Chairman Jeffrey Young
c/o Michael Thomas
RWQCB
October 11, 2006

Dear Chairman Young,

This is a statement regarding the need for you to reconsider the dates of submission of evidence by, and hearings for, CDO recipients. It is obvious that, as with the April hearing, your prosecution staff is unready to provide clear, concise, and consistent information to CDO defendants regarding the availability of documents in evidence for the prosecution. The email correspondence chain between the RWQCB staff and CDO defendant,, Mr. Rob Shipe, demonstrates the complete confusion, lack of readiness, and inconsistency my husband and I encountered prior to the April hearing.

Even you, Mr. Young, have failed in your duty to post information by the end of August regarding the procedures for the upcoming hearings. The hearings are days away, and we have no idea about their conduct, the order of presentations, or how to plan our personal business in order to be available for the hearing when it is our turn. Your own statement in correspondence referring to those future details is as follows:

> By the end of August 2006, the Water Board Chairman will issue a more detailed Procedural Order establishing new timelines for the hearing on individual Cease and Desist Orders in late October or November of this year and addressing other procedural matters, such as the timelines for the submission of documentary evidence by Designated Parties and the allocation of time to individual Designated Parties to present oral testimony at the hearing. That Order will offer the Designated Parties, other than the Prosecution Team, the opportunity to modify, replace, or supplement their respective evidentiary submittals to address the materials and documentation submitted by the Prosecution Team (Designated Parties will be required to identify any new evidence or documents not previously submitted).
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> If you have questions, please call Michael Thomas at (805) 542-4623, or via e-mail at mthomas@waterboards.ca.gov.

To date, we have received none of the promised information from you. The hearings are scheduled to reconvene in less than one month, and we have none of the details on the Procedural Order. We are ordinary citizens with evidence due by October 13, 2006, who must rely on the good graces of the party who is prosecuting us to ensure that we meet all the standards and timelines for modification and supplementation of our evidence. Yet that party has afforded us little assistance and has presented serious obstacles to our defense.

It should be clear to everyone by now that the water board is incapable of conducting this business in a professional manner. If they who are professional prosecutors are unable to meet their own requirements, then we ordinary citizens with no sophistication

in this arena can hardly be held to account for having all evidence submitted in the manner and within the timelines directed by the RWQCB.
Mr. Matt Thompson has already told my husband, William Moylan, that we have met the requirement of the proposed CDO in submitting our pumping receipt. In addition to meeting this requirement, we are willing to attach an onsite system, such as the Piranha, a system which has the ability, demonstrated at the Los Osos firehouse, to produce a product lower in nitrates than the RWQCB's standards. Yet that system is not approved by the RWQCB. This ban is an obstacle for cooperative dischargers who want to comply with the order to clean our groundwater.

My husband and I are also interested in a plan for an onsite septic tank management program that could be managed by the CSD or by the county. In fact, it is my understanding that the county was ordered to implement such a plan years ago, never did, and faced essentially no consequences as a result. It would seem that the action we face today is a direct result of that failure by the county to act in compliance, and the subsequent failure by the RWQCB to act to enforce compliance.

My husband and I have already proven that we support clean water in Los Osos by pumping our septic tank even though it did not require it, to show the RWQCB that we are willing to comply with an interim plan to mitigate water quality. We continue, however, to object that the efforts of a tiny portion of the population will do little to mitigate the water quality for this town.

It is also worth noting here that the RWQCB has been remiss in notifying only this tiny fraction of the population that it finally believes there is a water situation in Los Osos urgent enough to require the immediate issuance of proposed CDOs without resorting to the levels of enforcement available to them. It hardly seems like a sincere effort to get the community interested and involved in cleaning up the water when the CDOs are essentially Los Osos's best kept secret. The county newspaper, untrustworthy as it is as a source of information, has devoted little text to the matter, and most people I talk to continue to believe that the question of CDOs was resolved with the removal of the bimonthly pumping requirement. Out-of-towners behave as though Los Ososans are whiners who just don't want to pump their tanks. Very few people understand the dire consequences down the road when we will be forced to "vacate the premises" on January 1, 2010. These sins of omission lie at the feet of the water board and need to be addressed today in considering the conduct and scheduling of the CDO hearing, or whether they should occur at all.

If the RWQCB wants clean water in Los Osos, then right now the water board needs to make all citizens aware of our groundwater issues rather than proceeding in this haphazard way with these hearings over months and years. Rather than postpone the dates for evidence and hearings, the water board may want to look at alternate methods

for ensuring clean water in Los Osos - methods less harsh than CDOs, mehtods it has not yet tried. It is obvious that the entire CDO plan has gone beyond anything the prosecution staff or you had in mind when you directed this enforcement, Chairman Young.

You planned one day for our "event," as the Governor referred to our hearing. Your staff and you had no contingency plan, as was evident in the discussion for the continuance after a full day almost completely wasted for individual CDO defendants. We sat for half an hour waiting for you to devise something in the late hours of April 28, 2006 that would accommodate all your schedules. One board member's comment that it would be "inconvenient for everyone" was amusing in his complete inability to grasp that it was not merely an inconvenience for those of us in the defendants' dock. It was a hardship to have to arrange more days at other hearings.

Because you get paid to show up at such hearings, Mr. Young, usually listening to lawyers and others who also get paid for their time while in attendance, it is difficult for you to imagine the disruption to our personal lives when you arbitrarily set a hearing date. We must arrange days off from work, with or without compensation, arrange child care at our own expense, rearrange travel plans at our own expense, rearrange family responsibilities, postpone important business at our own expense, and in my case make arrangements for my blind and visually impaired students' needs to be met when I am unavailable to work with them, since there is no substitute to take my place. When the first hearing proved almost fruitless after hours were wasted in getting organized, you arbitrarily set other dates around which we had to wind our lives once again. Then you cancelled those dates after we had already made other arrangements at our own expense. Following that we had to rearrange those arrangements. And so it goes. And now, another pair of dates is imminent for which we have had to make arrangements. Yet any progress that might be made on those dates, given past practice, is questionable.

You could never understand the personal toll this experience has taken on my health, my family, my work, and my home life. Just as it has taken its toll in a variety of ways on other CDO recipients, as well as others who have not yet received CDOs. We have a sixty-eight-year-old friend who lives alone in the Prohibition Zone. She was recently diagnosed with a progressive degenerative neurological disease through which she has already lost considerable physical and cognitive functioning. She is dealing with planning for her bleak future when she will lose all function. She expressed not only fear of the inevitable future she faces, but also fear of receiving a proposed CDO and the ensuing months of hearings and evidence collection she has seen others engaged in. She knows that she will be completely incapable of taking care of those demands. You cannot possibly imagine the position she is in. And she is only one.

You have gotten yourselves into a situation with vastly unanticipated unintended consequences, just as you discovered the unintended consequences to defendants resulting from receipt of CDOs. Please take this opportunity to admit that this course of action is wrong. Your original order stating that you were striking everything all the way back to issuance of CDOs should have been just that. It was an opportunity you gave yourselves to try again to create a rational system of compliance that would involve the whole Prohibition Zone.

Instead of falling back into the same CDO trap with threats of even more dire consequences included in Mr. Sato's proposal, you could have taken the path of reason and humane stewardship. You could have created an advantageous situation for all. You chose, instead, to direct this enforcement to resume, which it did with even greater threats, causing even more anxiety and fear. You have failed to give citizens enough time to arm themselves against the Sato threats. You have failed to take into account that circumstances in Los Osos are vastly different today from what they were in January. AB 2701 has passed, and the wastewater treatment responsibilities will move into the hands of the county in January. The CSD has declared bankruptcy, havig been fined almost out of existence by actions requested by a local organization which the RWQCB consented to and perpetrated.

And so you must at least postpone the dates for submission of evidence and for the hearings, as well, to allow citizens a fair opportunity to access and organize evidence on their own behalf. Failure to afford us the right to due process will only further confirm the notion that the water board is interested, not in clean water, but only in retaliation against individual residents of the Los Osos Prohibition Zone for a situation beyond the control of any single individual in this town.

As Senator Susan Collins of Maine said when New Orleans was awash with sewage in the streets after Hurricane Katrina, "The first obligation of government is to protect our people." She did not blame the citizens, who depended on their government officials to take care of business, for the failures that caused sewage to flow above ground through the city. Responsibility for protecting citizens falls squarely on the shoulders of government.

The water board needs to take a thorough look at what they have done, examine their motives for the enforcement actions, determine their competence to conduct these proceedings, and consider the rights of the defendants in determining how best to proceed. A reasonable person would change course to move as far from these disastrous and damaging actions as possible. At the very least the water board needs to review its timelines for evidence due and hearing dates.

Sincerely,

Beverley De Witt-Moylan
Prohibition Zone/CDO Recipient

Submitted by email

Beverley A. De Witt-Moylan
May 11, 2006

RWQCB HEARING

PROCEDURAL OBJECTIONS

-I OBJECT TO THE RWQCB's UTTER FAILURE TO PROPERLY NOTIFY ME OF A PROPOSED CDO, MAILING IT INSTEAD IN A PLAIN MANILA ENVELOPE THROUGH REGULAR MAIL WITH NO INDICATION THAT IT WAS IMPORTANT AND NEEDED TO BE OPENED IMMEDIATELY.

-I OBJECT TO BEING THREATENED WITH FINES OF $1000 PER DAY FOR NOT REVEALING THE NAMES OF EVERY RESIDENT AND TENANT ON MY PROPERTY WITHIN 5 DAYS OF RECEIPT OF THE PROPOSED CDO.

-I OBJECT TO BEING DENIED MY RIGHT TO DUE PROCESS BY BEING DENIED AN INDIVIDUAL HEARING

-I OBJECT TO BEING GIVEN NO MORE THAN 15 MINUTES TOGETHER WITH MY HUSBAND TO PRESENT OUR DEFENSE, WHEN THE DOCUMENTS WE RECEIVED STATED THAT EACH CDO RECIPIENT WOULD HAVE 15 MINUTES TO PRESENT THEIR CASE.

-I OBJECT TO ANY TIME LIMITATION ON OUR PRESENTATIONS GIVEN THE SERIOUSNESS OF THE CONSEQUENCES OF CONVICTION, NAMELY THAT, IF NO WASTEWATER TREATMENT SYSTEM IS AVAILABLE ON JANUARY 1, 2010, "YOU WILL HAVE TO VACATE THE PREMISES." -Matt Thompson, April 28, 2006

-I OBJECT TO THE CHAIRMAN'S RULING THAT THE PROPERTY IS THE CDO RECIPIENT AS A JUSTIFICATION FOR COMBINING PRESENTATIONS BY SPOUSES. ACCORDING TO THE DOCUMENTS, THE PROPERTY IS NOT THE DEFENDANT, THE PROPERTY IS NOT THE POLLUTER, THE PROPERTY WILL NOT BE PAYING FOR BIMONTHLY PUMPING, THE PROPERTY WILL NOT "HAVE TO VACATE THE PREMISES."

