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

CHAIRMAN'S ORDER REGARDING PROSECUTION TEAM'S OBJECTIONS TO EVIDENCE FOR HEARINGS ON DECEMBER 14 AND 15, 200

The Central Coast Water Board Chairman reviewed the Prosecution Team's December 1, 2006 objections to evidence submitted by the Los Osos Community Services District (LOCSD). The LOCSD previously submitted a list of 847 documents as evidence for the Water Board's April 4, 2006 hearing on this matter. The LOCSD appears to be submitting the same list of 847 documents as evidence for the December 14 and 15 hearing on this matter, along with additional documents on computer disk (CD). The Prosecution Team is objecting to many of these documents due to relevance and lack of description.

The evidentiary standard for this hearing is set forth in Government Code Section 11513, except as otherwise ordered by the Chairman:

> (c) The hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided. Any *relevant* evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions.
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> (d) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. An objection is timely if made before submission of the case or on reconsideration.

The Water Board's hearing procedures and the hearing notices allow for incorporation of evidence by reference if that evidence is already in the Water Board's files and the person seeking to incorporate the evidence specifies its location in the Water Board files and designates the particular portions of the evidence on which the party relies. (Cal. Code of Regs., Tit. 23, § 648.3.)

In addition, evidence submitted to the Water Board for these proceedings must be directly relevant to the issues before the Water Board in these proceedings, as described in the Chairman's Order of Proceedings, dated November 11, 2006, which is incorporated herein by reference.

Documents that do not meet the Water Board's requirements are not admissible, as described below. The Los Osos CSD has until **December 12, 2006** to correct and resubmit its document list for consideration by the Water Board as to those documents that were not properly identified or described.

Documents 59, 83, 186-89, 306, 356, 598, 606-630, 631, 635, 637-640, and 642-701: The Prosecution Team's Objection is sustained; these documents will not be admitted into the record of the current proceeding for the consideration of proposed CDOs. These documents are not in the Water Board files and the LOCSD did not submit copies:

Document 28 (documents the Prosecution Team incorporated by reference in the Administrative Civil Liability hearing): It is unclear which documents this refers to. The Chairman did not admit all of the Prosecution Team's documents for the Administrative Civil Liability hearing. The CSD has until December 12, 2006 to specifically identify the documents it wants incorporated by reference, and their relevance to the issues in this proceeding, otherwise the Prosecution Team's Objection will be sustained.

Document 129, "1997-2005 Cleath and Assoc. LOCSD files GWR Monitoring Reports and all Back-up information and data" is identified as being the document listed as ACL-LOCSD-179 in the record of the ACL proceeding (also designated Document 0179.pdf). Document 0179.pdf is a seawater intrusion report. We cannot determine what LOCSD files or back-up information this document refers to. The CSD has until December 12, 2006 to specifically identify the documents it wants incorporated by reference, and their relevance to the issues in this proceeding, otherwise the Prosecution Team's Objection will be sustained.

Document 133, '1998-2005 LOCSD to SWRCB quarterly and annual reports" is listed but no copy was provided. The CSD has until December 12, 2006 to provide copies of these reports and to explain their relevance to the issues in this proceeding, otherwise the Prosecution Team's Objection will be sustained.

Documents labeled ACL-PUB-xxx: It is impossible to determine what these documents are and whether they are in the Water Board's files. The CSD has until December 12, 2006 to provide copies of these reports and to explain their relevance to the issues in this proceeding, otherwise the Prosecution Team's Objection will be sustained.

Documents 598, 632, 636, and 641: The Chairman ruled these documents as inadmissible during the Administrative Civil Liability hearing due to vague descriptions. The CSD has until December 12, 2006 to specifically identify these documents and to explain their relevance to the issues in this proceeding, otherwise the Prosecution Team's Objection will be sustained.

The unnumbered videos included on the DVD the LOCSD prepared for this hearing (LOTTF Right to Choose, parts 1 and 2; LOTTF Low Cost Alternatives) address the Tri-W project or alternatives for a community system. The Prosecution Team's Objection is sustained; the videos will not be admitted.

Videos 599-606: The Prosecution Team's Objection is sustained. The Chairman also ruled these videos as inadmissible during the ACL hearing for the same reasons.

