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RE: CEASE AND DESIST ORDER NO. R3-2006-1043[redacted]

This letter represents my formal comments; these comments will be explained in full at the Hearing(s) by me and/or by my counsel or representatives. In addition, I am under the belief that the Los Osos Community Services District ("CSD") is submitting a number of documents in support of its comments on this matter. I request that all documents submitted by the CSD be incorporated by reference to my case. I hereby reserve the right to comment on those documents. In addition, the RWQCB information sent to me informed me that the RWQCB prosecution team would rely on a list of documents in its presentation. While the RWQCB team claims that it has made its documents available for my review, they have only been available at RWQCB offices during the work day. Because I am unable to get to the RWQCB offices during the work day, I have not had a chance to review the documents, but I reserve the right to comment at the Hearing on the documents and/or on any arguments based on them.

I. The use of CDOs is wrong enforcement tool

It is my understanding the State Water Resources Control Board ("SWRBC") and each Regional Water Quality Control Board in the State, has never issued a CDO against an individual homeowner. The SWRCB's own Enforcement Policy states that CDOs regularly involve "*extensive capital improvements*" beyond the scope of a single property. After looking at the SWRCB Policy as a whole, it is clear that the SWRCB

does not consider a CDO to be an appropriate prosecution tool against private citizens, because citizens hold no discharge permits and have no control over sewage or stormwater collection and treatment.

I believe that to use Cease and desist Orders are entirely too heavy handed. They seem to be borne out of frustration and not any rational methodology. The frustration can be seen on page three of the March 23 Staff Report when the response to statement that "we wanted to hook up to the sewer but we have no control over the CSD's work stoppage" was "The Water Board has worked with the County and the CSD for over twenty years. Continued violations of the prohibition are not acceptable."

Your staff admitted at the informational meeting on February 15, 2006 that they have never done this type of enforcement action in mass before. I believe that CDOs were never intended to be used against private citizens the way they are being applied in our case. We are not a corporation dumping toxic chemicals. We are simply just average folks trying every day to be good citizens and relying on our government to provide municipal infrastructures like waste management.

There is no way of knowing if pumping every month is a reasonable cost. I had my tank pumped on February 28, 2006 and the cost was $385.00. I did this for two reasons, one I wanted to make sure my septic system was working properly and two to demonstrate that I am willing to voluntarily comply with a septic management program. There are too many variables out of the control of the RWQCB in regards pumping to honestly make the statement that costs are reasonable. For instance, what if the Santa Maria Wastewater Treatment plant can no longer take our waste and the pumping trucks had to go to Bakersfield or Ventura?

III Resolution 83-13

As I understand it, the CSD is challenging the scientific underpinnings of Resolution 83-13 and the issuance of CDOs to me and to others based on Resolution 83-13. I join in their challenge to Resolution 83-13 and this prosecution based on Resolution 83-13. In the interest of not being duplicative, I will not submit documents in support of my joinder, but instead reserve the right to comment on the CSD's documentation and to comment on the RWQCB's documentation.

It is worth noting, however, that at the time Resolution 83-13 was adopted, it was recognized that the Prohibition Zone was not a scientifically precise area of discharge/pollution, but the RWQCB Staff's best guess was based solely upon information available at that time. But that means that there is no actual scientific evidence supporting the current prosecutions but just a guess from 1983.

IV. No evidence my septic tank is polluting

Most importantly, and as stated in brief above, there is absolutely ***zero evidence*** offered by the RWQCB to show that my septic tank has violated Resolution 83-13. It is abundantly clear that the RWQCB has failed completely to develop any scientific evidence with regard to my property or any other individual property. In the more than 20 years since Resolution 83-13 was adopted, the RWQCB never collected site-specific or property-specific information, but it now seeks to prosecute based not on site-specific information but based on some presumption that the prosecution team's evidence must apply equally to every property targeted for prosecution.

Furthermore my septic system in use in Los Osos is an approved, legal, septic system. At no time has the RWQCB, the County of San Luis Obispo, or the CSD ever inspected my septic system to determine whether it is faulty or whether it is working as it is designed to work and leaching liquids into a leach field in the upper aquifer for additional natural treatment. If my septic system is working as designed and permitted by the government, then we cannot be the subject of this enforcement hearing. Yet the RWQCB initiated this action without even trying to find out whether the environmental characteristics – depth of aquifer, proximity of leach field to streams, proximity of leach field to other leach fields, etc. – of my property or my septic system lead to the need to revoke my septic permit and to require pumping.

