

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

STAFF REPORT FOR REGIONAL BOARD MEETING ON DECEMBER 7, 2007
Prepared on November 8, 2007

ITEM NUMBER: 17

SUBJECT: Discussion of Water Board Enforcement Options and Status of the Los Osos Proposition 218 Vote

SUMMARY

This item is a brief report regarding the Water Board's recently adopted Cease and Desist Orders and Board approved settlement agreements relative to the Los Osos/Baywood Prohibition Zone. There will be no hearing on December 7, 2007; however, the Water Board intends to discuss future enforcement options and may give direction to staff.

The Advisory Team recommends against scheduling a hearing to consider the Cease and Desist Orders and settlement agreements at this time for several reasons, including the fact that the Cease and Desist Orders and settlement agreements are being litigated in San Luis Obispo Superior Court. As such, any hearing and discussion by the Water Board may be inappropriate given the current status of the litigation. The Advisory Team recommends that the Water Board schedule regular closed sessions to discuss the ongoing litigation regarding the Cease and Desist Orders and settlement agreements and to base its decision on scheduling a hearing on the closed session legal discussions.

In a separate mailing, the County of San Luis Obispo will provide information about its next steps following the successful Proposition 218 vote. County representatives will also be present on December 7, 2007, to answer Board questions.

DISCUSSION

On September 7, 2007, the Water Board directed staff to schedule a hearing on December 7, 2007, to consider rescinding the recently adopted Cease and Desist Orders and settlement agreements relative to the Los Osos/Baywood Park Prohibition Zone. However, the Chairman has since discussed the scheduling of a hearing with legal counsel and decided to, instead, schedule this status report. There will be no hearing on December 7, 2007, and, therefore, no Water Board action regarding the Cease and Desist Orders and settlement agreements. However, the Water Board intends to discuss future enforcement options and may give direction to staff.

Enforcement Options

The Water Board adopted 13 Cease and Desist Orders against individual property owners in the Los Osos/Baywood prohibition zone during the past year. The Water Board also approved 25 settlement agreements for individuals who received Cease and Desist Orders and chose to settle with the Prosecution Team. These Cease and Desist Orders and settlement agreements are currently being litigated in San Luis Obispo County Superior Court.

With respect to these Cease and Desist Orders, the Water Board could schedule a hearing to consider rescission of the Orders and withdrawal of its approval of the settlement agreements. At the Board's discretion, such a hearing could be a full evidentiary hearing or could be more limited in scope to include comments from the public and designated parties. Rescinding the Cease and Desist Orders and withdrawing approval of the settlement agreements would be a relatively straightforward process, and could be done in one consolidated hearing.

The Advisory Team recommends against scheduling a hearing to consider the Cease and Desist Orders and settlement agreements for the following reasons:

1. There is no compelling reason to rescind the Cease and Desist Orders and settlement agreements at this time. The Orders and settlement agreements do not require any burdensome actions now or in the near future. Parties subject to the Orders and settlement agreements are not treated differently with respect to the recent 218 assessment. The Orders and settlement agreements may have a negative affect on property values; however, this possibility was known prior to adoption and is not a reason to rescind them.
2. Rescinding the Orders and settlement agreements would be a good will gesture to the community considering the positive results of the 218 assessment vote; however, it is important to understand that a similar vote was held and passed several years ago, and a wastewater project eventually progressed to the point where construction began before the project was derailed. Recent comments by a Los Osos Community Services District Board member, following the recent successful 218 vote, demonstrate the very real possibility that attempts will be made to derail the project again. Also, others have stated their intent to file a lawsuit challenging the 218 vote. Therefore, the results of the 218 vote and the County's efforts to construct a wastewater facility are not a guarantee of success.
3. The Cease and Desist Orders and settlement agreements are being litigated in San Luis Obispo Superior Court. As such, any hearing and discussion by the Water Board may be inappropriate given the current status of the litigation.
4. The Court's decision regarding the Cease and Desist Orders and settlement agreements is important to the Water Board relative to future enforcement actions, as discussed below.
5. Finally, the Water Board should not schedule a hearing to consider the Cease and Desist Orders and settlement agreements without first meeting in closed session to discuss the on-going litigation. Multiple closed session hearings may be necessary as the court case progresses.

Regarding future enforcement actions, if any, the Prosecution Team has indicated its intent to take enforcement action against all residents simultaneously. The Prosecution Team could issue additional proposed Cease and Desist Orders for Board consideration or could issue Cleanup and Abatement Orders. Any proposed Cease and Desist Order must be considered and adopted by the Water Board itself. As an alternative, Cleanup and Abatement Orders can be issued directly by the Executive Officer or his designee.

If the Prosecution Team proceeds with enforcement actions in the future, the Advisory Team may pursue the option of "paper" hearings, which means the enforcement actions would be processed entirely via written submittals, and there would be no oral hearings before the Water Board. This is a legally appropriate approach and would facilitate relatively prompt processing of the approximately 4,500 cases.

On May 2007, the Water Board stated its preference that the Prosecution Team not initiate additional enforcement actions pending the Proposition 218 vote results. The vote results were positive, and the Advisory Team recommends that the Water Board maintain its preference for not initiating any additional enforcement actions at this time. If the County process to construct a wastewater treatment

facility is derailed, the Water Board may wish to reconsider its stated preference regarding additional enforcement actions.

The Advisory Team recommends that the Water Board schedule regular closed sessions to discuss the ongoing litigation regarding the Cease and Desist Orders and settlement agreements and to base its decision on scheduling a hearing on the closed session legal discussions.

Proposition 218 Tax Assessment Vote

The Proposition 218 tax assessment was approved by approximately 80% of the voters. The County is therefore proceeding with its process to evaluate and develop a wastewater treatment system for Los Osos. The County presented detailed information on its process to the Water Board in writing and in presentations at previous Board meetings. Since the Proposition 218 vote passed, the County is moving forward with its next steps. During 2008, the County will draft environmental documents, begin the permitting process, begin pre-design work, and pursue funding. During 2009, the County will begin the assessment collection period, and complete the final design work. During 2010, the County will begin construction. County representatives will be present for this item on December 7, 2007, to answer questions the Water Board may have regarding the County's process and progress.

CONCLUSION AND RECOMMENDATION

The Advisory Team recommends against scheduling a hearing to consider the recently Adopted Cease and Desist Orders and settlement agreements at this time for the reasons noted above. Nevertheless, the Water Board can direct its Advisory Team to schedule a hearing for the February 2008 Water Board meeting.