

Timothy L. Rochte  
1400 17<sup>th</sup> Street  
Los Osos, CA 93402

July 21, 2006

Michael Thomas  
Assistant Executive Officer  
Central Coast RWQCB  
895 Aerovista Place, Ste 101  
San Luis Obispo, CA.93401

(sent via email)

Dear Mr. Thomas,

The following bulleted information represents my personal response to Mr. Sato's response of June 19, 2006 to your office regarding the presentation of the Prosecution Team's case for the proposed CDO's in Los Osos, of which I am a recipient:

- To date, I object to the prosecution actions in this case based on violations of my civil and property rights. To wit: "Government officers may face liability in their individual capacities for violations of civil rights under §1983." Even in a quasi-judicial proceeding such as this one, the arbiters can be found liable for violation of civil rights where the proceeding lacked sufficient procedural safeguards to protect against violations (see *Cleavinger v Saxner*).
- I object to the imposition of Mr. Sato's suggested limits to my due process rights (Reed Sato discussion Part II). The lack of disclosure and notification of the possibility of CDO's when I purchased my property in 1989, and now further application of pressure and power by the Central Coast Regional Water Quality Control Board (Board) for imposing additional fines of up to \$15,000 per day is cause for alarm to all law-abiding citizens. The consequences of a de facto "taking" of my property exists; all in the course of a 15 minute hearing with extreme limits applied to my ability for a defense. This process certainly violates basic constitutional protections.
- The attempt by your Board to deny assistance to me and others, by requiring documented "representation" for my preparation and presentation of my case, specifically from Ms. Gail McPherson, further denies my rights and limits my ability to defend my property, family and person. In the intimidating atmosphere of a quasi-

judicial hearing I reserve the right to call on assistance in presenting my case. This cannot be considered as being equal to “legal representation.”

- I have noted with great interest that, like me, the majority of the respondents have requested that the Board restart the prosecution from the beginning. In fact, I again assert that the prosecution should immediately commence with a review of the very application of CDO’s or “enforcement appropriateness” for issuing CDO’s against 5000 individual homes, and to a community of 15,000 people. A rethinking of this action is required in the interest of expediting justice and environmental quality.
- According to Mr. Sato’s response, “The Quintero objection is based on a mere appearance of impropriety.” Here Bias is clearly demonstrated by the many documented statements and discussions in public and private by the Board Chair, board members, and the staff prosecution. Ongoing prosecution against individuals was openly discussed between the prosecution and the hearing board prior to notice of individuals, which was explicitly barred, but intended to threaten and intimidate individuals and the community into submission during the ACL hearing against the LOCSD. Several examples are included in transcripts of the ACL proceedings against the Los Osos District. I certainly feel Bias can be demonstrated, and the decision to scapegoat individuals is connected to the community election and outcome of a vote. The statement by Mr. Young, that I, as a citizen, have control of the building of a treatment plant by my vote was extremely counterproductive and just one of many examples of ongoing bias the Board Chair against the voting citizens of Los Osos following the unsuccessful ACL hearing.
- The voluntary removal from the case of Ms. Okun and the reasons given do not make moot any or all other reasons requiring her removal based on bias. She determined that individual CDOs were appropriate and prudent actions, and this should be revisited, as well as other decisions and actions as she designed the process.
- Starting over at “Square 1,” in a neutral hearing environment would assure this is indeed the appropriate and prudent action to achieve compliance goals. This is especially true in light of the lack of clear evidence that my home is actually polluting ground water.
- To my knowledge there is no scientific evidence that my septic system is not working properly, that current pumping intervals are inappropriate, or that I am polluting ground water. I hope additional materials introduced by the prosecution includes some material evidence that I am indeed a cause of the ground water nitrogen levels in excess of drinking water standards, and a clear nexus of such pollution to the ground water levels from **my individual property is conclusively demonstrated.**
- Since Mr. Sato argues that the prosecution “reserves the right to argue differently, to add evidence, expert witnesses, and change theories,” the CSD and defendants must also have the opportunity and time to prepare a defense against such changes. I

experienced the 11<sup>th</sup> hour changes in the staff report that is the basis of the prosecution theory, and I was deprived an opportunity to review documents, to submit comments or defensive material based on the prosecutions switch a day before the deadline for my response. I believe this was due to the lack of a CEQA analysis which resulted in the temporary removal of the pumping requirement, the overall affect depriving me of my best defense and violating my rights and ability to protect my family and home.