-I OBJECT TO THE GENDER BIAS BEING DEMONSTRATED BY THIS BOARD IN THAT ALL CORRESPONDENCE FROM THE RWQCB IS ADDRESSED TO MY HUSBAND ONLY. IN THE EVIDENCE I SUBMITTED PRIOR TO THE APRIL 5, 2006, DEADLINE I IDENTIFIED MYSELF BY MY FULL, LEGAL NAME. AT THE APRIL 28, 2006, HEARING I IDENTIFIED MYSELF AT LEAST THREE TIMES FOR THE RECORD BY MY FULL, LEGAL NAME. I HAVE BEEN ADDRESSED ONLY BY MY HUSBAND'S NAME, AND THE TWO MOST RECENT COMMUNICATIONS FROM THE RWQCB TO OUR PROPERTY HAVE BEEN ADDRESSED TO

MR. BILL MOYLAN ONLY. NOT ONLY AM I COMPLETELY OVERLOOKED AS A CO-OWNER WITH MY HUSBAND OF THE PROPERTY, BUT THE RWQCB STAFF HAS ALSO DROPPED THE USE OF MY HUSBAND'S LEGAL NAME, AS WELL.

-I OBJECT TO BEING CALLED AWAY FROM MY JOB SERVING BLIND AND VISUALLY IMPAIRED CHILDREN IN THIS COUNTY, BEING UNABLE TO GET A SUBSTITUTE BECAUSE OF THE SPECIALIZATION OF MY CREDENTIAL, YET SUFFERING THE PENALTY OF FORFEITING ANY DEFENSE IF I DID NOT APPEAR.

-I OBJECT TO BEING ADVISED THAT MY HUSBAND COULD REPRESENT ME IN THE EVENT I COULD NOT APPEAR, WHEREAS, WHEN MY HUSBAND TOLD THE CHAIRMAN THAT HE WOULD BE OUT OF TOWN WERE THE HEARING TO BE CONTINUED INTO THE FOLLOWING WEEK, THE CHAIRMAN AGREED THAT WE COULD PRESENT AT THE BEGINNING AND DID NOT ASK HIM IF I WOULD BE AVAILABLE TO REPRESENT HIM. THE DOUBLE STANDARD FOR ONE SPOUSE REPRESENTING ANOTHER IS EVEN MORE EVIDENCE OF GENDER BIAS ON THE PART OF THE RWQCB IN DEALING WITH MARRIED COUPLES.

-I OBJECT TO BEING DENIED MY RIGHT TO EQUAL PROTECTION UNDER THE LAW IN BEING SINGLED OUT AS A TEST CASE FOR PROSECUTION WITH 44 OTHER FAMILIES WHO WILL HAVE TO PAY OUT MORE IN PUNITIVE COSTS, IF ANY ARE IMPOSED, THAN ANYONE ELSE IN THE PROHIBITION ZONE AND WHOSE SEPTIC SYSTEM WILL BE MORE ADVERSELY AFFECTED BY PUMPING THAN ANYONE ELSE IN THE PROHIBITION ZONE.

-I OBJECT THAT I HAVE NOT BEEN OFFERED THE SERVICES OF A PUBLIC DEFENDER.

-I OBJECT TO BEING REQUIRED TO DEFEND MYSELF AGAINST UNSUBSTANTIATED CHARGES AND BEING CRIMINALIZED FOR LIVING IN A SECTION OF LOS OSOS ARBITRARILY DEFINED BY THIS BOARD AS THE AREA WHERE THE POLLUTERS LIVE WHILE EVERYONE ELSE OUTSIDE THIS ZONE IS DEFINED AS CLEAN.

-I OBJECT TO THE AMOUNT OF MISINFORMATION, CONFUSING COMMUNICATION, CONFLICTING COMMUNICATION, REVISIONS TO COMMUNICATIONS, AND INCONSISTENCIES IN COMMUNICATIONS FROM THIS STAFF, INCLUDING OUR INABILITY TO GET A SIMPLE, CONSISTENT ANSWER REGARDING THE DATE THAT EVIDENCE WAS DUE IN SACRAMENTO.

-I OBJECT TO DISINGENUOUS STATEMENTS MADE BY THE PROSECUTION STAFF IN ITS REBUTTAL TO THE EVIDENCE THAT THEIR DOCUMENTS IN EVIDENCE WERE AVAILABLE DURING BUSINESS HOURS AT THEIR SITE. THE DELIBERATE INCONVENIENCE AND LACK OF AVAILABILITY OF THESE DOCUMENTS WITH NO CITATION OF RELEVANCE OF INDIVIDUAL DOCUMENTS FORCED CITIZENS TO TAKE TIME OFF WORK OR AWAY FROM FAMILY RESPONSIBILITIES DURING BUSINESS HOURS TO REVIEW IN LIMITED TIME

THOUSANDS OF PAGES STORED IN A BACK ROOM IN A CARDBOARD BOX. AT THE SAME TIME PROSECUTION STAFF REQUESTED THAT OUR DOCUMENTS BE SUBMITTED IN PDF FORM, OSTENSIBLY SO THAT THEY COULD PERUSE THESE DOCUMENTS AT THEIR LEISURE.

-I OBJECT TO AND AM DISTURBED BY THE RWQCB SUBMITTING REVISED CDO'S ON THE DATE OUR EVIDENCE WAS DUE, WHICH WE DID NOT RECEIVE IN THE MAIL UNTIL APRIL 11, 2006.

-I OBJECT TO THE RWQCB'S SUBMISSION OF FURTHER REVISIONS TO THE CDOs, WHICH WE RECEIVED BY COURIER ON APRIL 26, 2006, LESS THAN TWO DAYS BEFORE THE HEARING, AND TOO LATE FOR US TO RESPOND TO, SINCE ANY EVIDENCE WE MIGHT HAVE PROFERRED WAS DUE NO LATER THAN APRIL 5, 2006, AND NO REVISION TO THAT DATE WAS FORTHCOMING.

-I OBJECT TO RECEIVING THE RWQCB OBJECTIONS TO EVIDENCE BY EMAIL TRANSMISSION LESS THAN 24 HOURS PRIOR TO THE HEARING AND BY HARD COPY THE DAY OF THE HEARING. RULES OF EVIDENCE FOR PURPOSES OF THIS HEARING IN WHICH 45 LEGALLY UNSOPHISTICATED FAMILIES WOULD BE PRESENTING THEIR EVIDENCE OUGHT TO HAVE BEEN CLARIFIED UPON ISSUANCE OF THE CDOS. SENATOR SUSAN COLLINS OF MAINE RECENTLY STATED THAT "THE FIRST OBLIGATION OF GOVERNMENT IS TO PROTECT OUR PEOPLE." IN THEIR ZEAL FOR PROSECUTION THIS BOARD HAS COMPLETELY FORGOTTEN THAT THE CITIZENS LIVING IN THE PROHIBITION ZONE ARE "OUR PEOPLE." THIS BOARD HAD AN OBLIGATION TO THE HARD-WORKING CITIZENS OF LOS OSOS WHO HAVE HAD TO MOUNT A DEFENSE IN WHATEVER SPARE TIME THEY MIGHT HAVE HAD BETWEEN WORK, FAMILY, AND COMMUNITY OBLIGATIONS. THIS BOARD OWED THE CITIZENS OF THE PROHIBITION ZONE THE COMMON COURTESY TO PROVIDE THEM WITH CORRECT INFORMATION AT THE OUTSET OF THIS ACTION, SO THEY WOULD NOT SPEND TIME ON EVIDENCE THAT WOULD BE REJECTED BECAUSE OF ITS SOURCE OR FORMAT.

-I OBJECT TO THE USE OF BIMONTHLY PUMPING AS THE REMEDY OF CHOICE WHEN, ACCORDING TO A PROSECUTION STAFF STATEMENT AT THE INFORMATIONAL MEETING IN FEBRUARY, THIS CONCEPT IS "UNHEARD OF."

-I OBJECT TO THE WATER BOARD'S RECOMMENDATION OF A SOLUTION WHICH, IN THE WORDS OF ITS OWN STAFF, HAS NEVER BEEN TRIED AND YET IS BEING PROPOSED WITH CONFIDENT VEHEMENCE BY THE PROSECUTION AS THE ONLY POSSIBLE WAY TO KEEP UNSCIENTIFICALLY PROVEN POLLUTION FROM CONTINUING TO AFFECT THE GROUNDWATER.

-I OBJECT TO THE LANGUAGE IN THE RWQCB REBUTTAL ON PAGE 7 OF THE LEGAL OBJECTIONS STATING THAT "TAKING ENFORCEMENT ACTION IS APPARENTLY THE ONLY WAY THE WATER BOARD CAN PROTECT PUBLIC HEALTH AND SAFETY IN THIS CASE, GIVEN THE COMMUNITY'S "***RAMPANT AND LONGSTANDING DISREGARD OF THE PROHIBITION.***" THIS HYPERBOLE IS QUITE THE OPPOSITE OF THE WATER BOARD'S POSITION IN ITS STAFF REPORT FOR REGULAR MEETING OF JULY 9, 2004 IN ITS *BACKGROUND* SECTION WHERE IT CITES NUMEROUS CIRCUMSTANCES WHICH PUT OUR TIMELY CONNECTION TO A WASTEWATER TREATMENT SYSTEM OUT OF OUR HANDS. ON PAGE 2 OF THIS DOCUMENT THE RWQCB INDICATES THAT, "PROJECT DELAYS, AND NONCOMPLIANCE WITH THE TIME SCHEDULE ORDER, ARE CLEARLY BEYOND THE LOS OSOS CSD'S ABILITY TO CONTROL". ON PAGE 3 "INDIVIDUALS HAVE VERY LIMITED MEANS OF EFFECTIVELY CEASING DISCHARGES UNTIL A COMMUNITY SEWER SYSTEM IS AVAILABLE." AND ON PAGE 4 "IT SHOULD BE NOTED, HOWEVER, THAT THE VAST MAJORITY OF VOTERS IN LOS OSOS HAVE SUPPORTED THE PROJECT AT EVERY STEP." I OBJECT THAT IN 2004 THE WATER BOARD REASONABLY AND PRUDENTLY ACKNOWLEDGED THE MANY OBSTACLES PREVENTING BOTH THE CSD AND INDIVIDUALS FROM SUCCESSFULLY IMPLEMENTING A WASTEWATER TREATMENT FACILITY, YET JUST TWO YEARS LATER RESIDENTS OF THE PROHIBITION ZONE ARE DRAMATICALLY CHARACTERIZED AS HAVING DEMONSTRATED "RAMPANT AND LONGSTANDING *DISREGARD* OF THE PROHIBITION." THIS STATEMENT IS OFFENSIVE AND PATENTLY UNTRUE.

