From: William R. Moylan
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To: Mr. Michael Thomas
Assistant Executive Officer
Central Coast Water Board
895 Aero Vista Place, Suite 101
San Luis Obispo, CA 93401

Date: July 21, 2006

Re: Response to Reed Sato's Brief

Dear Mr. Thomas,

In response to Reed Sato's brief dated June 19, 2006 I have several objections, which follow.

In part 1A Mr. Sato mentions the "Quintero v. City of Santa Ana...which required a review of the totality of the circumstances, which led the court to conclude there was an appearance of bias and unfairness." Mr. Sato then concludes, "there is no such appearance in this case."

I disagree with Mr. Sato's conclusion. There is an appearance of bias and unfairness in this case, and the totality of the circumstances needs reviewing. The Central Coast RWQCB's entire case revolves around the continued use of septic tanks in the Los Osos Prohibition Zone since 1988, the year in which the County of San Luis Obispo was supposed to have completed a wastewater treatment facility in Los Osos. The County did not complete a sewer for Los Osos by that year. The County did not even come up with a plan for a treatment facility until the year 1997, a full 9 years after a sewer plant should have been built. Not building a plant by 1988 was unfair and biased to the people of Los Osos.

When the arbitrariness of the boundaries of the Los Osos Prohibition Zone have been mentioned to Mr. Briggs or other members of the RWQCB, the pat answer given is that the Prohibition Zone is not up for challenging because of the many years that have passed since the "Zone" was established; that, indeed, any discussion of the boundaries of the Prohibition Zone should have been brought up years ago. So, the argument given to any challengers of the Prohibition Zone is that the time for that passed years ago.

If that argument given by the RWQCB concerning the unscientific and arbitrary nature of the Prohibition Zone is relevant, then, it follows, that the issuance of these proposed CDO's to homeowners in Los Osos is unfair and biased, because the time for the issuance of CDO's should have been shortly after 1988 when the sewer should have been completed by the County. The County of San Luis Obispo was negligent and should have been issued fines and/or ACL's in 1988. But, a full eighteen years have gone by, almost two decades, and now the RWQCB has decided to issue CDO's to individual homeowners. Using the same argument that the RWQCB uses, the time for CDO's has long passed. They should have been issued long ago-to the County

or some other recalcitrant governing body, not to individual homeowners who have had no power to establish a wastewater treatment plant on their own. The proposed issuance of CDO's now, 18 years after a TSO has passed is biased and unfair to the citizens of Los Osos. Because of this glaring 18-year passage of time, these proposed CDO's should be withdrawn immediately, and the hearing should be eliminated.

I also find fault with the "Request to Clarify Order" that Mr. Sato uses in his brief. How many times must this procedure be clarified? Shortly after we received our proposed CDO, with carefully outlined rules that we had to follow, we received "clarification notices." We were told time after time that the rules had changed, the deadlines had changed, the sources we could use for "evidence" had changed. Right up to the night before our hearing date, we received another "clarification" of the rules with which we had to comply. Frankly, I am sick and tired of "clarification orders." These continual "clarifications" only indicate the muddiness of the original issuance of proposed CDO's. Now, Mr. Sato, has had a request to clarify the procedures. Has Mr. Sato been coached on exactly what needs clarification and how? Has Mr. Sato been told just what the respondents should be limited to? If Mr. Sato has been coached or advised on his brief by Mr. Young or any other member of the Central Coast RWQCB, then his clarification itself is biased and unfair. This last, but I'm sure not final, clarification further restricts my ability to examine witnesses. It also restricts the witnesses I will be allowed to examine and cross-examine. I find it severely restrictive of my due process, considering the severity of any penalties that may be levied upon me. In the RWQCB's haste to streamline the procedures, the fairness of this hearing is becoming less and less palpable. This is bias. This is not fair. This really smacks of totalitarian government.

Specifically, B1 of Mr. Sato's brief states, "...Nor Any Other Individual Respondent Has a Legitimate Basis for Cross-examining Any Witness Presented on Behalf of Any Individual Recipient of the Cease and Desist Order." This specifically contradicts what the original hearing notice clearly states. The original notice dated February 28, 2006, page 4, third paragraph, under "Conduct of Hearing" states,

"Designated Parties may testify, present witnesses, cross-examine other parties' witnesses and make closing statements." At the hearing on April 28, 2006, Chairman Young clearly corroborated that we may cross-examine other parties witnesses. It is clear that Mr. Sato is denying due process.

There are other issues involved with the "totality of the circumstances" of this hearing that need mentioning. The actual source of ground water nitrates in Los Osos has never been scientifically proven. They may be coming from the upstream farming. They may be coming from the emissions of the power plant in Morro Bay. They may be naturally occurring from the thousands of years of decaying vegetation under the shifting sands of Los Osos. Or, they may be a combination of the above. Until definitive science is used to determine the source or sources of nitrates, the entire issuance of CDO's and the need for a wastewater treatment facility is moot. If these concerns are not addressed, then the issuance of proposed CDO's is unfair and biased.

Finally, I object to the cavalier approach the RWQCB has shown throughout this entire procedure. Mr. Sato states in his brief that Ms. Okun stepped down voluntarily "simply to avoid

unnecessary litigation of the alleged due process issue." That sounds like a cover-up. She stepped down because she was giving advice to the Board and also acting as prosecutor. That is a violation of due process. This violation of due process begs the question, "How many other due-process violations have occurred or will occur with this Board?" I understand that Mr. Briggs has consulted with and advised the Board about the implementation of proposed CDO's and also about hearing procedures. Is not this interaction of Mr. Briggs and the Board also a violation of due process? Could the designated parties involved really get a fair and impartial hearing considering the interaction of the members of the Board and Mr. Briggs? Mr. Thomas, with all the breaches involving safeguards for the respondents and with the further imposition of restrictions on the respondents by Mr. Sato, the nature of this hearing has been undeniably tainted by bias and unfairness and would only result in a mockery of justice.

In conclusion, I want to reiterate my former opinion that this RWQCB needs to stop wasting our taxpayer's money by conducting this hearing. The time and money spent by me and my wife, by the other good and law-abiding citizens who have received these proposed CDO's, and the physical and emotional turmoil that this hearing has cost us is immeasurable. Stop this unnecessary and unwarranted harassment as soon as possible. If the situation was reversed and you were being prosecuted instead of us, you would ask the same.

Sincerely,

William R. Moylan

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