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Fire Chief
Phill Veneris

Offices At:
2122 9th Street
Los Osos, California 93402

Mailing Address:
P.O. Box 6064
Los Osos, California 93412
Phone 805/528-9370
Fax 805/528-9377
www.losososcsd.org

By email: pwyels@waterboards.ca.gov
Hard copy to follow

February 14, 2006

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

RE: Designated Party Status for March 23, 2006, Central Coast RWQCB Hearing

Dear Mr. Wyels:

On January 27, 2006, the Central Coast Regional Water Quality Control Board ("RWQCB") issued a series of documents to the resident citizens and property owners of Los Osos relative to a March 23, 2006, Hearing regarding Cease and Desist Orders ("CDO"s) that the RWQCB will consider adopting for those persons' properties in Los Osos. Among other documents, the RWQCB issued a Notice of Public Hearing that invited interested parties to request status as Designated Parties for purposes of the Hearing. This letter represents the Los Osos Community Services District's ("LOCSD"'s) official request to be considered a Designated Party for purposes of that Hearing.

Grounds for Status as Designated Party

The RWQCB's has undertaken a random, scattershot selection of individual property owners for prosecution and imposition of CDOs. At the same time, the RWQCB refused to provide information to the CSD or to individual property owners as to the specific individuals being prosecuted. This has left the individuals at a decided disadvantage as against what the RWQCB has called its "Prosecution Team." The RWQCB has stated that the residents of the CSD *are* the CSD. If that is the case, then the CSD *is* the residents, and the CSD is not only entitled to status as a designated party, but is itself a party to each and every enforcement action.

While the RWQCB is holding a single hearing for all 50 potential CDOs, the CSD wishes to clarify that it seeks Designate Party status as to each and every enforcement action against individual property owners or residents. These individual actions have been initiated on a random basis against 50 property owners (and/or residents). These individuals were mailed notice of the enforcement actions, which seeks CDOs on a random basis unrelated to any specific discharge violation for which the RWQCB has provided supporting evidence. In addition,

the RWQCB has elected to withhold the identity of these individuals and the specific locations of their property, in violation of the due process rights if those individuals and all who may have an interest in the action, including creditors and nearby property owners. Because the RWQCB has made it clear in the past that the property owners and residents of the LOCSD *are* the LOCSD, the LOCSD clearly has a direct and substantial interest in any enforcement action taken against any property owner or resident within the LOCSD.

Further, the CSD, as elected representatives of the citizens, is in the best position to represent the interests of the fifty property owners chosen for prosecution this time around as well as the residents who the RWQCB plans to subject to later Hearings and CDOs. This representation of their interests includes, but is not limited to: better access to environmental, scientific and technical data; institutional history with RWQCB; access to outside experts and counsel; and funding to prepare fully for the Hearing. The CSD has an interest in ensuring that its constituents' rights are protected and that individual lack of sophistication on any single constituent's part does not prejudice that constituent in this process.

In addition, the RWQCB has indicated that it will continue to undertake random, scattershot selection of individuals for prosecution until all individual properties in Los Osos have received Hearings. The CSD believes that the environmental, scientific, and technical facts at issue in many of these cases will be similar. In order to avoid disparate decisions on what *should be* the same facts, the CSD is prepared to introduce evidence at the Hearing that will apply to *all* properties in Los Osos. This evidence will protect the integrity of the Hearing process and the rights of individual property owners.

There also exists a very real possibility that this matter will wind up being appealed to the State Water Resources Control Board and thereafter to the State Court system. All interested parties – the State Board, the RWQCB, the property owners who have been called to this Hearing, property owners subject to later Hearings, and the CSD – deserve an administrative record that fully and fairly represents all of the environmental, scientific and technical arguments relevant to the CDO proceedings. Because of the RWQCB's prosecutorial role and the relative lack of sophistication on the part of many individual property owners, the CSD's presence is needed to ensure that the administrative record is complete.