FROM: Beverley De Witt-Moylan
1516 17th Street
Los Osos, CA 93402
October 8, 2006

To: RWQCB
895 Aerovista Place
San Luis Obispo, CA 93401

In the following pages please find the presentation I intended to make to the water board at the April 28, 2006, CDO hearing. Having no opportunity to make this presentation on that date, I am submitting it into evidence as an amendment to the evidence submitted in time for the April 28, 2006, hearing. Recent additions are indicated in bold text.

1516 17th Street
Los Osos, CA 93402
April 28, 2006

RWQCB
895 Aerovista Place
San Luis Obispo, CA 93401

Dear RWQCB and Staff,

My husband and I are responsible, law-abiding citizens of Los Osos, CA, residing in a home in the Prohibition Zone. Like you, we earn a living, pay our taxes, donate to charities and worthy causes, volunteer, assist our neighbors, vote, and report for jury duty. We recycle. We compost. We conserve energy. We conserve water. **By sheer accident of fate,** unlike you, we flush in the Prohibition Zone. **Had anyone told us when we purchased our property that we would face prosecution and fines because we bought in The Prohibition Zone, we would not have bought property here. Had the RWQCB devised a notification procedure disclosing that buying in The Prohibition Zone automatically placed us at risk for severe penalties, including perhaps being forced "to vacate the premises" in 2010, we would not have purchased a home in Los Osos, since we could afford nothing else outside The Prohibition Zone.**

Chairman Young stated at the hearings that Designated Parties should have known about The Prohibition Zone, because information had been published in the newspapers at various times since its institution. Conversely, he also stated that citizens should know better than to include newspaper reports as evidence, since such stories are unreliable. The RWQCB has had a longstanding, but unfulfilled, obligation to assure that any owner or purchaser of property in The Prohibition Zone have fair, adequate, and timely notice that their property was in the area of Los Osos arbitrarily designated as The Prohibition Zone with all the attendant risks attributed to owning such property.

Like you, I am a public servant. I have the responsibility of teaching blind and visually impaired students in San Luis Obispo County. As a public servant my job's parameters include breaking down barriers, opening lines of communication, facilitating cooperation among individuals and groups, devising creative solutions to difficult issues, assessing current functioning and needs, documenting those assessments, and maintaining constructive relationships with everyone involved with my students. Most importantly, I have a duty to remember that I am an employee of the public, and in that capacity I have a duty not only to provide service, but also, in providing that service, to **treat the public with fairness, courtesy, and respect in personal contact and in**

correspondence, and to create better lives for those I serve. In fulfilling all my tasks as a public employee I have the added responsibility of making wise and prudent use of public funds.

Working with the public demands the ability to respect individuals from all walks of life with all their opinions. It requires the flexibility to approach individuals as themselves and not as stereotypes about whom assumptions are formed and cemented into place. It requires fairness and consistency in the way all citizens are treated. This level of service requires professional objectivity and an understanding that constructive solutions result from a sense of mutual trust and respect.

Trust in any transaction is essential. Without mutual trust among my students, their families, their schools, and me, I cannot do the job I am paid by the public to do. Without trust my efforts are ineffectual, and perhaps even detrimental. In my capacity as a public servant trust emerges from the perception by those with whom I work that I respect them, that I give them choices based on verifiable data, that they know from experience that I have their best interests at heart, and that I have the training and expertise, as well as the competence, to provide the best outcome for those I serve.

Unfortunately, I have not yet experienced in the RWQCB, in its role as a public servant, the high standards I set for myself. Statements made by this staff throughout the past three months, and subsequently in the hearings held on April 28, and May 10, 2006, would lead me to look elsewhere for a competent and trustworthy public servant. I actually heard a prosecution staff member say in a public meeting that the RWQCB is not concerned with water supply, but only with water quality.

It has been disturbingly obvious that RWQCB staff has no site-specific data to present us with regard to the CDOs that are proposed for us, and prosecution staff has admitted to that. Repeatedly in response to earnest and desperate questions from common citizens who have no expertise in the area of water management the prosecution staff has reiterated versions of the phrases, "I feel..." or "We feel... ." Any high school composition student knows that feelings are not facts, and they do not substitute for logic and reason. In the April 28, 2006, hearing Mr. Briggs referred to "common knowledge" as proof that residents of The Prohibition Zone had had sufficient notice that the property they lived in or had purchased was subject to enforcement action because of illegal discharges. The fact is that this prosecution staff has presented no evidence relative to our site, other than inference, that proves my husband and I are polluting the aquifer.

We struggled unsuccessfully with getting a straight answer from a very elusive staff about a simple matter of whether the two copies of our evidence were due in Sacramento on April 5th or if they simply need to be postmarked on April 5 for the April

28, 2006, hearing. We also never received a definitive response to our question regarding whether the local board would send the two required copies to Sacramento. Two different staff members gave two completely different answers.

A staff member told my husband today that he was "pretty sure" that if the evidence were postmarked on April 5th it would be all right, because it would get to Sacramento in "a couple of days." He seemed to believe that the April 5th deadline was only for evidence directed to the San Luis Obispo office. This is very important and necessary information for those of us being prosecuted who stand to lose our defense if it is not submitted in time. The question arises as to whether this situation reflects a desire to provide deliberately misleading information to the people of Los Osos who face prosecution or true incompetence and disorganization on the part of the prosecution staff. **Our experience at the April 28, hearing served as an excellent argument for the latter.**

It is impossible for citizens to comply with rules that continue to evolve and change, never mind the incredible burden of compiling our evidence in such a short time frame. It is difficult to have confidence in the competence of RWQCB prosecution team members who cannot even agree on the date or in what form evidence should be submitted for a prosecution.

Most recently we are faced with the failure of the chairman of the RWQCB to post information as promised by the end of August regarding the procedures for the upcoming hearings. His statement in correspondence referring to those future details is as follows:

> By the end of August 2006, the Water Board Chairman will issue a more detailed Procedural Order establishing new timelines for the hearing on individual Cease and Desist Orders in late October or November of this year and addressing other procedural matters, such as the timelines for the submission of documentary evidence by Designated Parties and the allocation of time to individual Designated Parties to present oral testimony at the hearing. That Order will offer the Designated Parties, other than the Prosecution Team, the opportunity to modify, replace, or supplement their respective evidentiary submittals to address the materials and documentation submitted by the Prosecution Team (Designated Parties will be required to identify any new evidence or documents not previously submitted).
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> If you have questions, please call Michael Thomas at (805) 542-4623, or via e-mail at mthomas@waterboards.ca.gov

To date, we have received none of the promised information from Chairman Young, but did receive a notice from Michael Thomas in which he stated that the Chairman would issue a statement sometime in November regarding hearing procedures. The hearings are scheduled to reconvene in less than one month, at the very beginning of November, and we have none of the promised details on the Procedural Order. We are ordinary citizens with evidence due by October 13, 2006, who must rely on the good graces of

the party who is prosecuting us to ensure that we meet all the standards and timelines for modification and supplementation of our evidence.

With regard to the ethics of those on the prosecution team, it is distressing to me to read emails which, if authentic, document that communication between a certain group of Los Osos citizens and the former Executive Officer may have taken place prior to the random issuance of CDOs.

It is even more disturbing to ponder why citizens of Los Osos, with real estate interests in Los Osos, would be interested in the degradation and subsequent devaluation of property values in Los Osos. The question arises as to the benefits to be derived from essentially condemned property by those with real estate interests in Los Osos.

Timing is everything, and the timing of the communications to Mr. Briggs from a group of citizens of Los Osos, who advocated the most severe punitive measures against their neighbors when the election did not turn out as they had planned, appear to be an attempt to get the water board to punish this community. Threats by the water board of individual actions coming at the time of our local election appear to be an attempt to influence the outcome. Issuance of CDOs just two months after our election appears to show a cause/effect relationship. (incorporate by reference email correspondence between Pandora Nash-Karner, Jerry Gregory, Leon Van Beurden, and others with Roger Briggs - included in evidence of other Designated Parties)

Timing is also at issue in the scheduling of the former Executive Officer's sabbatical to coincide with the dates of the CDO hearings in November, making him unavailable for questioning by CDO recipients. Though the prosecution team has stated that Designated Parties had their opportunity to question Mr. Briggs, in fact the sole opportunity we had for questioning was to cross-examine him in reference to the case presented by the single Designated Party who was able to present at the April 28, 2006 hearing, namely the LOCSD. At that time the hour was late, and many of the Designated Parties had left for the evening to take care of personal and family obligations. None of the Designated Parties had an opportunity to question Mr. Briggs in regard to the site-specific details of each CDO. It is disingenuous and deceptive for the prosecution team to indicate otherwise.

Mr. Sato states that Designated Parties had been previously advised of Mr. Briggs's imminent departure from the country. In fact, the only notice my husband and I received was in the final section, Section III, of Mr. Sato's brief of June 19, 2006, in which he mentions the departure of Mr. Briggs in the opening sentence (incorporate by reference from RWQCB documents). This could hardly be considered Notice. Mr. Briggs, himself, made no effort to inform us of his imminent departure.

Mr. Sato states that Mr. Briggs had delivered "completed testimony...with all parties completing cross examination." Of course, this statement is untrue, given that, only those Designated Parties who were still present at that late hour and had an interest in cross-examining Mr. Briggs on his testimony in response to the LOCSD's case actually cross-examined Mr. Briggs. No one had an opportunity to cross-examine Mr. Briggs in regard to any other individual Cease and Desist order, since no other cases were heard that day. In fact, the LOCSD case remains incomplete and will apparently resume on November 2 or 9.

Given in particular that Mr. Briggs constructed the circumstances in which we now find ourselves, the RWQCB had an obligation to notify Designated Parties as soon as it knew that our chief prosecutor would be unavailable for our hearings. The former Executive Officer has the information about exactly when he first knew that he would not be available for the hearings after October and how the scheduling of the hearings coincided with his departure.