- Discussions on making consolidated arguments, time allowed, and other procedural issues is a misguided attempt to streamline the process for the benefit of the prosecution and inserts bias further. I previously requested an individual hearing, and not a mere 15 minutes sandwiched between harried processes of hearing 45 **other mis-aligned citizens**.
- The allowance for my “incorporation by reference” of evidence and testimony prior to ruling by the board is absent from the process, and the Chair has allowed materials by others, but will rule on my case before I have a chance to hear all others and utilize their materials. The refusal to allow me to cross examine witnesses is denied, and the ability for me to call witnesses is restricted. If I require assistance with my testimony, but order of the Chair, I can be denied “third party” assistance. We are told to work together but are divided and denied assisting one another when it comes time to address the Board and cross examine.
- Mr. Sato’s understanding of the Chair’s allowing designated party status to the CSD contrasts sharply from what the CSD has presented. The CSD is not an advocate for individual parties, but sought designated party status based on the impacts of CDO’s and other enforcement actions that obstruct or limit their ability to provide a revenue base for a legitimate wastewater project. It is my understanding that as the lead agency for the community wastewater project, individuals impacted by any requirements (such as \$300-500 per month for pumping) would negatively impact the district in providing a project based on available revenues and bonding capacity.
- Mr. Sato’s understanding of the consequences for a CDO to individual property owners is incomplete and insensitive to the realities of the real estate market. CDOs are attached to individuals and their property. Renters as well as owners are receiving CDO’s. The actions indirectly take personal property as they will lower property values and make property loans smaller and more difficult to obtain. If a CDO recipient works within the Prohibition Zone, including home based business, their company is subject to the CDO as well. It will make it difficult to do business with government entities.
- CDO’s affect the commerce within the community and at a corporate level. CDO’s will be applied to all businesses in the prohibition zone, but individuals were designated to go first to “grease the skids”; instead of business that are also purportedly polluting, and can likely afford attorneys.

- Contrary to Mr. Sato’s belief that the action does not impose penalties, and the risk is minimal because it involves “tank repairs owners should be doing anyway” is erroneous and mis-informed. An informal survey noted all septic tanks are properly operating. They are permitted and approved by the authorized governmental agency. While the 1988 provision of the Basin Plan is cited without any individual scientific evidence, I am denied a challenge of the basis for the requirement, both then because I was not enforced against at the time of adoption, and now because it is too late to protest or appeal.
- The notice that Roger Briggs will not be available for the hearing or cross examination is indeed baffling. He's the architect of the enforcement actions, steward of the basin, and presided over the regulatory failures in Los Osos. His inability to provide adequate scientific information on individual properties when instituting the discharge prohibition zone, and then provision of inappropriate time schedules and support for an unsustainable project is exactly why we face this questionable process.
- In spite of Mr. Sato saying: "it is hard to imagine that any further examination of Mr. Briggs would not be duplicative" I am ready to continue my cross examination or indeed repeat the entire hearing process prior to his departure.
- Ms. Okun stated regarding the removal of Mr. Briggs, “removing him from the hearing process is not legally required and due to his unique role as a witness in this case, it is not possible”. Each individual should be allowed to call him as a witness and cross examine him at a time reasonable to their defense. If the RWQCB chooses to continue the hearing without Mr. Briggs, I reserve the right to call Mr. Briggs as a witness upon appeal to the SWRCB and the courts.
- In the final Paragraph Mr. Sato requires legal transfer of representation to Ms. McPherson if she is to assist in any way. Ms. McPherson is not providing legal representation but practical help. Her administrative help as well as my right to exercise my right of free speech with assistance must be preserved.

In closing, I wish it to be known that, in an effort to properly defend my property, my family and myself, I am incorporating procedural arguments from the LOCSO and other defendants that I may choose to use in this hearing or upon appeal.

Sincerely,

*Original signed by*

Timothy L. Rochte  
(sent via email)