefore, that the entire Central Coast RWQCB should recuse itself from hearing this matter and should turn the matter over to one of the other Water Boards in the state. While this may seem to be a heavy burden, it is the only way in which due process may be upheld.

We do not think that we need to remind the board that government officers may face liability in their individual capacities for violations of civil rights under δ 1983. Specifically, even in a quasi-judicial proceeding such as this one, the arbiters can be found liable for violations of civil rights where the proceeding lacked sufficient procedural safeguards to protect against violations. (See *Cleavinger* v. *Saxner* (1985) 474 U.S. 193).

Procedural Issues. Because the entire prosecution must start fresh from the beginning, be presented by a new Prosecution Team, and be heard by a different Water Board, the procedural issues raised by Questions One, Two, Three, and Four are moot. But presuming the RWQCB will not restart the prosecution and recuse itself, then our responses to those questions are as follows. The Prosecution Team's case, because it is thoroughly influenced by Ms .Okun, must be stricken completely from the record, and so must everything that followed it. Therefore, the entire hearing must begin again, with new presentations by the Prosecution and the Los Osos Community Services District, and a new opportunity for individuals to speak regarding procedural issues. And all parties should be allowed to supplement their cases with new materials- the decisions must be based on the best scientific evidence available.

The fifth question is as redundant as the previous four questions, and the personal issues are as follows:

We find it personally offensive and demeaning what your board has not only done to us, but to our other 44 fellow neighbors; you literally have taken our lives and put them on hold causing us great grief and aggravation stressing us out beyond belief, causing us to seek additional medication, causing us to cancel planned events and out of town visits with our three children and our four granddaughters, wasting our time, money, and energy, as well as the taxpayers money in what appears from the evidence was a knee-jerk reaction in a retaliatory manner in a use-and-abuse of power, such as using a 50MM Howitzer to execute an innocent person that could not afford to mount a $50,000 or $100,000 legal defense against an administrative jargon and doublespeak understood by very few people including legal minds.

Please stop these proceedings, step back and eliminate these CDO's. You have unquestionably proven that you have the power and discretion to bring havoc to a community whether it be Los Osos or some other community in our great State. Now you must show that with some power comes ethical and responsible use of that power.

Please stop these proceedings and let Assemblyman Sam Blakeslee's proposal with the San Luis Obispo county Board of Supervisors move forward in a deliberate and conscientious manner as the entire community will now be looking very hard at your agency. This case and accompanying CDO's should have never been started and all should be entirely stricken from the record and should not be re-started. We are responding as if it was presenting our closing arguments to the jury in defense of the unwarranted charges brought against us and the community of Los Osos.

Please allow us to reclaim our lives! We have waited patiently to build our retirement home here in Los Osos on our lots for over fifteen years, or since approximately 1991. At the age of 74, I will be close to 80 before we could begin to reconsider fulfilling our dream. In the period since you established your prohibition zone, you not only have exacerbated the condition of our health and well being, but through an extrapolation process provided to us by our financial planner your actions have caused us, a conservative loss in excess of 1.2 million dollars is lost income and interest and the enjoyment thereof. If we sound a bit harsh and bitter, it is only borne from the frustration and angst this entire debacle has caused us!

In closing, we would encourage you and your entire staff (and all board members) to read the latest JULY-AUGUST ISSUE OF THE ROCK.

Sincerely,

ALAN R. MARTYN

Jacqueline C. Martyn

JACQUELINE C. MARTYN