Revised submittal of interested party comments 2:55:22 PM-4/12/2006

STATE OF CALIFORNIA
CENTRAL COAST WATER BOARD
Received
APR 12 2006
895 Aerovista Place, Ste. 101
San Luis Obispo, CA 93401-7906

By facsimile: (916) 341-5199

Philip G. Wyels
Assistant Chief Counsel
State Water Resources Control Board
Office of Chief Counsel
P.O. Box 100
Sacramento, CA 95812
1

RE: Central Coast RWQCB Hearing April 28th- As Interested party:
Position Against RWQCB Prosecution of individual Los Osos Citizens for CDO's,

Dear Mr. Wyels:

The Central Coast Regional Water Quality Control Board ("RWQCB") issued a series of documents to the residents in Los Osos in February and March addressed to both renters and property owners. As an "interested person" am concerned that RWQCB violated their own process and continues to trample the rights of the citizens and property owners of Los Osos.

As an interested party I ask that you please post all emails and letters from me, including questions, concerns, as well as the letters regarding requests for designated party status for SAFE (Solidarity Against Fines and Enforcement) and the PZLDF (Prohibition Zone Legal Defense Fund).

I have worked on the Los Osos Technical Task Force made up of scientists and engineers interested in providing a lower cost and environmentally and socially acceptable project within the framework of the prior CSD. In my capacity as a retired wastewater professional, certified in water and wastewater (operator grade V) and former manager with experience with SRF loans, project development and construction, I worked with colleagues on the review of the now defunct wastewater project. I helped author numerous papers and reports, including the 2004 SRF loan protest, and the 2005 revocation of the Coastal Development Permit report, and a preliminary report on an alternative wastewater project out of town.

I was hopeful that the project continuance compromise in October/November brokered by Assembly Blakeslee would be successful. Our community came together in agreement and the RWQCB stance against it was regrettable.

I understand from the record that the RWQCB[2] began working in earnest on prosecuting individual citizens in October 2005. This followed the emails from

---

[2] CSD ACL Hearing transcripts Roger Briggs/Jeffery Young exchange

soon to be ousted board and their supporters[3] even though the RWQCB staff has always recommended against individual prosecution, as contained in their own staff reports[4] I also understand the RWQCB staff pressured the SWRCB to reject the Blakeslee brokered compromise. These and other unfortunate circumstances that lead to a failed project has very little to do with the first 50 individuals the RWQCB has selected for a taste of enforcement.

In addition to the first 50 designated defendants, the RWQCB issued a Notice of Public Hearing that invited interested parties to request status as Designated Parties for purposes of the Hearing. I individually requested this status and I also included a large list of the individual citizens within the prohibition zone that requested designated party status. This request was sent several times by many since the first notice was received dated January 27, 2006. You refused to allow those citizens, whom apparently are among 14,000 people on 5000 properties, that will face similar prosecution within the year.

However, it is my understanding that the RWQCB is required to warn all residents of their intent to prosecute all the 5000 properties[5]. I know from surveys that many property owners are still unaware of the actions by the RWQCB against them or the overall detrimental affect the prosecution for CDO's will have on their property and constitutional rights.

Even the series of correspondences to the first group "selected" for prosecution never contained a warning (Notice of intent) as required by your regulations. The RWQCB failed to properly notice and never guaranteed mail delivery of the correspondence.

These procedural failures alone should be corrected with a public notice to every property owner in the prohibition zone of the action threatened and provide the legal opportunity to comply with said water quality standards. This should occur before any hearing or adoption of CDO's.

At a minimum the lack of due process according to your own regulations should void the hearings and a restart of the process with Notice of Intent (NOI). A response from RWQCB staff that the RWQCB is relying on an action in 1983 to meet the noticing (NOI) requirement for today's population is absolutely ludicrous.

It seems these oversights and lack of due process by the RWQCB is part of a history of irresponsible and strong arm tactics actions. The enforcement of CDO's for individual citizens is clearly motivated by political reasons meant to intimidate and even terrorize the most vulnerable citizens. Note the first letter with the threat of $1000 per day fines if they did not submit confidential

[3] Emails obtained by Tacker PRR
[4] RWQCB staff reports 2004
[5] SWRCB Enforcement policy

information on the residents living in their homes, within 5 days (of the receipt of the letter notifying them of their prosecution). As noted, this is a letter never properly noticed or properly delivered. Mail delivery was delayed in some cases by 10 or more days. The rescheduling of the hearing for the RWQCB convenience does not remove the legal requirement to restart the process and do it right. Even today, many citizens are just learning the ramifications and dire unintended consequences of the CDO, liability to businesses, and the devaluation of private property.

I have already noted in my many letters and emails to the RWQCB that most designated parties have been denied adequate time and access to review the case against them that contains 34 documents and 8000 pages of technical information, without any RWQCB staff explanation of the relevance. I continue to protest CSD without adequate time for preparation of a proper defense.

The RWQCB staff report was a bare bones justification for the misapplication of regulations meant for industry. Defendants have been denied adequate time for submitting defense arguments, or even thoughtful comments, let alone the time to hire interview and hire proper counsel. The effort for the individual citizen to understand the intricacies of water laws, to compile defense documents, sort, inventory, and provide 9 copies with electronic (PDF) copies alone with detailed 'relevance' notations, and also develop witness lists, take depositions, and request subpoenas is absurd in the time allotted.