He has important information regarding his, and through him, the RWQCB's failure to act on previous failures by San Luis Obispo County and prior CSDs to comply with Time Schedule Orders and other requirements for developing a wastewater treatment facility in Los Osos. Mr. Briggs has information about and has not yet provided a fair or thorough explanation with regard to the manner in which he decided finally to impose enforcement actions on individual citizens, enforcement actions that generally are reserved for larger entities than individual homeowners. He also needs to answer the question of why he did not follow the RWQCB's normal levels of enforcement process for dealing with alleged violations.

Mr. Briggs's involvement with the Los Osos sewer situation goes back many years. Ms. Okun the previous prosecution team counsel, stated in the prosecution staff's Request for Continuance of May 4, 2006, (incorporate by reference from RWQCB documents) that the hearings could not proceed without Mr. Briggs. In their briefs in response to Mr. Sato's brief, many Designated Parties responded to the information that Mr. Briggs would be unavailable for the hearings. Many requested that the hearings be postponed until his return. We have not received a response to that request..

Timing is at issue, as well, in the timing of the Cease and Desist Order Hearings for November, a truly unfortunate case of appearance of impropriety. By effectively placing the hearings in a parenthesis around our local elections, the RWQCB distinctly appears to be trying to influence the outcome of our election. Electioneering is not new to the RWQCB who made it clear that the outcome of the September 2005, election would dictate the direction it took with regard to enforcement.

The RWQCB Staff Report for Regular Meeting of July 9, 2004, **Item # 19 (incorporate by reference from RWQCB documents)**, demonstrates in its *BACKGROUND* section on page 1 the numerous circumstances that put our timely connection to a wastewater treatment system out of our hands. The Coastal Commission itself was responsible for several setbacks. The County was responsible for others.

In that document, on page 2, the RWQCB indicates that; "project delays, and noncompliance with the Time Schedule Order, are clearly beyond Los Osos CSD's ability to control." Over years and years the water board has flouted its own regulations to accommodate delays beyond reasonable control and has supported the citizens of Los Osos with comments such as another statement **(at the top of the first column on page 4 in the above-cited report)**, "It should be noted, however, that the vast majority of voters in Los Osos have supported the project at every step."

Given that the RWQCB understands that individual citizens of Los Osos have limited means to effectively cease discharges until a community system is available **(page 3 of the same report, bottom of the second column)**, given that most citizens support a wastewater project **(page 4 of the same report, bottom of the first column)**, and given that all the delays in construction of a wastewater project are out of our hands and beyond our control, it seems counterproductive, dysfunctional, and absurd to single out 45 families at random for individual enforcement of CDOs. The July 9, 2004, staff report **(Item #19 on page 4 at the top of the second column)** states that, "property owners have been powerless to prevent delays in the project." It can only be concluded that punitive fines, though prohibited, are being imposed on this tiny group of 45 out of 5000 families, though we have had absolutely no way of effecting any of the outcomes which have occurred over the years in the matter of wastewater treatment. **It should be noted here, however, that the RWQCB Chairman did say at the May 10, 2006, hearing that individuals had the vote as a way of influencing wastewater treatment in Los Osos. In this statement the chairman seemed to indicate that the RWQCB responded to residents of The Prohibition Zone based on a vote of a majority of the citizens of the entire town. As I stated in my brief, to my knowledge no exit polls were taken to determine where citizens lived who voted for or against Measure B or the recall. To my knowledge, the water board has no interest in the makeup of a local government body, nor in the location of a wastewater treatment plant, only in its ultimate construction, something it has allowed to languish for years.**

We remain powerless to change the water treatment situation in Los Osos, even with the threat of this individual enforcement action. It remains unclear what the water board truly hopes to accomplish by prosecuting my husband and me, along with 44 of our neighbors.

Three months have passed since my husband and I received our Proposed CDO notification. Three months should have been sufficient time to pull another 50 names at random from the hopper, to issue another 50 notices, yet we have heard of no new CDOs.

At this date, five and a half months since I first compiled this document, eight and a half months since we received our proposed CDO, no improvements have taken place in Los Osos water quality that could be attributed to proposed individual Cease and Desist Orders. Via AB 2701 the entire wastewater treatment issue has been removed from the citizens and government of Los Osos, putting mitigation of groundwater ostensibly in the county's hands, even further from our ability to influence any outcome.

Because of the particular conditions of AB2701, when wastewater treatment in Los Osos conditionally becomes the county's responsibility, those very conditions create circumstances that effectively put responsibility for treatment of our wastewater in no one's hands, since everything hinges on a 218 vote projected to occur almost a year from now. It is unclear how, under these circumstances, citizens could possibly be held accountable to carry out the water board's directive, when even the wastewater treatment system is not clearly the responsibility of any party under AB 2701, a law which effectively separates authority over the water supply from authority over wastewater treatment, at least for the short term, an arrangement that is bound to make it even more difficult efficiently to ensure the quality of our water supply.

It was my initial understanding that issuance of individual Cease and Desist Orders occurred in response to what the RWQCB considered an urgent situation. My husband and I received our original manila envelope on January 30, of this year. It is now the beginning of October. The hearings do not commence for another month, calling into question the great urgency that would require issuing individual Cease and Desist Orders in the first place, foregoing the water board's normal procedures for levels of enforcement.

The April 28 hearing was an almost complete waste of everyone's time and resources, as none of the individual Cease and Desist Order recipients had an opportunity to present our cases. We are no closer to resolution of the conditions for which CDOs were issued, and now we must disrupt and rearrange our lives once again to incorporate two hearings in the very busy month of November.

If there are no plans to issue further CDOs until such time as our cases are resolved, the minuscule benefit derived from 45/5000 families pumping effluent every other month, now every three years, will show a huge cost/benefit gap.

According to Chapter Five, "Septic System Maintenance," of THE SEPTIC SYSTEM OWNER'S MANUAL - Kahn, Allen, and Jones, Shelter Publications, Inc. 2000, in the section titled 'Inspection and Pumping,' "In many parts of the country, it is recommended that tanks be pumped every three to five years, but recent studies indicate that a functioning tank, without abuse, may only need pumping every 10 to 12 years." Failure to address individual tank situations may cause a tank to be pumped prematurely, creating unnecessary financial burdens on tank owners whose tanks do not require pumping as frequently as mandated in the proposed CDOs.

This cost benefit gap does not even address the tremendous unfairness to the original 45 families in the outlay of personal income to fund this remedy. Citizens of this community deserve to know over how many months or years some of us will be forced to pour funds into pumping every three years while others, our next door neighbors, continue to discharge effluent with impunity. Our pumping, while right next door our neighbors on both sides do not pump, creates a futile loop, while having little mitigating effect on groundwater quality.

The fact that hearings for individual recipients of Proposed Cease and Desist Orders will encompass years and years at the current pace would cause a reasonable person to conclude that there must be a better way to bring about the RWQCB's goals for water quality in Los Osos. That some citizens will have pumped their tanks at a cost of anywhere between $400-$700 in current charges three times in the next ten years while other citizens would not have been so ordered in that period of time sets up a situation where individual civil rights to equal protection under the law are in question yet again.

Support by the RWQCB of a mandatory OSMP in Los Osos would do much more to mitigate the condition of the groundwater than years of shuffling papers and scheduling hearings with only a fraction of the citizens pumping until so ordered, since they would be waiting for the CDO timelines to take effect. Except for the continuous waste engendered by the much-too-late muscle flexing of a government agency against the wrong targets, little will be accomplished in the RWQCB's insistence on pursuing these enforcement actions.

One prosecution staff member, at our informational meeting at the RWQCB headquarters in San Luis Obispo, referring to two wastewater textbooks, one of them a Metcalf and Eddy volume, referred to the practice of pumping every other month as "unheard of." Consequently my husband and I must conclude that our government officials, whom we have to trust to recommend what is best for us based on their best judgment, intend for us to spend our precious little discretionary income to engage in a wastewater treatment practice that is "unheard of." Obviously the prosecution staff decided to listen to this staff member in reducing the pumping requirement so drastically. It is unfortunate that the prosecution staff felt compelled to defend their pumping requirement stance in later

documents, though Dr. Wickham's testimony on April 28, 2006, made it clear what an absurd and damaging scheme this was. That this staff is unable to admit their initial error in failure to research, extrapolate, and project logical outcomes, that it chooses instead to lay the changes in pumping requirements solely at the feet of the Air Quality people merely serves to damage their credibility even further. It begs the question, how is it that they never considered the air quality ramifications of hundreds of diesel truck trips every week through our little town? It is too terribly obvious when government agencies assume that the citizens are stupid. This behavior in public officials only serves to damage down the line the ability of future regulators to work with the effectiveness that follows from credibility. The charge of government agencies is to make the best use of public funds to provide the greatest good for the greatest number. As public servants, the RWQCB fails here, as well.

The testimony of Dr. Dan Wickham on April 28, 2006, made an indisputable case based on science that the original pumping scheme proposed by the prosecution team was the product of something other than a good look at hard science. The original requirement for bimonthly pumping was proposed by individuals who had no discernible credentials for evaluating anything related to septic tank effluent, as became apparent in the testimony of prosecution staff on April 28, 2006. Whatever reason the prosecution team has decided best suits their purposes as an explanation for the dramatic change in the requirement from pumping every other month to pumping every three years, this modification is a far more rational response to the groundwater situation in Los Osos than the original proposal.

With the proposed CDOs and all their administrative entailments, it appears that the RWQCB's former concern for conserving public funds has disappeared. I am interested to know the timeline for issuance of further proposed CDOs, since this agency has released no others. I reiterate my request for the timeline for issuance of further individual Proposed Cease and Desist Orders. Over eight months have passed, and the original forty-five recipients continue to stand alone.

It is disturbing to note that many citizens of this town know little or nothing about the individual Cease and Desist Order plans of the RWQCB. The RWQCB has done no outreach to advise the town in its entirety, or the Prohibition Zone residents at the least, that individual Cease and Desist Orders are planned for the entire Prohibition Zone, except perhaps in reports in the newspaper or on television. The RWQCB has made plain, however, its position regarding news outlets as a source of reliable information. This agency has an obligation to extend to the citizens of Los Osos the courtesy of informing everyone at once of its plans randomly to prosecute each and every resident of The Prohibition Zone at some future date. This notice could easily be accomplished through the use of a postcard announcement. Though current Proposed Cease and Desist Order defendants were not afforded the proper notification prior to enforcement,

it would be a step in the right direction for the water board to use its resources to inform the rest of The Prohibition Zone residents of its plans for them.

