

1 DEE THOMAS MURPHY -IN PRO PER-
2 1408 Las Encinas
3 Los Osos, CA 93402
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FILED

MAY 12 2009

SAN LUIS OBISPO SUPERIOR COURT
BY *Erin Brown*
Erin Brown, Deputy Clerk

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7
8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN LUIS OBISPO**

10
11 **DEE THOMAS MURPHY,**

12 Petitioner,

13 vs.

14
15 **ARNOLD SCHWARZENEGGER,**
16 **GOVERNOR OF THE STATE OF**
17 **CALIFORNIA , et al.**

18 Respondents.

Case No: *CV080510*

**REQUEST FOR EMERGENCY
INJUNCTIVE AND DECLARATORY
RELIEF IN THE INTEREST OF
PUBLIC HEALTH
AND WELFARE; AND
EMERGENCY ORDER**

Judge: Barry La Barbera
Department: 2
Filed: May 12, 2009

*Ex Parte Hrg: 05-14-09
8:30am
Dept. 2*

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24 **REQUEST FOR EMERGENCY INJUNCTIVE**
25 **AND DECLARATORY RELIEF**

26 The Petitioner, DEE THOMAS MURPHY, a Citizen of the Los Osos Prohibition Zone
27 and subject to State Ordered Cease and Desist Orders, now comes before this Court, and having
28 authority as a United States Citizen pursuant to U.S. Code Title 33 Chapter 26, Sec. 1365, to
request this Court, as expediently as practicable, enter an EMERGENCY ORDER in the interest

1 of public health and welfare and in compliance with the Governor of the State of California's
2 Executive Order S-06-08 (Attachment #1 of Ex Parte filed May 8, 2009), Executive Order S-20-
3 06 (Attachment #2 of Ex Parte filed May 8, 2009), and State of California Cease and Desist
4 Orders Numbers 99-3053 (Attachment #3 of Ex Parte filed May 8, 2009), 99-3054 (Attachment
5 #4 of Ex Parte filed May 8, 2009), 99-3055 (Attachment #5 of Ex Parte filed May 8, 2009), 99-
6 3056 (Attachment #6 of Ex Parte filed May 8, 2009), and Order Number 00-131 (Attachment #7
7 of Ex Parte filed May 8, 2009), and in compliance with the Central Coast Regional Water
8 Quality Control Board Basin Plan and the requirements of the Los Osos Prohibition Zone and
9 pursuant the mandated pretreatment requirements of the United States Code Title 33 Chapter 26
10 – Water Pollution Prevention and Control, upon all Respondents.

11 The Petitioner has provided to the Court an overwhelming amount of undisputable
12 evidence showing the Respondents have been negligent in performing their duties as a regulatory
13 agency. Based on the facts presented to this Court by the Petitioner pursuant to this case
14 including the previously submitted Exhibits 1, 2 and 3, and the First Amended Complaint and all
15 additional attachments previously filed Ex Parte complaint, filed May 6th of 2009.

16 The Respondents are negligent in performing their duties and obligations pursuant to the
17 Duty of Care (Attachment #8 of Ex Parte filed May 8, 2009) in violation of public trust,
18 subjecting the public to a clear and present danger, and posing a threat to the public health and
19 welfare at large and in violation of authority commissioned them pursuant to U.S. Code Title 33
20 Chapter 26.

21 Petitioner will prove in a jury trial that ALL Respondents, i.e. persons, who are all in a
22 position of authority, are guilty of “knowing endangerment” pursuant to the United States Code
23 Title 33 Chapter 26, Section 1319(c)(3).

24 In a period of consequences, the Respondents lack the political will and moral imperative
25 to take necessary action to implement the federally mandated discharge elimination solution to
26 cease and desist discharges in the interest of public health and welfare, thus the justification for
27 this Court to enter an **EMERGENCY ORDER** for “Emergency Injunctive and Declaratory
28 Relief.

