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STATE OF CALIFORNIA
CENTRAL COAST WATER BOARD
Received
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San Luis Obispo, CA 93401-7906

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

Re: Proposed Cease and Desist Orders – Revisions to Procedures Following the Replacement of Ms. Lori Okun as Counsel to Prosecution Staff

Dear Mr. Thomas:

Thank you for this opportunity to discuss my position regarding the five questions posed by the RWQCB to Designated Parties in the CDO Prosecution.

With regard to the first question, the Prosecution's case, as presented orally on April 28, 2006, should be stricken entirely. The RWQCB should cease any and all prosecution of Designated Parties. The entire case is tainted by the Prosecution Staff's frequent contact with RWQCB members. Both Mr. Briggs and Ms. Okun have regular contact in their roles as advisors to the Board on many matters. In addition, Mr. Young has also indicated his prejudice in the matter of CDOs by statements he made prior to the prosecution staff's decision to issue them.

The absolute lack of science as a platform for the CDOs, along with documented statements made by staff and Board members with regard to citizens of Los Osos and CDOs, the utter lack of a relationship between the conditions of the CDOs and clean water, the years of involvement with the Los Osos wastewater issue by Mr. Briggs and other staff members, the personal relationships Mr. Briggs appears to have established with specific community members who have vehemently encouraged him to engage in "swift" and "brutal" enforcement against individual citizens, and the complete and total disregard for the "unintended consequences" of CDOs on individual citizens create a strong impression of impropriety in the motivation for their issuance. Therefore, the only reasonable remedy to the current circumstances is for the RWQCB to strike the CDOs entirely, dismiss the prosecution, and fulfill its duty to assist the LOCSD in developing a wastewater treatment plan.

If the case is stricken "to some lesser degree," then it must be stricken back to the original issuance of CDOs. Since suspicion exists with regard to the motivation for the CDOs in the first place, as well as with regard to the actual randomness of the selection process, the Prosecution Staff needs to revisit CDO issuance with observers from the community

monitoring this process for fairness and impartiality. In a random process where 45 families are chosen from almost 5000, it is highly unlikely that two next-door neighbors would be chosen or that two neighbors in the same block only a few houses away from each other would be chosen. Yet that is what happened. It is also notable that not a single business was chosen in this random sample, aside from some home businesses that became targeted because their owners' homes were selected. CDO selection must be conducted anew, if the case is stricken "to some lesser degree."

If the case is stricken "to some lesser degree," then the entire RWQCB, along with the Prosecution Staff, must be replaced because of previously described associations which would taint their participation. The Board has already been tainted by its associations with Mr. Briggs and Ms. Okun. Ms. Okun has demonstrated her understanding of that fact by stepping aside. Mr. Briggs must follow her lead. The entire Water Board must do the same in order for due process to prevail.

It is only fair that the prosecution be conducted by a Board untainted by history, personality conflicts, and prejudice. Continuing the CDO prosecution, whether starting over or continuing from the April 28, 2006, hearing, requires a different Prosecution Staff, a different Regional Water Board, and a different venue. If this case were not already absurd on its face, it could be said to have mutated into a parody of itself. Its only hope is to begin completely afresh, if it is to begin again at all.

With regard to question two, the Prosecution Staff should not have the opportunity to produce additional evidence, even if only in writing. The Prosecution Staff had its entire case prepared well in advance of the first CDO hearing with many years to gather and organize all relevant evidence. They have had ample time. That their own staff has proven themselves incompetent in the matter of wastewater treatment is irrelevant in determining if they should be able to produce even more insubstantial evidence.

In reference to question three, if the Chairman does decide that the Prosecution Staff is permitted to present its case again, it should have the opportunity to introduce new material into the record **if and only if** Designated Parties are afforded the same privilege. If such a condition prevails, then Designated Parties should receive sufficient time to gather and submit additional evidence. RWQCB members must take into account that the Prosecution Staff prosecutes for a living. They spend their workdays developing cases. On the other hand, Designated Parties spend their workdays at jobs and taking care of their families and are then left to research and develop a defense in limited time with no access to many documents available at the RWQCB headquarters only during work hours. Designated parties are forced to take time away from work, family, and community responsibilities in order to conduct their research. In light of this situation, the RWQCB Chairman would be advised to take the special circumstances of Designated Parties into consideration when determining what constitutes "sufficient time" to research, peruse, and present further evidence following the submission of Prosecution Staff evidence.

In reference to question four, I have already stated my position that the prosecution case for CDOs should be stricken entirely, totally, and completely, and not resumed. The case for the issuance of the CDOs in the first place is unfounded and suspect. If, however, the Chairman decides to resume prosecution and allows the Prosecution Staff to start over, then it is only logical, ethical, and right that the Community Services District be afforded the same privilege. In our judicial system defendants have more rights than prosecutors. This administrative case demands at least equal rights for the CSD, as a Designated Party, with the Prosecution Staff.

In reference to question five regarding "personal issues," it is notable that at the April 28, 2006, hearing Dr. Press said that a continuance of the hearing to a later date would be "inconvenient for everyone." For those who get paid for prosecuting us and for hearing the Prosecution's case, it may have been simply "inconvenient" to continue the case. For those of us with jobs and families who must also develop a defense against this prosecution, for those of us who are elderly or ill, for those of us who are students, a continuance was not "inconvenient." It was a significant hardship. And just as a continuance was a significant hardship, beginning this prosecution again for any reason also poses a grave hardship.