For these reasons, the CSD requests status as a Designated Party.

Summary of Comments

The RWQCB's Notice of Public Hearing states that an "interested person seeking designated party status must submit all comments on the proposed CDO with the request for designated party status." Due to the nature of the CSD's comments, this will be impossible. Indeed, it is surprising that the RWQCB even made such a request, as the request lends itself to the appearance that the RWQCB may engage in viewpoint discrimination in determining which interested parties are granted Designated Party status.

Notwithstanding those issues, the CSD can summarize its comments, and is happy to do so. The CSD will prepare full comments and supporting written evidence to be submitted by the

general deadline of **March 1, 2006**. We note that the RWQCB has not made the full scope of its prosecutorial evidence available and apparently will not do so until March 13, 2006. It would be highly prejudicial to expect the CSD to compile and collate all of its comments and evidence in a span of less than three weeks when the RWQCB has spent months preparing for this prosecution and yet has thus far refused to supply the environmental, scientific, and technical evidence on which the prosecution is based.

It is the position of the CSD that the RWQCB is acting unwisely and illegally for two reasons. The first is a lack of indisputable scientific evidence upon which to base the CDOS; the second is the inequity inherent in the process by which the RWQCB has elected to impose the CDOs. These two issues are discussed below.

A) With regard to scientific, environmental, and technical evidence, the CSD believes that there is sufficient evidence to counter that which the RWQCB will no doubt proffer at the Hearing. The CSD is gathering our own evidence and will provide in a timely fashion full reports on the scientific, technical and environmental evidence that we propose to introduce in written and verbal form at the Hearing. At this time, we the following list[1] of scientific, technical, and environmental reports which will be components of our presentation:

(1) The entire Administrative Record of the Los Osos Community Services District Administrative Civil Liabilities Action by the Central Coast Regional Water Quality Control Board Hearings, December 1-2, 2005 and January 5, 2006

(2) Los Osos Nitrate Monitoring Program, April 2005 Ground Water Monitoring -- Cleath & Associates, June 2005

(3) Nitrate Monitoring Program, October 2005 Ground Water Monitoring – Cleath & Associates, December 2005

(4) Pavement Evaluation – Fugro West, Inc., January 2005

(5) Disposition of Harvest Water – Montgomery Watson Harza, June 2004

(6) Geotechnical Report – MWH/Fugro, March 2004

(7) Report Addendum and Response to Comments, Simulated Effects of a Proposed Sewer, Projection, Nitrate Concentrations in the LO Valley Groundwater Basin -- Cleath & Associates, June 2004

(8) Wastewater Revenue Program, Wastewater Facilities Project – Tuckfield & Associates, November 2004

(9) LOWW Project, Revised Project Report, Design Documents -- Montgomery Watson Harza, March 2003

(10) LOWW Project, Value Engineering Report – Boyle Engineering, May 2003

(11) Simulated Effects of a Proposed Sewer, Projection, Nitrate Concentrations in the LO Valley Groundwater Basin – Gus Yates, RG, CHG; Derrik Williams, RG, CHG, November 2003

(12) Amended Engineer's Report for the Wastewater Assessment District No. 1 – JLWA, June 2001

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[1] This list is meant to be illustrative, not exhaustive, and we reserve the right to withhold any of these documents and/or to include additional information in our final submission on March 1, 2006, should we be named a Designated Party.

(13) Final EIR – Crawford Multari & Clark, March 2001
(14) Final Project Report – Montgomery Watson Harza, March 2001

Again, this list represents the scope and range of documentary evidence which we will introduce to rebut the scientific, technical, and environmental evidence submitted by the RWQCB. The actual reports, in addition to any additional reports, studies, or evidence that is relevant to the Hearing, will be submitted by March 1, 2006, in accordance with the general schedule for Designated Parties. We reserve the right to amend this list as future appeals and court actions proceed.