Trust in any public agency results from a perception of fairness and equity to the best of one's ability. By randomly singling out 45 families, excluding any and all businesses, except for home-based businesses, regardless of any site specific data, the RWQCB staff has not only created a perception of profound unfairness, but also has engendered great distress and personal hardship for everyone involved. I have heard the phrase "unintended consequences" to describe the circumstances we find ourselves in with proposed CDOs and those we will find ourselves in if CDOs are issued. **Why are these consequences "unintended?" Is it possible that the prosecution staff did not extrapolate and project possible outcomes? If they did, then the " unintended consequences" could hardly bear that label.**

In my position as a government employee, I am required to review all foreseeable outcomes of decisions I make every day involving the lives of my students and their families. Any public organization, such as the RWQCB, which is paid with public funds and spends its working days making life-changing decisions for individual citizens, has a duty to consider all foreseeable outcomes before implementing any declaration having an impact on citizens' lives. It is impossible to believe that devaluation of our property, along with the inherent difficulty of selling property threatened with or issued a CDO, was never considered as a consequence of the water board's actions. Everything my husband and I have experienced as a result of our receipt of that manila envelope on January 30, 2006, has been a consequence.

Those of us who have been chosen as examples of what the RWQCB can do to individual property owners' property rights have spent our days fulfilling our obligations to our jobs, our families, and our neighbors. Then we have come home to hours and hours, over days and weeks and months, of mounting a defense against charges for which no site-specific evidence has been presented to us. 8,000 pages of documents, contained in a cardboard box in a back room of the RWQCB's San Luis Obispo headquarters sit waiting for those of us who are able to access them during the working hours of the prosecuting agency and by those of us who are forced to take time off from our jobs to sift through them. Though we are asked to submit our documents on disk, if possible, the same convenience and courtesy are not afforded us to peruse RWQCB files.

My husband and I are exhausted from attending meetings, developing our own defense, and helping our neighbors develop their defenses. Though we feel distraught and personally drained from this extraordinary burden added onto our already full lives, though we daily experience great personal distress, we are both grateful that our 78-year-old neighbor, a widow battling cancer, **who died in the middle of September, her house now up for sale among the dozens of homes futilely for sale in The Prohibition**

Zone, and our 91-year-old friend, a widower who has no knowledge about, access to, or understanding of computers, did not receive these documents in the first issuance. We are glad that we received the notification instead, who have the strength and resources to defend ourselves against a government agency that uses its authority to intimidate, harass, threaten and terrify law-abiding citizens.

Receiving our CDO on January 30, 2006, we were shocked to discover that we were required to reveal personal information regarding the names of occupants of our residence within a week or face fines of $1000/day. This experience with government intimidation and invasion of our privacy was stunning and disconcerting. If our elderly neighbors had received these innocuous envelopes, they may not have even opened them. And if they had received and opened them, they might not have been able to make any sense out of the contents. I almost discarded ours, thinking it was junk mail.

Three days ago a 68-year-old friend, who lives alone in the Prohibition Zone, told me that she had just received a diagnosis of a progressive degenerative disease that has already significantly impaired her physical and mental functioning. The progress of this disease involves the impairment and gradual loss of all functions, even the sweat glands, speaking of wastewater. She faces a certain, dire future, and along with that, she is frightened about the eventual receipt of a Cease and Desist Order and her imminent inability to defend herself.

In targeting all citizens of The Prohibition Zone for Cease and Desist Orders and the ensuing months and years of fruitless, endless, pointless, draining contention entailed in their issuance, the RWQCB snares the weak and incompetent along with the competent, the low- and high-functioning together. What is especially disconcerting about the entire conduct of this matter is that those who are incapable of responding, like our ill and elderly friends, are considered automatically to have accepted their CDOs. These are times in which corporations are now granted personhood. They are also times in which persons are treated like corporations, as though we have endless resources and a team of lawyers on retainer prepared to defend us against eventualities such as prosecution by the RWQCB.

It is discouraging, shocking, and dismaying that a government agency in the United States of America can behave with impunity in such an imperiously cavalier manner toward taxpaying citizens and face no consequences. It is equally disheartening to know that ordinary citizens who happen to have jobs in government agencies are free to act out in ways that hurt citizens and waste public funds, because they feel personally frustrated, angry, or thwarted by a turn of events beyond any individual's power to control and by their own failure to act when they should have.

Even with the replacement of the acerbic arrogance of Ms. Okun, the bullying tone of the prosecution staff toward tax-paying citizens continues in the notices issued by her replacement. Mr. Sato indicated that he would consider enforcement actions not only in the form of Cleanup and Abatement Orders or individual Cease and Desist Orders and their consequences, but he would also consider Administrative Civil Liability and its attendant crushing fines, as well as referral to the Attorney General's Office and civil prosecution by the State. These threats against citizens who have no power on their own to install a wastewater treatment facility merely serve to highlight the historic impotence of this agency in getting compliance from other government agencies. Now they are left to harrass the citizens they are sworn to serve. To what end?

My husband and I have had our tank pumped within the past six months (see receipt from Al's Septic Pumping Service already submitted to Matt Thompson). Mr. Thompson told my husband that we had already met the rquirement for the CDO in submitting this receipt. In addition, we are willing to install an onsite wastewater treatment system onto our existing septic tank. The Piranha system installed at the Los Osos firehouse continues to exceed the standards established by the RWQCB for nitrates, yet the RWQCB has so far refused to certify this onsite system as acceptable for individual homeowners' use. This agency's goal of enforcement juxtaposed with unreasonable restrictions make it difficult even for citizens who try to find compliance methods of their own in order to demonstrate cooperation.

We endorse the LOCSD Board's resolution to adopt a "Clean Water Interim Compliance Plan" (see Agenda Item A, adopted on October 5, 2006, which includes a Citizens Resolution identified as Attachment 5 incorporated by reference from LOCSD documents). Even with these measures, however, my husband and I can do little to ensure clean water for the entire town of Los Osos. Nothing less than cooperation and assistance from the RWQCB, rather than threats of punishing fines and loss of our homes, is acceptable use of the power and influence of the RWQCB, a government agency whose job is to assist communities in providing clean water for citizens.

I have a chronic autoimmune disease, which is exacerbated by stress. Having been in remission since last July, my symptoms have returned and I have been in great distress. The burden under which we currently live is extremely distressing for me when added to my daily activities as a full-time teacher with a part-time therapy practice.

I am once again in a cycle of symptoms, infusions, blood tests, medications, and doctor visits, a cycle from which I was free prior to receipt of the individual Proposed Cease and Desist Order my husband and I received on January 30, 2006. As I sit here at my computer today, October 8, 2006, I have to hold myself up in the chair, waiting for the infusion I will receive tomorrow, allowing me to live symptom free for another six

weeks, until that medication begins to abate and I wait to receive yet another infusion at a charge of over $7000 (seven thousand dollars) each.

The RWQCB prosecution staff spends its days getting paid to prosecute citizens for the crime of flushing their toilets into legal septic systems permitted by the San Luis Obispo County Planning Department. When their prosecutorial workdays are done, they close the doors to their offices and drive off to their respective private lives.

We, the prosecuted, however, spend our days and nights with this prosecution. We get up in the morning with this prosecution. We eat and drink this prosecution. We take this prosecution to work and home again. We sleep with this prosecution. We wake up in the middle of the night with this prosecution. Every time we flush our toilets, we are committing a crime. **According to Chairman Young's statement at the May 10, 2006, hearing we do not face a criminal proceeding, yet the consequences of flushing our toilets are dire. We face fines and the prospect of having to "vacate the premises" on January 1, 2010, if we are not hooked up to a wastewater treatment facility. Though it "may be revised," that date remains in the Proposed Cease and Desist Order, along with new, greater threats of ACLs and referrals to the Attorney General for civil prosecution.**

This prosecution is the wallpaper of our lives. While for the RWQCB it is simply a job, for which it accepts our tax money in payment, for us it is our lives, our homes, our families, and our rights as citizens. The RWQCB through this prosecution denies my husband and me our rights to privacy, property, due process, and equal protection under the law. **Given that the original 45 Proposed CDO recipients continue to stand alone, expending hours upon hours of our lives in defense against this action, our rights continue to be abridged, as we have been singled out from among over 4000 families for prosecution.**

Whatever the outcome of this action, you will never be able to restore to me nor to my husband nor to any proposed individual Cease and Desist Order recipient the hours stolen from our families, our friends, our work, our responsibilities, and our goals. Nor can you restore our trust in our government to work for us and not against us, as long as you continue to hold these unreasonable, proposed individual Cease and Desist Orders of suspicious origin over our heads, along with the threat of ACLs and referral to the Attorney General for further civil action. We are people who have been deprived of our freedom to live normal lives. Along with being denied our rights to life and liberty, and the threat of being denied our property, we have been deprived of "life, liberty, and the pursuit of happiness."

In June my husband and I lost our elderly dog, Luke, whom we rescued over eleven years ago from a life of abuse, deprivation, and abandonment. In September we lost our other elderly dog, Sage, whom we raised from a ten-week-old puppy to the age of thirteen.

During the last year of their lives we were not there for them. Spending countless hours at the computer and at endless meetings trying to defend ourselves against this action, we missed hours and days and nights of the last months of their lives. There is no compensation you could devise that would restore that time to us.

We will never forget all that your enforcement action has stolen from us.

This prosecution is not simply about 45 families chosen for random, unlawful, "bundled" prosecution. It is about the rights of every citizen of this town, this state, and this country in a time when the rights of individuals are under attack from every quarter, where cynicism and corruption have infected the highest levels of our government. This is a time when even the President of the United States tries to push through legislation to deprive people of their constitutionally guaranteed rights. This form of official corruption through arrogance has trickled down to the staff of the RWQCB, where, through threats of punitive, exorbitant fines, through the misuse of administrative authority, through denying us our right to an individual hearing, this board denies our rights as citizens as it attempts to cover up its past failures to act. This absurdly staged prosecution of a few citizens to make a pathetic example for the rest is a model of incompetence and gross governmental abuse.

As a public servant who holds myself to the highest standards of professionalism, I find that this agency has demonstrated to me neither competence, nor ethics, nor conscience, nor a desire to protect the people, nor a commitment to a long-term solution to the wastewater issue in Los Osos. This agency seems, instead, simply committed to the most expensive sewer project per capita ever built in this country. Given recent developments, especially in the timing of the CDO hearings on November 2 and 9, 2006, I stand by this statement still. The prosecution team has not removed the January 1, 2010 date from the order, but merely allows that the date "may be revised" by the Executive Officer. To retain a date known to be impossible to meet, unless we were to return to all conditions as they were in September, 2005, which is an impossibility, along with the additional threats of ACLs and referral to the Attorney General, is a clear indication that the prosecution staff is interested in punishment for all citizens of The Prohibition Zone. To fail to acknowledge the difference between Cooperative and Recalcitrant Dischargers in this order is to demonstrate no interest in creating conditions where citizens can cooperate in the goal of clean water for Los Osos, but an interest merely in threatening and intimidating citizens to cover up a longstanding failure of by the RWQCB to ensure that local agencies effect the changes it has mandated.