As a full-time teacher of blind and visually impaired children of all ages and abilities for the San Luis Obispo County Office of Education I hardly ever take a day off from work. My students depend on me to be there to assist them. Because of the specialty of my credential, if I cannot attend to my duties, no one is available to take my place. Any time of any weekday that you might choose to allow me to present my defense would be a hardship not only to me, but to my students as well. It is difficult for me, in any case, to accept the merit of this prosecution based on the presentation of Prosecution Staff. It is even more difficult to accept that my time is taken from my students and my home responsibilities in order to attend to my defense against what amounts to a frivolous lawsuit with no basis in fact or science or credible research data. If the Chairman decides to press on with the prosecution case, whether to begin again or to continue, the only day when my students or my personal life would not be adversely affected and the best day for me to present my defense would be a Sunday. Please consider scheduling any further hearings for this day of the week. Saturday would be my second choice. Otherwise evenings after 6 PM would be an acceptable alternative.

I have a chronic autoimmune disease that makes it difficult for me to sit for hours on end in a hearing room. Though the Chairman may take this situation into consideration in ordering our presentations, I am also aware from the Chairman's statements at the April 28, 2006, hearing that if I am not present to witness presentations by others, I cannot incorporate by reference their testimony into my record. We are not permitted simply to ask for blanket incorporation by reference, but must make references to specific testimony. If we are not present to hear specific references, we cannot incorporate them, thus forfeiting any opportunity we might have to add pertinent testimony to our own defense. While the Board purports to look after our best interests, it also does not hesitate to limit our defense. Therefore my reference to my physical hardship is moot, since I am

forced to attend every minute of every hearing date if I want an opportunity to incorporate by reference the evidence presented by other defendants.

As a taxpayer I have "personal issues" with and object to the use of my taxes to fund the poor quality of this prosecution with so little demonstrated merit. I have "personal issues" with and object to supporting government employees of dubious credentials and expertise in the area of wastewater treatment in their prosecution against individuals living in the Los Osos Prohibition Zone. I have "personal issues" with and object to the expenditure of tax monies to fund facilities and salaries dedicated to the very poorly organized April 28, 2006, hearing. I have "personal issues" with and object to the expenses associated with further hearings with no promise of better efficiency or a better attempt at due process. I have "personal issues" with and object as a taxpayer to the expense of salaries and benefits paid to CDO defendants who are public employees who attend hearings instead of working at the jobs taxpayers like me pay them to do.

As a community member I have "personal issues" with and object to the RWQCB forcing individuals without the advantage of "personal business leave" to take time from their jobs at their own expense to defend themselves against an action taken with so obviously little thought to science and with so much malice aforethought. This prosecution is punitive when the failure of these citizens to appear at the hearings results in forfeiture of their defense. Continuing or beginning the CDO hearing process again involves more days without pay for families who can already little afford having missed one day's pay. Yet the RWQCB has given no thought to or remedy for this eventuality. It is my belief that the RWQCB members and staff receive pay and that the RWQCB members also receive expenses for engaging in this prosecution. We defendants simply pay, not only the salaries and expenses of those who would engage in swift and brutal enforcement against us, but also the expenses we incur in having to engage in our own defense.

As a citizen of the United States of America I have "personal issues" with and object to being denied my right to due process by being denied an individual hearing.

I have "personal issues" with and object to being given a time limit of fifteen minutes to present my entire defense.

I have "personal issues" with and object to being required to combine my presentation with my husband's despite the conditions of the Proposed CDOs, which state that *each CDO recipient* has fifteen minutes to present his or her case. This restriction discriminates against spouses by requiring them to share time, though each is a CDO recipient, and each one individually suffers the consequences of a CDO.

I have "personal issues" with and object to being singled out for prosecution with 44 other families as a test case when it is clear that such a small number of properties will not mitigate the groundwater conditions in any measurable or statistically significant way.

I have "personal issues" with and object to the attenuation of this prosecution, given that issuance of CDOs indicates an emergency, yet the RWQCB has extended this prosecution for months. These delays would indicate that an emergency indeed does not exist and that the issuance of Proposed CDOs is not to address groundwater issues, but to further a different agenda which has nothing to do with the quality of groundwater.

I have "personal issues" with and object to the RWQCB's failure to offer me access to a public defender when the consequences of CDOs are dire to individuals. According to a statement made by Mr. Matt Thompson at the April 28, 2006, hearing, if a wastewater treatment facility is not available for CDO recipients to connect to on January 1, 2010, "You will have to vacate the premises." Perhaps to members of the RWQCB vacating the premises and losing one's home is not a dire consequence, but to my husband and me who live in the Prohibition Zone, our home is our greatest asset. To be put in a position to lose our home is dire. It is not inconvenient. It is not a hardship. It is a calamity.

Finally, I have "personal issues" with and object to the RWQCB continuing to ignore my existence in its communications. The gender bias demonstrated by its addressing of all correspondence to my husband alone is deliberately offensive and discriminatory.

The RWQCB has engaged in violations of my civil rights in various ways in the course of the CDO process. It is my understanding that government officers may face liability in their individual capacities for such violations of civil rights as denying due process and engaging in gender discrimination. 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)

In conclusion, aside from the regular collaboration among Ms. Okun, Mr. Briggs, and the RWQCB members, this CDO case is flawed from its inception. The best course is for the RWQCB to abandon the prosecution of 45 individual families and put its energy into assisting the local government of Los Osos to take positive, proactive steps to mitigate the quality of the groundwater. If, however, the Water Board chooses to move on with the prosecution, then it is essential for the protection of due process that this case begin again from the point of issuance of CDOs with local citizen involvement in the assurance of a random sample. Removal of Mr. Briggs and the entire RWQCB is also required to preserve the integrity of the case, which is tainted by associations among Prosecution Staff and the Board. Hearing of this case by an impartial Water Board from a different region is crucial in the preservation of due process.

Please mail copies of all briefs filed in response to the May 18 Request to my home address. I will submit my response by July 21, 2006.

Sincerely,

Beverley A. De Witt-Moylan