1 **AUTHORITY UNDER WHICH EMERGENCY INJUNCTIVE AND**
2 **DECLARATORY RELIEF SHALL BE ORDERED BY THIS COURT**

3 The Judge of this Court, as an individual and a person and in a position of authority and
4 subject to the herein referenced federal law, has an obligation to rule in the interest of public
5 health and welfare. In addition, the Respondents are not just public citizens, but public servants
6 having authority commissioned to them pursuant to an Act of the United States Congress to
7 uphold, administer, promulgate and enforce the stricter federal water laws of US Code Title 33
8 Chapter 26 (“33USC26”). This Court has authority pursuant to the federal constitutional
9 supremacy clause which requires state law to yield to federal law, (Supreme Court of the State
10 of California, City of Burbank v. State Water Resources Control Board, (2005) 35 Cal.4th
11 613.), of which, by law the U.S. Code Title 33 Chapter 26 is “*prima facie* evidence” of the law
12 in effect. The *Statutes at Large* remains the ultimate authority. If a dispute arises as to the
13 accuracy or completeness of the codification, the courts will turn to the language in the United
14 States Statutes at Large. This Court must rule pursuant to U.S. Code Title 33 Chapter 26.

15 The Governor of the State of California is required to adopt water quality standards
16 pursuant to 33USC26 §1313(c)(1), (c)(2)(A), (i)(1)(A), (i)(2)(A) & (i)(3), and pursuant to
17 criteria defined in 33USC26 §1314. The Governor, as the supreme State authority pursuant to
18 U.S. Code Title 33 Chapter 26, is obligated to adopt and or enforce standards or limitation
19 respecting discharges of pollutants, or any requirements respecting control or abatement of
20 pollution pursuant to U.S. Code Title 33 Chapter 26, Sec. 1370.

21
22 **IN THE INTEREST OF A PUBLIC HEALTH EMERGENCY**

23 The Respondents, under the Duty of Care, have a fiduciary duty to require and to act to
24 uphold and enforce laws in the interest of the public health and welfare. Furthermore, the
25 Petitioner’s technology is not subject to any “approval” by Respondents prior to application as
26 Respondents only have authority over “discharges of waste”. Petitioner’s technology does not
27 discharge waste as clearly proven per data previously presented to this Court. The Respondents
28 have taken action to inform the public of the “emergency”, however, the Respondents refuse to

1 acknowledge the federally mandated solution required to be implemented to cease all discharges
2 within the Prohibition Zone of Los Osos in answer to the “emergency”.

3 A letter from the National Resource Defense Council written to Resources Secretary,
4 Mike Chrisman, dated December 12, 2008, states: “It is important to note that failed governance
5 is largely responsible for the federal courts decision to impose strict limits on State and federal
6 project operations. Reforming the current dysfunctional regulatory approach is a key strategy to
7 give State and federal agencies, as opposed to the courts, greater control over project
8 operations”. Despite these pleas, the Respondents refuse to reform and use the court system to
9 stonewall solutions. The Respondents continue to operate in their current dysfunctional
10 regulatory approach creating and allowing major threats to public health and welfare to continue.

11 The Defendant’s continual acts of negligence and endangerment have caused the
12 California Department of Public Health to step in to take emergency action to cease the use of
13 the municipal drinking water wells in the Estero Bay region.

14 The Defendant’s actions and refusal to acknowledge their obligation to administer
15 pursuant to federal law is resulting in:

- 16 • continual allowing poisoning of the Los Osos sustainable drinking water supplies
- 17 • continual violation of the Marine Protection Act thereby allowing discharge of pollution
18 into the Morro Bay East Estuary State Marine Reserve to continue unchecked
- 19 • continual violation of the Endangered Species Act allowing sewage discharges to
20 continue
- 21 • continual disregard for the Governor’s AB32 (Reference Attachment #2 of Ex Parte filed
22 May 8, 2009)
- 23 • continual disregard for the Governor’s State of Emergency – Water Shortage
24 PROCLAMATION. (Attachment #9 of Ex Parte filed May 8, 2009)

25 Edmund G. Brown Jr., Attorney General of the State of California and Attorney for
26 Respondents, at the West Coast Green Conference in 2008 proclaimed, “*What we [the Citizens
27 of California] need is technology, innovation and paradigm shift.*” Despite the Attorney
28 General’s proclamation, the Respondents continue to issue waivers and discharge permits to

1 continue allowing discharges of life threatening toxic and hazardous pollutants, causing a
2 knowing endangerment to public health and welfare, our sustainable drinking water resources,
3 our natural resources and the environment of our planet at large.