I urge the RWQCB to cease and desist misusing public funds in this misdirected effort to disrupt the lives of law-abiding citizens, an effort intended not to make a difference, but simply to make a point. Professionalism and ethics would dictate that the water board

work with our duly elected CSD Board, **and other government officials,** as it has worked with previous boards, to develop a solution to the Los Osos wastewater treatment issue while respecting the rights of individual citizens.

With the wastewater issue moving to San Luis Obispo County in January 2007, the RWQCB must exert all its efforts to promote a sustainable, affordable solution to the wastewater problems in Los Osos in which it has been complicit both by action and inaction. The RWQCB had many opportunities over many years to ensure that the citizens of Los Osos, who pay government officials to take care of business, got what they paid for. Indeed, trusting government officials, whether elected or appointed, to fulfill their duty to protect us is our only recourse as citizens. When they or the institutions they represent fail, we hardly expect them to fault us. Rather, we expect them to resign or we expect to put them out of office and find better candidates. In the case of appointed officials, however, citizens have far less discretion. We must trust in the integrity of the appointees to remove themselves when they find they are unable impartially, fairly, and competently to fulfill their responsibilities. They need to step aside to be replaced by others who demonstrate integrity, impartiality, competence, professionalism, and a commitment to public service.

"The first obligation of government is to protect our people," Senator Susan Collins of Maine said in reference to the dismal failure of government to respond to the Hurricane Katrina disaster. When sewage filled the streets of New Orleans as a result of gross government abuse, neglect, and failure to act, she did not blame the citizens of that city for the consequent health and safety debacle. She placed the blame and the responsibility squarely on the shoulders of government, where it belongs.

Beverley De Witt-Moylan
(referred to as TRE ETAL in your complaint)

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

SUBTERRANEAN MYSTERIES REVEALED!

The Septic System Owner's Manual

LLOYD KAHN · BLAIR ALLEN & JULIE JONES

SHELTER Shelter PUBLICATIONS

DRAINFIELD FAILURE

After several years of use, a build-up of bottom sludge and floating scum will reduce the effective capacity of the tank, as shown in the "clogged tank" illustration on page 48. This means waste passes through the tank too fast, and solids eventually plug the pipes in the drainfield. The microorganisms in the drainfield no longer have an aerobic (with air) environment in which to perform their cleansing action; they are now struggling to survive in an anaerobic (without air) environment. Either untreated effluent begins surfacing on the ground or sewage backs up into house drains. At this point, the system *has failed,* and a new drainfield is required—expensive!

INSPECTION AND PUMPING

Inspect the Tank

How can you avoid drainfield failure? Inspect the tank at regular intervals and pump when necessary. In many parts of the country, it is recommended that tanks be pumped every three to five years, but recent studies indicate that a functioning tank, without abuse, may only need pumping every 10 to 12 years. Since there are many variables, we recommend an inspection every three to five years and *basing pump-outson inspections.* As the years pass, you should be able to see the pattern of sludge and scum accumulation.

Keep a Record

Use a file folder (or get your wastewater district to get the *Homeowner's Septic System Guide* shown on page 164) to keep a record of inspections and dates when the tank has been pumped.)

What Is Pumping?

Septic tanks are pumped by a licensed pumper with a vacuum tank truck. The pumper will use a 4- to 6-inch-diameter hose and vacuum everything out of the tank (both solids and liquids).

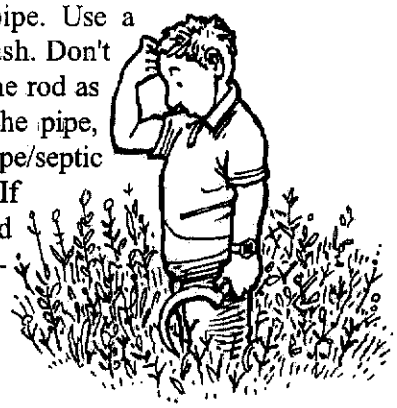
Note: To do a good job, it's best if the truck is a modern vacuum-type truck, rather than an old "mudsucker." With the old-style trucks, the operator may be so concerned about pump failure that he doesn't get all the solids.

Waste pumped from a septic tank is called septage. It is approximately 5% solids and 95% water. (Raw sewage is 1% solids and 99% water.) The septage waste must be taken to a licensed disposal site because of the potential health problems with contamination. In many rural areas, private companies have developed septage disposal sites—generally evaporation ponds. In other communities, there may be a centrally located sewage plant that can handle the septage waste.

WHERE IS IT?

Locating the Tank

You can save some money by locating the tank yourself and digging up the manhole covers. If the tank has no risers over inspection holes, and no diagram is available showing the location, you will have to probe for the tank, as follows: Use a long metal rod (½-inch rebar, bent over 90° to make a handle at the top) and begin probing where the main drain pipe leaves the house. Push the rod firmly down into the soil until you "feel" the drain pipe. Use a firm and steady push. Don't punch or pound the rod as you can damage the pipe, particularly the pipe/septic tank connection. If the soil is too hard and dry for probing, try soaking the area with a garden hose.



FROM: Beverley De Witt-Moylan
1516 17th Street
Los Osos, CA 93402
November 10, 2006

To: RWQCB
895 Aerovista Place
San Luis Obispo, CA 93401

The following is to be entered into evidence in addition to the evidence already submitted in the matter of Proposed Cease and Desist Order #1041.

I object that we have been designated as "dischargers." San Luis Obispo County holds the permit for our septic tank, and as such the county is the discharger of record.

I object that the RWQCB has no site-specific evidence for its charge that we are polluting the waters of the state.

I object to our continuing to face prosecution in this CDO action when my husband and I have fulfilled all the terms of the CDO, according to Matt Thompson, by having our septic tank pumped.

I object to the use of CDOs as a cruel and unusual enforcement tool against individual citizens when CDOs were originally meant for enforcement against institutions such as businesses.

I object that the RWQCB arbitrarily outlined a section of Los Osos named the Prohibition Zone yet established no mechanism by which the penalties for residing in this "zone" were conveyed to purchasers of property in the Prohibition Zone.

I object to the fact that 23 years have passed since the establishment of the Prohibition Zone, yet the RWQCB has not revisited this designation to determine if remains a valid construct in the context of the developments occurring since its institution.

I object that the apparent restrictions in the Prohibition Zone have been altered regularly from nitrate reduction in the original plan to complete and total cessation of discharges in the most wording of the Proposed Cease and Desist Orders.

I object that the RWQCB has made no good faith attempt to advise the community as a whole of its enforcement plans and actions.

I object that at least one member of the water board staff has stated that the RWQCB is not interested in water supply, but only in water quality. This statement goes directly to its attempts unduly to influence the type of WWTF built in Los Osos. The mistakenly permitted WWTF planned for the TRI W site would fit that staff member's statement, since it did not allow for recharge of the aquifer.

I object to the RWQCB's insistence on the date January 1, 2010, as a way to influence the location and type of WWTF built in Los Osos.

I object that, despite the good faith this community has shown in its movement toward sustainable, affordable wastewater treatment in the past year, the RWQCB continues this enforcement and threatens other enforcement actions.

I object to the arbitrarily chosen date of January 1, 2010, as the target for installation of a WWTF in Los Osos when Morro Bay has until 2015 simply to upgrade its facility.

I object that the RWQCB has singled out my husband and me at random for prosecution, along with 44 other randomly chosen recipients of Proposed CDOs when the board contends that every resident of the Prohibition Zone is in violation of the Basin Plan and should receive a CDO.

I object that the past nine months of the CDO proceedings have ensured that my husband and I do not receive equal treatment with other, future CDO recipients. That the RWQCB had no plan today and has no idea of the timeline, nor the final outcome, for this first round of CDO hearings and subsequent appeals creates the certainty that others will receive different treatment over a different timeline, equivalent to different enforcement.

I object to the first 45 Proposed CDO recipients being used as a test case by a board that is making it up as it goes. Instead of making wise and prudent use of public funds in projecting, extrapolating, and planning in order to mitigate the quality of the waters of the state, this board acted in haste to change the political will of the people of Los Osos by instructing the prosecution team to proceed with this enforcement.

I object that the same RWQCB who ordered under dubious circumstances that this enforcement be planned and executed is now in the position of judging the merit of these enforcement actions against individuals.

I object that a plan for unequal treatment of Prohibition Zone residents in its enforcement of the Basin Plan is indicated in Mr. Sato's brief in his reference to other kinds of enforcement, such as CAOs and ACLs, as well as CDOs, possibly being utilized in the future against residents of the Prohibition Zone.

I object that the board's attenuating these proceedings is an unreasonable intrusion into the lives of law-abiding citizens in such a way as to maximally inconvenience and exhaust the original 45 defendants.

I object to the RWQCB's attempts to coerce weary citizens into signing a settlement agreement acquiescing to the January 1, 2010, deadline by pairing penalties with promised special treatment for signers when the deadline comes and goes and no WWTF is in place to which to hook up. Special treatment of those first few panicked signers abridges the right to equal protection under the law for the rest who are not willing to sign off on the dangerously uncertain terms of that agreement.

I object that Chairman Young has not stricken everything from the record all the way back to the time prior to issuance of CDOs, as he stated in his order. In fact the same defendants continue after over nine months to engage in a defense of their property as though nothing had changed but the counsel to the prosecution team and the executive officer. If everything were truly stricken back to a time prior to issuance of CDOs, then it is a statistical impossibility that the same group of defendants could again have been randomly selected.

I object to the apparent and actual unfairness of this enforcement action continuing with the same defendants in violation of the chairman's order.

I object to the apparent and actual unfairness of continuing this proceeding with the same individuals comprising the prosecution team. Harvey Packard and Matt Thompson's regular advisory contacts with the board have rendered them unfit to be heard impartially. Their special relationship with the board creates inherent bias.

I object that this board has not recused itself from the Los Osos CDO enforcement action, given its inability impartially to hear our cases, being on record as having made biased comments regarding Los Osos and its wastewater treatment situation, having ordered this enforcement, and having a longstanding relationship with Harvey Packard and Matt Thompson as their advisors and now the prosecution team for the Los Osos CDO enforcement action.

I object to the fact that San Luis Obispo County is exempted from Designated Party status when it holds all the discharge permits for the Prohibition Zone and, in fact, permitted one thousand more septic systems within the Prohibition Zone following establishment of said zone.

