# California Regional Water Quality Control Board
## Central Coast Region

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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 PROPOSED SETTLEMENT AGREEMENT, CONTINUANCE OF HEARINGS FOR DESIGNATED PARTIES WHO HAVE AGREED TO SETTLE, AND ORDER OF PROCEEDINGS FOR PUBLIC HEARING ON**

**DECEMBER 14, 2006, 8:30AM TO 4:30PM AND DECEMBER 15, 2006, 8:30AM TO 7:30PM**

**NOTE: The Water Board Chairman may adjust the timing and order of these proceedings during the hearing.**

**PROPOSED SETTLEMENT AGREEMENT AND CONTINUANCE OF HEARINGS FOR DESIGNATED PARTIES WHO HAVE AGREED TO SETTLE**

Several Designated Parties have agreed to a proposed settlement agreement, or are currently negotiating a proposed settlement agreement, with the Prosecution Team. The hearings for those Designated Parties who agree to a proposed settlement with the Prosecution Team by December 14, 2006, will be deferred to allow the Water Board to consider approval of proposed settlements instead of the issuance of individual Cease and Desist Orders to those Designated Parties. **However, the hearings scheduled on December 14 and 15 will be held to consider issuance of individual Cease and Desist Orders for those Designated Parties who have not agreed to a proposed settlement with the Prosecution Team as of December 14.**

The Water Board will consider approval of proposed settlements pursuant to a proposed settlement agreement on Thursday, December 14, 2006, as scheduled below. The Water Board may, at its discretion, approve settlement pursuant to the proposed settlement agreement, reject it, or seek stipulations by the Prosecution Team and settling Designated Parties for revisions to any proposed settlement agreement. If the Water Board seeks revision of the proposed settlement agreement, the Water Board will also set a date by which Designated Parties must decide if they will sign the agreement or continue with the hearing process.

The Water Board will consider only settlement proposals between the Prosecution Team and Designated Parties (as the parties proposing a settlement).

## CONSOLIDATED PROCEEDINGS FOR ALL PROPOSED CEASE AND DESIST ORDERS

**December 14, 2006 Hearing, continuing on December 15, 2006, as necessary:**

Begin Hearing at 8:30am

1. Consideration of Proposed Settlement Agreement (Estimated Time: 2 hours)
2. Consideration of Preliminary Procedural Matters (*e.g.*, Incorporation of and Objections to Documents Submitted by Parties, *etc.*; Estimated Time: 0.5 hours)

**NOTE: All of the evidence and comments presented in items 3 through 7 will be incorporated automatically into the record that will be considered for each individual Cease and Desist Order action.**

**NOTE: During the evidentiary part of the hearing, only Designated Parties, their attorneys, or attorneys-in-fact, may address the Water Board. Attorneys-in-fact must provide a notarized authorization from one or more Designated Parties prior to addressing the Water Board.**

3. Non-Evidentiary Comment by Government Agencies (5 minutes each) and Interested Persons (1 minutes each) (Estimated Time: 1 hour)
4. Presentation of Evidence by Water Board Prosecution Staff (Estimated time: 0.5 hours)[1]
5. Cross-examination of Prosecution Team by other Designated Parties (Estimated Time: 0.5 hours)

Lunch Break at approximately 1:00 p.m. (1 hour)

6. Presentation of Evidence by Los Osos CSD[2] (Estimated time: 1 hour)
7. Cross-examination of Los Osos CSD by other Designated Parties (Estimated Time: 0.5 hours)

**NOTE: All of the evidence and comments up to this point will be incorporated automatically into the record to be considered for each Proposed Cease and Desist Order.**

8. Individual Proceedings for each proposed Cease and Desist Order: The Proposed Orders will be considered in alphabetical order by last name. The Chairman may adjust these proceedings, including the order and timing, and opportunities for cross-examination.