4
5 **PRAYER FOR EMERGENCY RELIEF**

6 Petitioner now prays for the Judge to RULE and ORDER an “Emergency Injunctive and
7 Declaratory Relief” be granted in the interest of public health and welfare of the Citizens of the
8 Los Osos Prohibition Zone as per the following:

- 9
10 1. Court to ORDER all Respondents to accept, require and to assist the development
11 and implementation of the Los Osos Going Green Project Proposal (Attachment
12 #10 of Ex Parte filed May 8, 2009), pursuant to 33USC26 §1281- Congressional
13 Declaration of Purpose and in compliance with mandated pretreatment
14 requirements pursuant to 33USC26 §1317, with sanctions of maximum penalties
15 to be imposed upon Respondents for each day of delay beyond 60 days from the
16 date of the filing of this action pursuant to 33USC26 §1319(c)(3).

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18 Respectfully submitted;

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20 DATED: May 12, 2009

21 
22 DEE THOMAS MURPHY,
23 -In Pro Per-

ATTACHMENTS of Ex Parte Filed May 8, 2009

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- Attachment 1 - Executive Order S-06-08
- Attachment 2 - Executive Order S-20-06
- Attachment 3 - CDO # 99-53
- Attachment 4 - CDO # 99-54
- Attachment 5 - CDO # 99-55
- Attachment 6 - CDO # 99-56
- Attachment 7 - Notice of Violation
- Attachment 8 - Duty of Care
- Attachment 9 - Proclamation
- Attachment 10 - Los Osos Going Green Project Proposal

1 DEE THOMAS MURPHY V. STATE OF CALIFORNIA, et al.

2 San Luis Obispo County Case No. : CV 080510

3 SERVICE LIST

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15 Governor of the State of California
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20 Edmund G. Brown Jr.
21 Attorney General of the State of California
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28 Eric H. Holder
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1 PROOF OF SERVICE - C.C.P. §1013a, 2015.5

2
3 I certify and state that I am now and at all times herein mentioned was, a
4 citizen of the United States, over the age of eighteen (18) years, a resident of the
5 County of San Luis Obispo, and not a party to the within action or cause. My address
6 is: 490 Java St.

7 Morro Bay Ca 93442

8 I further hereby certify that on May 12, 2009, I caused to be served the
9 copies of the attached:

10 **REQUEST FOR EMERGENCY**
11 **INJUNCTIVE AND DECLARATORY**
12 **RELIEF IN THE INTEREST OF**
13 **PUBLIC HEALTH**
14 **AND WELFARE; AND**
15 **EMERGENCY ORDER**

16 on the parties in said action as follows:

17 X

18 (BY REGULAR MAIL) by placing a true copy thereof enclosed in a sealed
19 envelope with postage thereon fully prepaid, for collection and mailing.
20 Said document(s) will be deposited with the United States Post Office.

21 ***

22 I declare under penalty of perjury under the laws of the State of California
23 that the foregoing is true and correct.

24 Executed on May 12, 2009, at San Luis Obispo, California.

25 MARLA JO BRITTON

26 [Print Name]

27 Marla J. Britton

28 [Signature]

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15 **ARNOLD SCHWARZENEGGER,**

16 **GOVERNOR OF THE STATE OF**

17 **CALIFORNIA , et al.**

18 Respondents.
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Case No: CV080510

- EMERGENCY ORDER -

**FOR AN EMERGENCY INJUNCTIVE
AND DECLARATORY RELIEF IN THE
INTEREST OF PUBLIC HEALTH
AND WELFARE**

Judge: Barry La Barbera

Department: 2

Filed: May 12, 2009

Petitioner: -IN PRO PER- (775) 848-8800

Defendants Counsel:

Joel A. Davis (213) 897-2130

23
24 **EMERGENCY ORDER**

25 THIS COURT HEREBY ORDERS, in the interest of public health and welfare, all
26 Respondents to accept, require and to assist the development and implementation of the
27 Los Osos Going Green Project Proposal (Service Establishment Proposal No. 090427)
28 pursuant to 33USC26 §1281- Congressional Declaration of Purpose and in compliance

- EMERGENCY ORDER -

1 with federally mandated pretreatment requirements pursuant to 33USC26 §1317, with
2 sanctions of maximum penalties to be imposed upon Defendants for each day of delay
3 beyond 60 days from the date of this EMERGENCY ORDER pursuant to 33USC26
4 §1319(c)(3).

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7
8 DONE this _____ day of May 2009

SUPERIOR COURT OF THE STATE OF
CALIFORNIA, COUNTY OF SAN LUIS
OBISPO

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13 JUDGE BARRY La BARBERA
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