I object to the RWQCB's complicity in the issuing of those one thousand permits.

I object to being singled out as a Designated Party in this action when we have a legally permitted, properly functioning septic system which was pumped in May of this year and was found to be in proper working order.

I object that the RWQCB has failed for years to take action with the appropriate targets to enforce its prohibitions.

I object that the RWQCB has engaged in extravagant public waste by its unwise and imprudent use of public funds in the processing of CDOs.

I object that the issuance of CDOs began as a political tool to bend the will of the community following the outcome of a local election in the fall of 2005.

I object to being referred to as the "community." We are not the community. My husband and I are two individuals with extremely busy lives and limited opportunities to engage in community activities. We have two votes between us, which are hardly enough in themselves to cause any specific outcome in this town in any election.

I object that our vote in any election had any bearing on our being now in a position to defend ourselves and our property.

I object to the chair and other board members referencing our vote in any context related to the RWQCB's decision to begin the process of CDO issuance.

I object to the RWQCB's continuing to reference the date January 1, 2010, beyond all logic and reason. I object to the waste of public funds associated with this date as a reference point, especially in light of Mr. Sato's statements that this date would be revisited under the right circumstances. Board members are aware of the cost of a lawyer's time. Time spent revising a TSO in the future when it is already an unreasonable target is wasted time.

I object to being accused of polluting the waters of the state. My husband and I are cooperative parties and are not guilty of polluting the waters of the state.

The following comments are in reference to STAFF REPORT FOR SPECIAL MEETING OF ____, 2006 Prepared on August 29, 2006 Item NO. ____. This document appears on the *Los Osos Enforcement Actions* link of the RWQCB web site.

On page 17 of this report appear these statements:

Whether an individual property is close to the Bay or further inland, all septic system discharges in the Prohibition Zone are contributing to pollution of groundwater or Morro Bay, and should be subject to CDOs...The CDOs are necessary to ensure that interim measures are taken to protect the environment until any approved wastewater treatment plant is available or until the community implements some other means to comply with the prohibition if no plant is on-line by 2010. Even if staff agreed that the Tri-W project was flawed, which it does not, staff would support interim environmental protection and a deadline for complying with the prohibition.

Considering that over nine months have already passed since January 30, 2006, the date of receipt of our Proposed CDO, with no action taken nor any move toward the issuance of further Proposed CDOs, these statements by staff have little force of logic. At the rate CDOs are being issued the current deadline will be far surpassed before a significant number of Prohibition Zone residents will receive a CDO. The water board does not appear to have any contingency plan in place to accommodate the probability that a majority of Prohibition Zone residents will not have been processed by the date arbitrarily chosen. It is also clear that no WWTF could possibly be ready for citizens by that date, a fact iterated and reiterated by various officials in a position to judge, such as Bruce Buel and Celeste Cantu. To consider January 1, 2010, therefore, a reasonable projection for the water board's objectives is both irresponsible and unreasonable.

If the water board were truly interested in cleaning up the waters of the state by addressing groundwater issues in Los Osos, it would have done so thirty years ago, twenty years ago, eight years ago, four years ago. It would be working right now with our duly elected CSD board and the county to facilitate its requirements. Threats of CDOs against citizens do little to clean up groundwater, particularly given the manner in which the CDO prosecution is being conducted. Putting energy into solving what it perceives as groundwater pollution from septic tank use by promoting cooperation among the agencies who are able to effect change would be a mature and logical response to a perceived crisis in which the water board is complicit.

At every turn the RWQCB chose to skirt its responsibilities to enforce its orders on the government agencies upon which citizens rely to provide infrastructure for wastewater, as well as maintenance of the water supply. Not only did government agencies fail to comply with water board orders, the water board itself chose not to enforce its own orders for various reasons that have no standing. Harvey Packard stated to William Moylan at a meeting on August 29, 2006, that the water board did, in fact, issue an enforcement action against the county years ago, but the water board simply did not follow through with it.

On another occasion, Mr. Briggs, who is on a first name basis with former LOCSD board members and on a first name basis with citizens who vehemently encouraged him to impose the severest penalties possible on residents of the Prohibition Zone and on the CSD, indicated he had not instituted enforcement against an earlier LOCSD board because he wanted to be helpful. After years and years of being "nice" to elected and appointed officials, Mr. Briggs determined, following a local election in the fall of 2005 and the urgings of his friends in Los Osos, that targeting individual citizens for prosecution was a wise, prudent, and expedient method for improving the quality of the waters of the state, given that he had done nothing to address water quality in Los Osos prior to that election.

It defies all logic that the executive officer, who failed in his duty to protect the citizens of Los Osos by protecting its waters would subsequently determine that an action such as CDOs against individual citizens, only 45 of which have been issued in almost a year, would in any way cover up or compensate for his incompetence and his collusion in the perceived pollution of the waters of this town and its bay. The executive officer's own actions and inaction, resulting in years and years of unnecessary violations of the board's own basin plan, by association also implicate the entire RWQCB, of which he is an agent.

On page 20 the same staff report states:

> Since local government has failed for nearly 20 years to implement a project that would allow residents to comply with the prohibition, compliance now falls to the individuals who are ultimately responsible for the waste discharges. The requirements of the proposed Cease and Desist Orders are reasonable interim measures to reduce the water quality effects of the ongoing, illegal, septic system discharges.

To quote the staff report, "This statement is so outrageous that it calls for a response." Any high school composition student who might read it would recognize the extraordinary leap of logic which posits that, because government agencies, including the RWQCB, have failed, compliance would then by default fall to individual citizens. Individual citizens, however, are not "ultimately responsible for the waste discharges." This statement twists logic to say that citizens, and not the government, are responsible for infrastructure. That "the government is the people" is true only in the limited sense that the people elect their officials, who often appoint other officials, such as the water board and its staff. Once having voted, citizens have no intrinsic ability to control what government officials do after they have taken their oath. Our federal and state governments are good examples of this state of affairs.

Other examples of government violating its charge to be wise stewards of the public trust and of public funds are the extraordinarily arrogant actions of the water board against individual citizens. When a police department is found to fail in its duty to protect citizens because it is rife with corruption, the next logical step is not to implicate and prosecute the private citizens who depend on this agency for protection. The next logical step is to investigate the agency and replace its corrupt agents with individuals willing to uphold the citizens' rights and their expectation of equal protection.

When a good teacher's lesson fails, that teacher does not blame the students and give everyone failing grades. The good teacher examines the lesson, the methods used, and devises another, better strategy to assist the students. The next logical step for this water board would have been to revisit and investigate its old, failed strategies, discover ways to improve the outcome, go back to work with those very agencies it had failed to assist sufficiently, correctly, or ethically and create a new course of action which would ensure success. If it is unable to do so, then an independent investigator should be brought in and another officer selected who is competent to fulfill the agency's obligations to protect the people.

Citizens across this country proved on November 7, 2006, that they no longer are willing to tolerate government agencies whose agents exist solely to exercise and massage their own sense of power and control. This country has demonstrated that it will no longer support officials who with cynical impunity use blame, cover-ups, obfuscation, unfounded prosecutions of innocent citizens, and smokescreens to mask malfeasance and maintain undeserved positions as guardians of the people and the resources of this land.

In our own local election this town reelected candidates dedicated to finding a sustainable, affordable solution to the wastewater issues in Los Osos. In this election the citizens demonstrated a clear commitment to clean water, to a wastewater treatment facility out of town, and to cooperation with the county in bringing about such an outcome.

One week ago my husband and I had the opportunity to sit with two CDO defendants, an elderly couple in their 80's. The husband could barely stand up, let alone walk. He is legally blind and suffers from orthopedic impairment. His elderly wife has all the responsibility for caring for both them and their home, as well as for coping with the disorganized bureaucratic tangle created by the water board.

They needed assistance to comprehend the daunting water board paperwork before them. As they struggled to understand and to formulate a response to deal with the task at hand despite their handicaps, they cried. Completely unable to care for his wife

and to handle this cruel government intrusion into their already difficult existence, the husband cried. Standing alone to address the overwhelming task of defending their home against the water board's threats, facing the prospect of sitting through yet another endless, pointless, fruitless, disorganized, demeaning display of government muscle flexing against powerless citizens, the wife cried. Trying to maintain composure, I felt like crying from sheer disgust with the destruction this water board has wrought with little hope of resurrecting anything constructive from its questionable actions. With so many choices at its disposal to assist citizens, the water board has determined that its current course, a course that victimizes many, essentially in secret, is appropriate. This is how the water board uses its vested power to fulfill its responsibility to protect citizens.

It is the baldest condescension for an agent of the water board, such as Chairman Young, Mr. Thomas, or Mr. Packard, to state that they empathize, sympathize, or know how a CDO recipient feels. By making old people huddle over a table trying in tears to grasp what is happening to them, by making citizens give up a year's time with their families to research a defense and attend evening and weekend meetings to assist each other, by watching as citizens unsophisticated in the law struggle to make their case before an impassive board, by forcing citizens to take time off work, often without pay, by forcing families to find and pay for child care while the parents attend a meeting or a hearing which the board and staff are paid to attend, by harming the physical and mental health of dozens of residents of this town so far, by creating a virtually secret enforcement in failing to notify the entire Prohibition Zone from the beginning about its intentions, this board uses its government authority to harass and intimidate the powerless, the fragile, the incompetent, the ill, the young, the elderly, the poor, the heads of households, the holders of multiple jobs, the retired, the working students, those least of the least able to accomplish the RWQCB's goals.

It is disingenuous of this board to act as though the power to accomplish its goals is in the hands of these citizens when this board has itself been unable accomplish its own goals for many reasons which bear investigating.

It is a continual puzzlement how, given the randomness of these enforcement actions and the large number of businesses in this town that not one business was targeted, except unintended home-based businesses. It is a puzzlement that the board has had over nine months to continue the process of CDO issuance, moving more citizens into the pipeline, perhaps some businesses, such as Ralph's or Miner's, yet has been unable to accomplish that small computer-generated task which would assist itself to bring all citizens into compliance with its own January 1, 2010, mandate.

Now the citizens also are asked to accept that the architect of this chaos with which we have lived for months on end will be unavailable for the hearings that await us. On page 20 of the same staff report appears the following statement:

> ABSENCE OF EXECUTIVE OFFICER ROGER BRIGGS
> The Prosecution Staff previously advised the Water Board and Designated Parties that Executive Officer Roger Briggs is unavailable for any hearing that occurs between mid-October 2006 and mid-April 2007. There is no legal basis for delaying any hearings related to the proposed individual cease and desist orders as a result of Mr. Briggs unavailability. There are well-recognized procedures for addressing the unavailability of a potential witness that can be utilized by any of the designated parties. Moreover, Mr. Briggs has previously given completed testimony under oath in this proceeding on matters pertaining to the individual cease and desist orders, with all parties completing cross-examination of Mr. Briggs. With the permission of the Water Board, such prior testimony could be utilized by any party that might otherwise have desired Mr. Briggs testimony at the newly scheduled hearings.