Most recently, on the very submittal deadline of April 5th the RWQCB site posted a revised prosecution staff report. This is the basis of the any defense submittals. This action by the RWQCB is unacceptable and the designated parties must be afforded a opportunity for response. For this reason the hearing should at least be postponed so proper procedures are followed, and time allotted for review and additional response.

Further, I believe all those in the prohibition zone have a right to question and cross examine witnesses because the RWQCB Chairman and Executive Director openly discussed that purpose of this hearing is to test the waters, so to speak. The RWQCB has stated they plan to" streamlined the process" as indicated in the February 28th letter, and in hearing transcripts. This denies due process to all those that follow. This very discussion described, of course is also a violation of the regulations for separation of enforcement from the hearing Board. The hearings should be cancelled on this basis as well as the failure for NOI.

Those others that will follow will also be denied equal access to defenses appropriate to their case that will be deemed by chairman Jeff Young as "repetitious" is a major concern and this is still unaddressed.

It is reasonable that all parties subject to the CDO's and the full consequences for the RWQCB's enforcement actions have a right to testify and present

information that the Board will need to make an informed and fair decision... for not only the individuals subject to the CDO's, but for the future of the Community Services District (CSD), which these actions seek to influence toward dissolution.

Concern over the careful coordination between Taxpayer Watch and the SWRCB for the dissolution of the CSD following their failed election is the linchpin to these prosecutions.

You should be aware that citizens have been promised that the CDO's will "go away" with the CSD wastewater projects control. The citizen's question of "what will stop these?" is answered with "Building the original project" by RWQCB staff. This behavior is unethical, and illegal. The notion that RWQCB staff is indicating that a change of the community "will" is required. Citizens have reported that they have been told by RWQCB staff The change in "will" means they should somehow "get the Los Osos CSD" to build the $205/month wastewater project, that was never approved by voters for funding at the (now --defunct) Tri W site.

Enforcement with CDO's to individuals as a toll to influence this outcome is wrong. Even if thinly veiled as enforcement, this abuse of regulatory authority against 50 individual citizens will not accomplish your goal. They are no more able to separately affect that political outcome, than they are to clean up the ground water basin all by themselves. Using a handful of enforcement victims to set the example of "RWQCB muscle" send a powerful message. That of wrongly applied regulatory discretion.

The timing and messages from RWQCB staff also coincides with Taxpayer watch goal to dissolve the Los Osos CSD. The group is made up of not only ousted board members, but real estate developers, and the project contractors who lost the September election. The record of dialog indicates that this is the same group of individuals that strongly influenced the loss of the SRF loan, and requested fines against their neighbors (RWQCB CDO's) and promised to bankrupt Los Osos.

Considering RWQCB enforcement actions are not only an ill fit for individual properties, but the continued campaign by the RWQCB Staff and State to use 50 "first" individual citizens as pawns in a battle of economic and political interests in Los Osos is wrong. Both the RWQCB and the SWRCB must extricate themselves from the entanglement that was exacerbated with the letting of the SRF loan for a contested project 20 days before the election. This RWQCB and SWRCB action was another effort to "change the will of the community."

Here the project was funded by the SWRCB without a lawful revenue stream, and then in error the SWRCB defaulted on a Los Osos SRF Loan. But the prosecution of individuals will do little to resolve that, unless the RWQCB is successful in influencing yet another election.

I urge the region 9 EPA and additional Federal oversight in all matters concerning Los Osos, the Taxpayers Watch Actions, and the funding sources for the group and Move Forward-Save the Dream (solution group) and all its forms. Investigation into the ties to the RWQCB to the process of the CSD dissolution actions against the duly elected CSD board.

I urge you to reconsider and advise the RWQCB-*Do not issue any CDO's to the citizens of Los Osos, and reconcile your actions to the laws and regulations governing your enforcement duties.* Apply RWQCB regulatory power for a positive outcome that protects water quality, and citizen's rights. The CSD and citizens groups are willing to work cooperatively toward that end. Most vital is that the RWQCB and SWRCB must step away from political gerrymandering and the dangers that abuse of power threatens.

Gail McPherson

cc: **By Facsimile: 805-543-0397**

Michael Thomas, Assistant Executive Officer, Central Coast RWQCB (Via Fax)
Lori T. Okun, Esq., Prosecution Staff (Via Fax)
Roger W. Briggs, Prosecution Staff (Via Fax)

Los Osos SRF Loan. But the prosecution of individuals will do little to resolve that, unless the RWQCB is successful in influencing yet another election.

I urge the EPA and Federal oversight in all matter concerning Los Osos, the Taxpayers Watch actions and funding sources, including the ties of the RWQCB to the process of the dissolution actions against the duly elected CSD board.

I urge you to reconsider and advise the RWQCB-Do not issue any CDO's to the citizens of Los Osos, and reconcile your actions to the laws and regulations governing your enforcement duties. Apply them for a positive outcome that protects water quality, and citizen's rights. The CSD and citizens groups are willing to work cooperatively toward that end. Most vital is that the RWQCB and SWRCB must step away from political gerrymandering and the dangers that abuse of power threatens.

Gail McPherson

cc: **By Facsimile: 805-543-0397**

Michael Thomas, Assistant Executive Officer, Central Coast RWQCB (Via Fax)
Lori T. Okun, Esq., Prosecution Staff (Via Fax)
Roger W. Briggs, Prosecution Staff (Via Fax)