California Regional Water Quality Control Board
Central Coast Region

Linda S. Adams.
Secretary for Environmental Protection

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Arnold Schwarzenegger
Governor

IN THE MATTER OF:

PROPOSED CEASE AND DESIST ORDERS AGAINST INDIVIDUAL PROPERTY OWNERS AND RESIDENTS IN THE LOS OSOS/BAYWOOD PARK PROHIBITION ZONE

NOTICE OF CONTINUED HEARING AND NOTICE OF PANEL HEARING

JANUARY 22, 2006 @ 1:00 AT THE CENTRAL COAST WATER BOARD OFFICE IN SAN LUIS OBISPO

AND

NOTICE OF SETTLEMENT

The Water Board has continued the hearings for four proposed Cease and Desist Orders (Cease and Desist Order Nos. RB3-2006-1008, 1015, 1016, 1041). The date, time, and location of the hearing is as follows:

Date and Time: January 22, 2006 @ 1:00 pm

Place: Central Coast Water Board
895 Aerovista Place
San Luis Obispo

The continued hearings will be conducted according to the Hearing Procedures set forth below; the hearings may be conducted by a panel of the Water Board pursuant to Section 13228.14 of the Water Code.

Proposed Settlement Agreement Approved

On December 14 and 15, 2006, the Central Coast Water Board approved a draft settlement agreement between the Prosecution Team and 28 Cease and Desist Order recipients, with specific revisions. The revised settlement agreement is posted on the Water Board's website at: http://www.swrcb.ca.gov/rwqcb3/los%20osos/Index.htm. The Prosecution Team will not propose Cease and Desist Orders for those individuals who agree to the settlement according to the terms of the approved settlement agreement. The following Cease and Desist Order numbers correspond to the 28 Designated Parties who agreed to a settlement with the Prosecution Team: Cease and Desist Order Nos. RB3-2006-1000, 1001, 1005, 1007, 1009, 1012, 1013, 1017, 1018, 1021, 1024, 1025, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1036, 1037, 1038, 1042, 1043, 1044, 1045, 1048, 1049.

Hearings On Proposed Cease And Desist Orders

On December 14 and 15, 2006 the Water Board began hearings regarding proposed Cease and Desist Orders against the remaining 17 individual property owners and residents in the Los Osos/Baywood Park Prohibition Zone. The Water Board completed the hearing process for 13 of the remaining 17 Designated Parties and issued the following Cease and Desist Orders: Cease and Desist Order Nos. RB3-2006-1002, 1003, 1004, 1014, 1019, 1020, 1023, 1026, 1034, 1039, 1040, 1046, and 1047, with specific revisions extending certain deadlines, on December 15, 2006.

The proposed Cease and Desist Order template, as revised to reflect modifications made in the Cease and Desist Orders adopted by the Water Board on December 15, 2006, is posted on the Water Board website at: http://www.swrcb.ca.gov/rwqcb3/los%20osos/Index.htm.

Designated Parties, or their representatives (attorneys or attorneys-in-fact who have submitted the requisite power of attorney to the Water Board), can contact the Prosecution Team to discuss the revised Cease and Desist Orders or the revised settlement agreement. The contact information for the Prosecution Team is as follows:

Harvey Packard: 805-542-4639, or by e-mail at Hpackard@waterboards.ca.gov
Matt Thompson: 805-549-3159, or by e-mail at Mthompson@waterboards.ca.gov
Reed Sato: 916-341-5889, or by e-mail at Rsato@waterboards.ca.gov

A recording of the Water Board's December 14-15 hearing is available now via the internet at: http://www.slo-span.org/. A VHS or DVD recording of the hearing can also be purchased from the same website, or by calling AGP Video at (805) 772-2715, or by e-mail request to agpvideo@charter.net. Also, a transcript of the hearing will be available upon request from the Water Board by approximately mid January 2007. The Water Board also will post its own audio recording of the hearing on its website by approximately mid January 2007.

Procedures for Continued Hearing

The continued hearings will be conducted as follows:

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

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

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

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

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

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

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

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

g. Closing arguments by individuals named in proposed Cease and Desist Order

h. Closing arguments by Water Board Prosecution Team

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

Evidence Admitted into the Record

At the hearings conducted on December 14 and 15, 2006, the Water Board considered objections to documents submitted or incorporated by reference by Designated Parties. The Water Board upheld some objections and admitted specified documents into the record as listed below. No additional documents will be admitted or considered for the January 22, 2007 hearing.

Evidence and documents admitted into the record:

1. All oral testimony presented by the Designated Parties at the December 14-15, 2006 hearing.
2. Except as noted in paragraphs 3 and 4, below, all timely submittals by the Designated Parties for the April 28, 2006 and December 14-15, 2006 hearings.
3. **Los Osos CSD's revised Exhibit A (revised December 12, 2006):** All documents listed in the Los Osos CSD's December 12, 2006 revised Exhibit A were admitted, except the following documents (as numbered therein): 1, 3, 5, 6, 8, 10, 11, 13, 15, 16, 20, 209, 364, 504, 509, 632, 641, 705, and 785-847.
4. **Designated Parties' Exhibit B:** Only the following documents from the Designated Parties' Exhibit B were admitted (as numbered therein): 850, 854, 859, 864, 867, 876, 884, 881, 888, 891, 892, 893, 894, 896, 898, 903, 904, 909, 910, 911, 916, 917, 918, 922, 923, 926, 937, 943, 945, 953, 954, 955, 956, 957, and 958.

Issues Before the Water Board in this Proceeding

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

2. Are the requirements of the proposed Cease and Desist orders the appropriate remedy for violations of the prohibition? Specific circumstances of each discharge are relevant only to the remedy the board may adopt if the board finds that violations are taking place or are threatening to take place.

PLEASE NOTE

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

The Water Board does not have to find that discharges from subsurface disposal systems within the prohibition zone are causing or contributing to conditions of pollution or nuisance in order to issue Cease and Desist Orders for discharges of waste that violate the prohibition.

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

Notice of and Information Regarding Possible Hearing Panel

The hearing on this matter may be conducted by a hearing panel of the Water Board pursuant to California Water Code Section 13228.14. In such event, the panel will consist of at least three of the following Board members: Jeffrey Young, Daniel Press, Gary Shallcross, John Hayashi and Russ Jeffries. The panel will take evidence and make recommendations to the full Water Board for final action at a future date to be determined. This notice also serves as a notice of panel hearing.

If a Hearing Panel conducts the hearing, the Hearing Panel will consider all evidence and comments, and make recommendations to the full Board. A quorum of the Board will consider the Panel's recommendation at a future Board meeting. The Board may adopt, modify, or reject the Panel's recommendation. The Board will not ordinarily accept new evidence after the panel hearing; thus, you should prepare to present all evidence and argument at the hearing on January 22, 2007.

Hearing Facilities

The hearing facilities will be accessible to persons with disabilities. Individuals requiring special accommodations are requested to contact Carol Hewitt at (805) 549-3503 at least 5 working days before the hearing. TTY users may contact the California Relay Service at 1-800-735-2929 or voice line at 1-800-735-2922.

Please bring the above information to the attention of anyone you know who would be interested in this matter.

for Jeffrey Young, Chairman
Central Coast Water Board

12-28-06
Date

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