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My residence [redacted] is not located in a densely developed area of Baywood Park. My home is located on a 50 foot by 150 foot lot. There is a vacant lot located next to my home and there are three other vacant lots on our immediate block. My septic tank has a large leach field in the front of our house that according to Al's Septic pumping is working efficiently. We are the only two people living in our home. We both are at work all day and do not put large amounts of waste into our septic tank. Our home is located on a hill and is over 50 feet above ground water. The nearest nitrate monitoring well at our elevation shows a nitrate level of 2.5 mg/l.

There is no scientific evidence that nitrates discharged from our septic tank degrades groundwater quality and threatens public health. However, I still want a sewer and am willing to pay the cost to have one.

V. Why is it so urgent now

As to the nitrate issue; it seems that if it were so urgent that we remove nitrates from the ground water CDOs should have been issued years ago. Having a few home owners pump now will not make a significant difference in preserving the ground water for future generations.

Resolution 83-13, the basis of this prosecution, was drafted with a local population of nearly 27,000 persons as the presumption for its scientific analysis. Yet Los Osos has only grown to 15,000 persons. This raises some problems. Primarily,

Resolution 83-13 is either based on scientifically indefensible positions with regard to the permissible growth in the area, or in the alternative, it relies on outdated science which has no practical application to the facts in the Los Osos area. In either the case, the Resolution cannot possibly be the basis for the RWQCB issuing legally-defensible CDOs against me.

Resolution 83-13 also permitted the construction of another 1150 new housing units in the Los Osos/Baywood Park area even while discharges prohibited in that Resolution were occurring. Yet the RWQCB never explained why, if 1150 additional units were to be built, how the additional units would not negatively impact the environment. This results in an incomprehensible position by the RWQCB – first the RWQCB states that pollution is rampant, then the RWQCB states that more building will be allowed, and now the RWQCB is prosecuting both those persons who were here when Resolution 83-13 was put into place and those who were allowed to build despite what the RWQCB has stated are massive problems with the groundwater.

IV. Random prosecution is wrong

The prosecution team never attempted to target the most egregious violators of Resolution 83-13. Indeed, the RWQCB has never actually made any scientific study of my property or any other property in Los Osos. RWQCB personnel have admitted that they have no experience in dealing with a large group of targeted persons and that they are going through "on-the-job" learning. This on-the-job learning may well result in my and some other members of the community facing immediate orders to begin septic pumping at a cost of thousands of dollars per year. Meanwhile, other residents will face no such order for months or years to come. Indeed, if the on-the-job learning by the RWQCB results in a shift in enforcement mentality, some residents could wind up not being subject to any order – while the targeted residents continue to face thousands of dollars in mandated costs per year.

Whatever action the Board decides to take should be applied to all property owners in the Prohibition Zone equally and at the same time. In the interest of fairness and keeping with the values of justice we hold dear as citizens of this country no action should be taken until **all** property owners within the prohibition zone are subject to the same action. According to Water Board Executive Officer Roger Briggs in the ***Tribune*** editorial dated February 19, 2006 "all of the residents within the water board's zone of prohibition will be pumping every two months by the end of the year". He continues that "the disparity shouldn't be great." The disparity is not fair no matter how long the differences in the time periods.

IIV. Conclusion

I do not have a great understanding of the scientific evidence at issue here. But I do know that Resolution 83-13 was based on limited science, and that the RWQCB has made no efforts to update that science to reflect the current reality in Los Osos. I also know that the RWQCB has never investigated my property to determine whether I am actually violating the law.

We agree completely with the RWQCB that a sewer system is the most practical manner to comply with the Prohibition. We can not emphasize enough our complete frustration with the inability to get a sewer built in Los Osos. We have always supported a sewer. We did not vote for the recall and have done everything in our power to get a sewer built in Los Osos. We are victims of bad government at the local level and now we are being victimized by our state government.

We fervently hope the RWQCB does the right thing and helps Los Osos be a healthy and viable community. After all it is our HOME.

Sincerely,

[redacted]

Cc Matt Thompson (mthompson@waterboards.ca.gov)