From: <amartyn@sbcglobal.net>
To: <mthompson@waterboards.ca.gov>
Date: Wednesday, November 15, 2006 12:31:23 PM
Subject: Fw: Emailing: agreement, Amendments 8,14, and due process, authorization, EVIDENCE CODE, EVIDENCE CODE-burden of evidence, Murphy

.
Central Coast

Regional Water Quality Control Board

895 Aerovista Place, Suite 101

San Luis Obispo, CA 93401

Att: Michael Thomas

Assistant Executive Officer

November 15, 2006

Dear Mr. Thomas,

Enclosed is our submission of additional evidence for my hearing.

First and foremost is that I do not believe that I am a polluter. I am not guilty. There is no scientific evidence that my individual home septic tank is polluting. I am a cooperative discharger, and paying a assessment toward a project that government at all levels has failed to deliver.

I am incorporating all my previous objections, those of the LOCSD and other defendants and interested parties, and those that I submitted for the April 28, 2006 hearing. I am also incorporating by reference all documents in exhibit A and B. These are submitted by the CSD and other defendants. Further, I join all others testimony, previous and future for my defense.

I have numerous objections that have been made in the past and my prior submittals are to be considered part of this response too.

Objections to due process issues, including protections against self incrimination, individual hearing, and valid evidence against me is just part of my issue.

I want to incorporate by reference the deposition of Roger Briggs that occurred on October 4, 2006 at McDaniel's Reporting in San Luis Obispo to which I was not a participant and thereby denied due process.

There are new conditions since April. They are:

Objections to formal Enforcement orders:

Not Guilty-septic tank is operating as designed and permitted.

No individual evidence of pollution fro individual

5th amendment against self incrimination

Lack of due process rights

Request and insist upon Individual hearing

Lack of discovery doc available and Key prosecutor Briggs denied deposition. He is now gone.

CDO result in regulatory takings-lower property values, create a economic disadvantage to home businesses

Unfair application with random selection-Businesses were not targeted

Lack of timely hearings promised before the school year started

Unavailable for the hearing dates

lack of consideration of changed conditions since CDO was conceived over a year ago.

Changed conditions:

Project report completed (Ripley Report)

Water conservation implemented

Water management plan -resource level 3 requested

SRF loan application

No dissolution-debt reorganization chapter 9 protection

County involved with implementation plan-timeline and major milestones identified

AB2701 provides funding and capacity for project completion

Recent Election with incumbents means to stay the course with out of town sustainable project

CSD resolution to support and encourage compliance with RWQCB CDO conditions

Cooperative efforts of all agencies to arrive at a negotiated settlement (ongoing)

Cooperative dischargers demonstrated with hundreds of skeptics pumped-records submitted

Willingness to support & connect to sewer in assessment payments-and extended in a written agreement

Science:

Few studies pre 1988

Many studies with conflicting opinions of experts

Differing conclusions-and solutions

False and misleading statements by the RWQCB prosecution-witnesses to testify

Procedural

Historical record of the Basin plan prohibition does not support the current enforcement action.

I request that the hearing be postponed until Mr. Roger Briggs is available to testify and for cross-examination. His presence and testimony is crucial to a fair hearing.

I and many others have retained the legal counsel of Shaunna Sullivan in assisting us with a settlement agreement and other matters. I believe that what we are proposing is fair and equitable. Coming to an agreement with Shaunna Sullivan would save the CCRWQCB much time, energy and money. It would also resolve this matter expeditiously.

I do plan to hook up to a sewer lateral as soon as it is available to the community. Please consider my wife and me as compliant parties.

Please peruse the attachments to this e-mail, which I reserve the right to use at my hearing. Please e-mail me a confirmation of this communiqué.

Sincerely,

Alan R. Martyn and Jacqueline C. Martyn

CC: <rsato@waterboards.ca.gov>, <hpackard@waterboards.ca.gov>, <mthompson@waterboards.ca.gov>

Amendment VIII - Cruel and Unusual punishment. Ratified 12/15/1791.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment XIV - Citizenship rights. Ratified 7/9/1868. *Note History*

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Generally, due process guarantees the following (this list is not exhaustive):

- Right to a fair and public trial conducted in a competent manner
- Right to be present at the trial
- Right to an impartial jury
- Right to be heard in one's own defense
- Laws must be written so that a reasonable person can understand what is criminal behavior
- Taxes may only be taken for public purposes
- Property may be taken by the government only for public purposes
- Owners of taken property must be fairly compensated

EVIDENCE CODE
SECTION 500-502

500. Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting.

501. Insofar as any statute, except Section 522, assigns the burden of proof in a criminal action, such statute is subject to Penal Code Section 1096.

502. The court on all proper occasions shall instruct the jury as to which party bears the burden of proof on each issue and as to whether that burden requires that a party raise a reasonable doubt concerning the existence or nonexistence of a fact or that he establish the existence or nonexistence of a fact by a preponderance of the evidence, by clear and convincing proof, or by proof beyond a reasonable doubt.

EVIDENCE CODE
SECTION 550

550. (a) The burden of producing evidence as to a particular fact is on the party against whom a finding on that fact would be required in the absence of further evidence.

(b) The burden of producing evidence as to a particular fact is initially on the party with the burden of proof as to that fact.