Documents 17, 20, 26-27, 48, 55, 81, 87, 88, 99, 114-115, 117, 118, 130 (the attachments to this document include news articles which are hearsay and fail to meet the criteria for admissibility under Government Code sec. 11513), 136-144, 160, 169, 197, 199-201, 210-213, 215218, 219, 358-360, 365, 374-375, 396, 403, 406-407, 517, 524, 531, 532-533, 535-536, 544, 555, and 588. The Prosecution Team's Objection is sustained. These

documents are inadmissible because they relate to the State Revolving Fund (SRF) loan or other funding issues (e.g., Proposition 218 or bond funding) and are therefore irrelevant to the issues in this proceeding.

Documents 18, 21-24, 30, 51-54, 57-66, 89, 97, 98, 103-105, 109, 110, 113-114, 119-123, 131-135, 139, 158, 183, 185, 188, 191-192,195, 198-199, 202-206, 209, 219, 223, 357, 362, 364, 366-373, 376-378, 380-384, 389-393, 398-399, 404-405, 410-411, 415, 419, 421, 426, 433, 436, 438, 441, 442, 446-448, 450-451, 454-455, 464, 465, 468-471, 473, 478, 480-483, 485, 496-499, 510, 512-516, 518-523, 525-530, 534, 556-557, 565-566, 575-583, and 703 relate to the wastewater treatment plant project the LOCSD commenced in August 2005 (the "Tri-W Project"), construction contracts for Tri-W Project, alternative sites or designs for a community system, the 2005 LOCSD election recalling and replacing three LOCSD directors, or Measure B. The Prosecution Team's Objection is sustained. These documents are inadmissible because they are irrelevant to the issues in this proceeding.

Documents 77, 80, 82, 90, 156, 189, 196, 397, 409, 553, and 554: The Prosecution Team's Objection is sustained. These documents relate to other sites (i.e., other projects such as Monarch Grove, Bear Valley Chevron, etc., as opposed to alternative sites for a community wastewater project) and are therefore irrelevant to issues in this proceeding.

Documents 135, 178, 180, 186, 425, 428-430, 434, 440, 443, 504509, 511, 532-533, 525-530, and 558: We cannot determine the relevance of these documents to the issues in this proceeding. The CSD has until December 12, 2006 to specifically identify these documents and explain their relevance to the issues in this proceeding, otherwise the Prosecution Team's Objection will be sustained.

CD Set B contains a file entitled "Briggs Complaint" that contains 194 documents in support of an unsigned "complaint" from a Mr. Bud Sanford against Roger Briggs. The Prosecution Team's Objection is sustained. The Briggs Complaint is hearsay containing unverified allegations of a third party and is not relevant to the issues in this proceeding.

Documents 1, 3, 5-6, 8, 10, 11, 13, 15-16, 70 & 552, 71 (the LOCSD's MS4 permit application), 79, 83, 159 (agenda without attachments), 166, and 170-172. We are unable to determine their relevance to the issues presented in the present cases. The CSD has until December 12, 2006 to explain their relevance to the issues in this proceeding, otherwise the Prosecution Team's Objection will be sustained.

Document 561: We cannot determine what this document is or its relevance to the issues presented in the present cases. The CSD has until December 12, 2006 to explain this document's relevance to the issues in this proceeding, otherwise the Prosecution Team's Objection will be sustained.

Disk number 3 from CD Set B contains over 100 files with a .DWG extension that appear to contain topographical maps. The CSD has until December 12, 2006 to explain this document's relevance to the issues in this proceeding, otherwise the Prosecution Team's Objection will be sustained.

Document 177 is inadmissible because it appears to be unauthenticated and unsigned notes. The CSD has until December 12, 2006 to explain this document's relevance to the issues in this proceeding, otherwise the Prosecution Team's Objection will be sustained.

In addition, all newspaper articles, press releases, blogs, or letters to the editor submitted by any party are hearsay. The CSD has until December 12, 2006 to explain why these

documents should be admitted pursuant to Government Code sec. 11513 and how they are relevant to the issues in this proceeding, otherwise the Prosecution Team's Objection will be sustained.

To the extent any other Designated Party submitted or incorporated by reference any of the above documents, that the Chair has ruled or will rule as inadmissible, will also be inadmissible for use by any other Designated Party.

Michael Thomas

for Jeffrey S. Young, Chairman
Central Coast Water Board
December 8, 2006

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