B) With regard to the process of the Cease and Desist Order, 50 property owners were chosen at random from among the property owners in Los Osos for this enforcement. The RWQCB did not attempt to determine which properties, if any, actually pollute the groundwater or surface water in Los Osos or which properties are the most egregious polluters. Instead, the RWQCB acted irrationally and without substantial justification in choosing fifty property owners to be the subject of this Hearing. This random selection violates principles of due process and equal protection and cannot be the basis for a fair and equitable Hearing.

In addition, based on the timing and manner in which the Designated Parties are to provide comments and evidence for the Hearing, the RWQCB has given the appearance that the property owners are being deemed "guilty until proven innocent" and being asked to prove their innocence in order to avoid being subject to a CDS, its costs, and its potential punishments. This, obviously, runs counter to all legal principles espoused by our federal and State constitutions and casts grave doubt on the legality of this Hearing.

Finally, the CSD takes the position that the RWQCB has acted unwisely, and perhaps unlawfully, in the manner in which it has treated the individual property owners whom it seeks to make subject to the CDOs. Specifically, the January 27, 2006, letter, ordered individuals to provide information regarding tenants, if any, on their property by February 6, 2006, or they would face a $1,000 per day penalty. The Regional Board sent this letter out on a Friday, leaving the citizens with just 5 working days to compile the information and send it back to the Regional Board.

The CSD views two aspects of this information demand as problematic. First, the information that is being demanded to assist the RWQCB in its prosecution of citizens is clearly subject to the constitutional privilege afforded all Americans by the Fifth Amendment against self-incrimination. Second, the request for tenant information was purportedly made pursuant to Water Code Section 13267. But that Section deals with technical or monitoring program reports, not general information. Therefore, and contradictory to what the Regional Board indicated, the Regional Board could not assess a $1000 per day fine pursuant to Section 13268. The CSD believes that the RWQCB's threat of fines is an illegal scare tactic – a tactic in keeping with the RWQCB's failure to provide the evidence on which its prosecutions are based and refusal to timely share with the public the names of the individual property owners being prosecuted.

These comments represent our initial position on the manner in which the RWQCB has initiated the CDO process. We reserve the right to withdraw or to supplement these comments in writing by the March 1, 2006, deadline and verbally or in writing at the time of the Hearing.

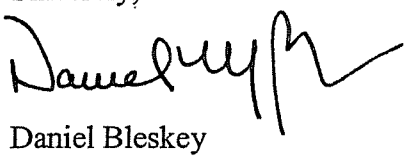
Conclusion

The summary of scientific evidence provided herein casts grave doubt on the RWQCB's CDOs and the RWQCB's intentions in pursuing the CDOs. Due to the CSD's familiarity with this information and ready access to the information, the CSD should receive Designated Party status for purposes of fully and correctly introducing this complex and technical information at the Hearing.

The summary of the process by which the RWQCB has called this Hearing evidences an intent by the RWQCB to have the individual property owners arrive not as equals fully prepared to argue their cause but as confused and unsophisticated parties unable to rebut the RWQCB's evidence -- evidence they will have scant chance to view prior to the Hearing. The CSD should receive Designated Party status to advocate on behalf of the individual property owners it represents, so that their interests may be fully protected.

Because the CSD will need to act quickly in compiling evidence and fully briefing our comments if Designated Party status is granted, I ask that you contact me **before noon on February 21, 2006**, and inform me of your decision. To contact me, or if you have any questions, I can be reached at: (805) 528-9370; or you may fax me at: (805) 528-9377.

Sincerely,



Daniel Bleskey
Interim General Manager

cc: Michael Thomas, Assistant Executive Officer, Central Coast RWQCB (mthomas@waterboards.ca.gov)
Lori T. Okun, Esq., Prosecution Staff (lokun@waterboards.ca.gov)
Roger W. Briggs, Prosecution Staff (rbriggs@waterboards.ca.gov)
Julie Hayward-Biggs, Special Counsel
LOCSD Board of Directors

Hard copy to include 9 copies for RWQCB Board Members