That Mr. Briggs's extended absence will not affect the hearings is patently untrue. While Mr. Briggs answered some questions and submitted to limited cross-examination, he certainly did not give "completed testimony," and his testimony was certainly not "with all parties completing cross-examination." A review of the April 28, 2006, hearing transcript will show that the hour was late, many defendants had, following Chairman Young's suggestions, gone home, and the cross examination was based merely on the testimony of Mr. Briggs in response to questioning by the CSD in its capacity as a Designated Party. Moreover, no cross-examination of Mr. Briggs was available to parties in response to testimony related to any other defendant's case.

According to Ms. Lori Okun, former counsel to the prosecution team, the hearings cannot proceed without Mr. Briggs. He is the perpetrator of almost every failure of this water board to enforce its own regulations and TSOs. Yet this board refuses to acknowledge and respond to defendants' questions regarding Mr. Briggs's absence. His status as executive officer in this prosecution upon his return has not been clarified. No explanation of his future position as a prosecution staff member has been offered to Designated Parties.

Defendants were given no formal prior notification of Mr. Briggs's planned six-month absence beyond the mere mentioning of it at the end of Mr. Sato's brief of June 19, 2006. Defendants had no opportunity to submit objections nor ask in advance for a remedy for his absence. By the same token, defendants who will be out of town for chosen hearing dates are not afforded the same consideration that Mr. Briggs received.

When my husband and I submitted a request for a hearing on a different date, so that we could present our oral arguments, because we must be out of town on urgent personal business, which cannot be conducted at another time, on the dates of the next

scheduled hearings, December 14 and 15, 2006, our request was denied. We were told that, "proceedings of government agencies generally take precedence over personal commitments." This tenet apparently does not apply to agents of government agencies, such as Roger Briggs, but only to citizens targeted by those agencies.

I object that Roger Briggs, the perpetrator of everything that has happened leading up to and including these Cease and Desist Orders, is not required to be present to face the citizens he has targeted with his unprecedented enforcement actions.

I object that because of circumstances beyond our control my husband and I will not be present at the next hearing and will, therefore, not be afforded the opportunity to incorporate by reference any evidence brought before the board during the hearing that was not previously introduced.

I object that the chairman has stated that Designated Parties are not required to attend the hearings, and has even encouraged them to leave, yet he has also stated that in not being in attendance at every minute of the hearings they forfeit the opportunity to incorporate by reference any testimony that is offered at the hearing which has not been introduced in written form prior to the hearing, such as that given by witnesses and in cross examination

I object that the Chairman has offered to assign specific order of presentation to certain CDO defendants, but not to all. He has also indicated that these defendants need only be present in that time frame, thereby appearing to be considerate of individual circumstances while denying their access to testimony presented in their absence.

The board states that Mr. Briggs had an opportunity to offer his "completed testimony" at the April 28, 2006, hearing. Mr. Moylan and I had no such opportunity to offer completed testimony, nor to question Mr. Briggs as a witness in our defense, and we are offered no other opportunity, only the prospect that the board may consider our request for a future hearing date at the December hearings. The following is an email that we received on November 6, 2006 in response to our request for another hearing date:

Mr. Moylan:

The Board Chair sympathizes with the difficulties that arise when scheduling hearings. However, the Water Board conducts many hearings, and it is impossible to accommodate all schedules. Please note that administrative proceedings of governmental agencies generally take precedence over personal commitments. While the Chair will not grant requests to reschedule individual hearings at this time, he is leaving the option open for consideration by the full Board at the hearing on December 14 and 15. We have your request, and we will present it to the full Board for consideration on December 14 and 15.

The Water Board's hearings on the Cease and Desist Orders contemplate that the Designated Parties will make their cases heard by way of written submissions and that they will use the limited oral hearing time to

bring to the Board's attention the highlights or most important points they wish to make in response to the Prosecution Team's recommendations. The Designated Parties should therefore make their cases and defenses heard by way of their written submissions and use the hearing time to focus on the most important parts of their case. A designated party's absence from the scheduled hearing will not result in a default (i.e., automatic issuance of the recommended Cease and Desist Orders). Each proposed Cease and Desist Order can be adjudicated on the written record if a Designated Party cannot be present to attend the hearing. Nevertheless, on December 14 and 15, the full Board will consider requests by Designated Parties that were brought to the Board's attention in a timely manner (as was yours).

Your request for separate individual hearings for yourself and Mrs. Dewitt-Moylan is denied. However, the Chair retains discretion to allow additional time to accommodate individual circumstances upon good cause shown. The Board Chair requests that you indicate why you need additional time for your presentation and specifically what testimony you anticipate not being able to cover in the allotted time frame or being able to include in your written submissions. The Prosecution Team is recommending issuance of individual Cease and Desist Orders to the persons responsible for discharges from subsurface sewage disposal systems at specified properties Therefore only a single opportunity to be heard will be afforded, jointly, to all Designated Parties associated with each property.

Thank you
Michael Thomas

If Mr. Briggs is afforded special status, in which he is excused from hearing dates for six months because of personal or professional business of which we have not been fully informed the same ought to be afforded to every defendant, as well. My husband and I have a right to be heard. We also have a right to face our accuser, Mr. Briggs. The hearing should be held upon his return, and no sooner.

The changes in hearing dates, the result of repeated procedural errors by the water board, pose a hardship for all defendants. The fact is that we simply cannot possibly be available for every date the water board chooses to meet its own needs, then subsequently cancels. We are required to attend the next scheduled hearing if we want to address the water board. But if I were to cancel the class in which I have been enrolled for months, it would be at least a year before that class would be offered again. Because the class is held some distance from here, and I am disabled from an autoimmune disease, I need my husband to assist me on the trip. The water board's history would lead me to expect that I would cancel my enrollment in this limited enrollment class, lose the opportunity to move toward completion of my professional certification, and then the board would change the date once again, leaving me without a class or a hearing. This arbitrary and capricious treatment to which we have been subjected for almost a year as private citizens who have no ability, in any case, to effect the outcome desired by the board is sheer abuse of authority.

We had no reason to believe that our case would not be heard on April 28, 2006. We had less reason to believe it would be heard on May 10 and 11, 2006. We had even less reason to believe our case would be heard on November 2 and 9, 2006. If history is any indication, it is now clear that this board will not be able to hear all the cases on

December 14 and 15, 2006. It has extended the CDO hearing process well beyond what would be considered a reasonable disruption of the lives of private citizens who are not accused of any criminal activity.

The previously referenced email transmission includes the statement, "the proposed orders would name all such persons, whether property owners or residents, together, jointly and severally, in a single order for each property."

I continue to object that this water board does not name me, failing almost completely to acknowledge my existence, in correspondence regarding the Proposed Cease and Desist Order on our property.

I also renew my objection to the Chairman's assertion that the property, and not the residents and owners of the property, has received the order. This statement does not take into account that the property is incapable of appearing at a hearing; the property is not referred to as the "Defendant' or as the "Designated Party," but rather my husband and I are; the property is incapable of responding to the complaint against us; the property is incapable of mitigating any groundwater issues; the property is incapable of paying any fines imposed; and the property will not be walking away on January 1, 2010. My husband, William Moylan, and I are co-owners of the property. We are both recipients of the Cease and Desist order, since both of us bear the consequences of any Cease and Desist Order enforcement. In all correspondence between this board and my husband and me as Cease and Desist Order defendants I expect to be acknowledged as having equal standing with my husband.

I object to being ignored as a co-owner of our property.

I object to being denied my own fifteen-minute period to make my presentation and reiterate my request for a separate fifteen-minute opportunity to address the board.

On page 17 of the staff report referenced above appears this statement:

> The community has now stopped the project and there is no other project in sight. The CDOs are necessary to ensure that interim measures are taken to protect the environment until any approved wastewater treatment plant is available or until the community implements some other means to comply with the prohibition if no plant is on-line by 2010. Even if staff agreed that the Tri-W project was flawed, which it does not, staff would support interim environmental protection and a deadline for complying with the prohibition.

To say that no project is in sight is simply not true. The community has researched several projects, having also brought in representatives of companies to demonstrate

and explain their WWTF options. AB2701 has been signed and is being implemented. Many possibilities exist for a project for Los Osos.

What is truer than the prosecution staff statement above is that once the project moves to the county in January, individual citizens of Los Osos will have even less power to bring a project to completion by January 1, 2010. To maintain this arbitrarily chosen date, a date refuted by many, even by Celeste Cantu of the SWRCB, as the cutoff date for hooking up to a WWTF with fine enforcement as the alternative, makes no logical sense and imposes undue hardship on the citizens of this town. Government agencies fail to meet deadlines, and the citizens receive a drop-dead date.

To argue that this date is needed to clean up the waters of the state is specious and disingenuous, given the years and years wasted by the RWQCB in non-enforcement against non-compliant government agencies, and the years and years projected to hear the thousands of CDO cases and proceed through appeals alone. The water board needs to rethink its approach if it is serious about clean water and not simply bent on revenge against powerless citizens or engaged in an attempt to devalue property, drive citizens out, and open the market to gentrification of the Prohibition Zone. Given that the aforementioned is a widely held view, the water board needs to examine its ill conceived, poorly thought out, and dismally executed plan of action.

The period prior to the next hearings in December is an opportunity for the board to admit its error and apologize to the forty-five families it has harassed, demeaned, and terrorized over the past nine months. The water board could change course now and work with the citizens of the Prohibition Zone and the town of Los Osos, who have demonstrated that they are willing and ready to cooperate in addressing the wastewater treatment issue, to create a solution instead of a problem. This is an opportunity for the water board to fulfill its charge to protect the waters of the state of California and to protect the citizens.

I reserve the right to incorporate by reference any and all evidence and testimony submitted by Designated Parties, including the LOCSD, in particular Exhibit A and Exhibit B of the LOCSD evidence, as well as the LOCSD submittal of October 12, 2006 (evidence submitted by Gregory Murphy of Burke, Williams and Sorensen, LLP).

Finally, 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) I reserve the right to bring

individual action against members of the water board, its prosecution team, and any and all perpetrators of violations of my civil rights connected with this action.

"The first obligation of government is to protect our people."

–Senator Susan Collins of Maine