**NOTE: Except as provided below, all of the evidence and comments from this point onward will be applicable only to each individual Cease and Desist Order action in the individual Cease and Desist Order proceeding in which it was, or will be, presented. Any person named in a proposed Cease and Desist Order may, upon a showing of property-specific relevance and materiality and with the approval of the Chair, incorporate by reference any testimony offered by other persons named in proposed Cease and Desist Orders.**

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[1] Estimated times set forth in the Order of Proceedings are intended to reflect anticipated limits for the respective presentations and are subject to limitation or extension by the Chair upon a showing of good cause.

[2] Documentation relevant to all, or several, properties that may be subject to individual Cease and Desist Orders should be presented at this time; the Chair will consider requests by Designated Parties other than LOCSD to present general evidence relevant to multiple properties at this time.

**NOTE: The following process will be repeated for each proposed Cease and Desist Order.**

a. Presentation of property-specific evidence of violation(s) and need for each proposed Cease and Desist Order by Prosecution Staff (Estimated time: 15 minutes for each proposed Cease and Desist Order)

b. Cross-examination of Prosecution Team by the Individual Cease and Desist Order Recipient. (Estimated Time: 10 minutes)

c. Presentation of property-specific evidence by individual property owners or tenants subject to each proposed Cease and Desist Order (Estimated Time: 15 minutes for each proposed Cease and Desist Order).

**NOTE: Individuals named in proposed Cease and Desist Orders will be encouraged to incorporate testimony from other individual proceedings that is relevant and material to the individual proceedings into the record of such individual proceedings in order to expedite the hearing process (*i.e.*, do not repeat testimony from other parties).**

d. Cross-examination of the individual property owners or tenants by the Prosecution Team. (Estimated Time: 10 minutes)

e. Rebuttal testimony by Prosecution Team (Estimated Time: 5 minutes)

f. Rebuttal testimony by individual property owners or tenants (Estimated Time: 5 minutes)

**Closing Arguments**

9. By Los Osos CSD

10. By Individuals named in Proposed Cease and Desist Order

11. By Water Board Prosecution Staff

**Deliberation and Decisions**

12. Board Deliberation and Consideration of Proposed Cease and Desist Order

**ISSUES BEFORE THE WATER BOARD IN THIS PROCEEDING:**

1. Are persons who own or occupy each property (*i.e.*, the persons named in each proposed Cease and Desist Order) discharging or threatening to discharge in violation of the Los Osos/Baywood Park prohibition in the Basin Plan?

2. Are the requirements of the proposed Cease and Desist orders the appropriate remedy for violations of the prohibition? Specific circumstances of each discharge are relevant

only to the remedy the board may adopt if the board finds that violations are taking place or are threatening to take place.

**NOTICE**

The validity of the discharge prohibition applicable to persons discharging to individual or community disposal systems within the Los Osos/Baywood Park prohibition zone is not an issue that is before the Regional Water Board in these proceedings; nor is it susceptible to collateral challenge through these proceedings, or in any petition for review of these proceedings. The Chair will not permit any party to present evidence or argument that challenges the validity of the Los Osos/Baywood Park prohibition.

Parties named in individual Cease and Desist Orders are expected to attend the hearing and summarize their written testimony as described above. If a party does not attend the hearing, the hearing will proceed *in absentia* and the Water Board will rely on written testimony from the absentee party. If any party encounters actual circumstances that prevent the party from attending the scheduled hearing, it is the party's responsibility to contact the Water Board as soon as possible to seek a continuance and provide substantial justification of prejudice to the party as a result of the party's absence from the hearing. If a party is unable to attend and requests a continuance, the Water Board will consider the request before proceeding with the hearing regarding whether or not to adopt the proposed Cease and Desist Order for the absent party. There is no guarantee that the Water Board will grant a continuance. If a party does not attend the hearing, and does not receive a continuance, the party will be in default and will be deemed to have waived the right to testify at the hearing.

If you have questions, please contact Michael Thomas at mthomas@waterboards.ca.gov, or call 805-542-4623.

for Michael Thomas
Jeffrey Young, Chairman
Central Coast Water Board

Date: 11-21-06

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