

**Response to the five questions**

**1. Must the prosecution's case, as presented orally on April 28, 2006 be stricken entirely, or to some lesser degree?**

Essentially the question asks: **Must it be stricken entirely OR must it be stricken to some lesser degree?**

It inherently assumes that some portion must be stricken. On April 28<sup>th</sup>, the Chair agreed with Ms. Okun and denied the CSD Attorney's motion to dismiss. The Chair ruled that Ms. Okun's dual role as prosecuting attorney AND legal advisor to the board on other matters is not an issue in this case.

If the Chair rules that a portion should be stricken to avoid a re-hearing based on Ms. Okun's role in this matter, it would require the Chair to reverse the prior ruling. If any portion of her influence on the board is to be removed, then ALL of her influence must be removed. Ms. Okun has been integral to the entire process. If she has tainted any evidence, then her role in this matter has tainted the entire process, including the very decision to prosecute with CDOs in the first place.

Ms. Okun's recusal to avoid a rehearing "after days of wasted 'first-round' hearings" and "countless hours of wasted staff time" has simply guaranteed this outcome. The only questions remaining are:

How many more days do we "waste on 'first-round' hearings"?

and

How many more "countless hours wasted of staff time" with the taxpayers of California pay for?

To remove any portion of her role in the trial as already conducted would require a reversal in the Chair's prior ruling, supporting the Los Osos CSD's argument in their original motion to dismiss. Removal of any portion of the prosecution's oral case from April 28th would require dismissal of the entire case.

The Chair should dismiss all cases. Since the board cannot direct staff, if the staff chooses to bring new cases, the board would have no say or influence on that. That decision would be left to staff.

**2. If the prosecution is required to present its case again, should it have the opportunity to introduce additional written materials into the record before the Water Board?**

If the Chair only requires that the prosecution present its oral case again, the prosecution should NOT have the opportunity to introduce additional written materials into the record before the Water Board. If the Prosecution needs to introduce new evidence, then they must go back and bring an entirely new case against the defendants.

**3. If the prosecution is allowed to supplement the written materials that it has introduced, should designated parties be entitled to submit additional written materials?**

If the Chair were to allow the prosecution to supplement the written materials it has introduced, then due process would require ample time for defendants to study and respond in writing to such information. Therefore defendants would also require the ability to submit new information and evidence before continuing the hearing.

**4. If the prosecution case is stricken entirely or to some lesser degree, should the Los Osos Community Services District be permitted to start it's case over?**

If the Chair should decide to strike the prosecutions case entirely, that would necessitate the entire process start over again and it should begin at the point where prosecution against individuals began, at the ACL hearing.

If the Chair chooses to only strike a portion of the prosecution case, including the entire case as presented orally on April 28<sup>th</sup>, then the CSD should be allowed to start their case over. This would include resubmitting written responses and evidence necessitated by any changes or alterations. But as I stated originally in answer to question one, any removal of Ms. Okun's prior participation in this case will necessitate the dismissal of the entire case in order to avoid a rehearing "after days of wasted 'first-round' hearings" and "countless hours of wasted staff time".

**5. Designated parties with personal issues such as childcare and health, that they would like the Water Board Chairman to consider when setting the order of presentation of the individual Cease and Desist Orders, should put such issues in writing for submission by June 23, 2006.**

For the past five years I have been an assistant coach with a local youth track and cross-country team. Beginning the last week in August, I will be assisting the local middle school in establishing a cross-country program after school (@ 3:00-4:30pm) on Tuesday and Thursday afternoons. In addition we are unavailable for most of August with business, personal and family issues.

I am helping to coordinate a charity fund-raiser taking place in September. It will take place in the Bay Area and we will be leaving the morning of Friday, September 9<sup>th</sup> and returning mid-day on September 12<sup>th</sup>.

The evening of Friday, September 22<sup>nd</sup> and on Monday October 2<sup>nd</sup> we will be unavailable due to the observance of religious holidays.

In October we will be on vacation from Friday the 20<sup>th</sup> through Monday the 30<sup>th</sup>. I assume we will have some sort of resolution by the end of October.

Rob & Elise Shipe