

1 DEE THOMAS MURPHY -IN PRO PER-
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FILED

MAY -8 2009

SAN LUIS OBISPO SUPERIOR COURT

BY J. Cacho
J. Cacho, 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 **Defendants.**

Case No: CV080510

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

Judge: Barry La Barbera
Department: 2
Filed: May 8, 2009

DATE: 5/12/09
TIME: 8:30 AM
DEPT: 2

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23 **REQUEST FOR EMERGENCY RELIEF**

24 The Petitioner, DEE THOMAS MURPHY, now comes before this Court to request a
25 EMERGENCY DECLARATORY JUDGEMENT and ORDER in the interest of public health
26 and welfare pursuant to Defendant's (Governor's) Executive Order S-06-08 (Attachment #1),
27 Executive Order S-20-06 (Attachment #2), and State of California Cease and Desist Orders
28 Numbers 99-3053 (Attachment #3), 99-3054 (Attachment #4), 99-3055 (Attachment #5), 99-

1 Executive Order S-20-06 (Attachment #2), and State of California Cease and Desist Orders
2 Numbers 99-3053 (Attachment #3), 99-3054 (Attachment #4), 99-3055 (Attachment #5), 99-
3 3056 (Attachment #6), and Order Number 00-131 (Attachment #7), and in compliance with the
4 Central Coast Regional Water Quality Control Board Basin Plan and the Los Osos Prohibition
5 Zone, requiring all discharges of all toxic pollutants by all persons be eliminated pursuant to the
6 United States Code Title 33 Chapter 26 – Water Pollution Prevention and Control.

7 The Petitioner has provided to the Court an overwhelming amount of undisputable
8 evidence showing the Defendants have been negligent in performing their duties as a regulatory
9 agency. Based on the facts presented to this Court in Exhibits 1, 2 and 3 and including
10 Petitioner’s First Amended Complaint, Petitioner will prove in a jury trial that the Defendants
11 have been “knowingly” negligent pursuant to United States Code Title 33 Chapter 26, Section
12 1319(c)(2).

13 The Defendants have been and continue to be negligent in performing their duties and
14 obligations pursuant to the Duty of Care (Attachment #8) in violation of public trust, subjecting
15 the public to a clear and present danger, knowingly posing a threat to the public health and
16 welfare at large.

17 In a period of consequences, the Defendants lack the political will and moral imperative
18 to take necessary action to make the necessary changes, thus the justification for this Court to
19 order this “Emergency Declaratory Judgment”.

20
21 **FACTS COMMON FOR RECONSIDERATION OF RULING,**
22 **TIMELINE OF FACTS AND REQUEST FOR RECONSIDERATION OF APRIL 27,**
23 **2009 RULING**

- 24 • On April 14, 2009, Plaintiff submitted to the Court a Request for Emergency Judgment.
- 25 • On April 15, 2009, the Court informed Plaintiff a Tentative Ruling was posted on the
26 Court’s website. Plaintiff was unaware of the posted Tentative Ruling. Hence, the Court
27 ordered the matters to continue to April 22, 2009 to allow Plaintiff time to read the
28 Court’s Tentative Ruling.

- 1 • On April 16, 2009, a local news publication, the New Times, printed an article stating the
2 Judge had already ruled and Plaintiff had no case. (Attachment #14)
- 3 • On April 22, 2009, matters were continued to April 27, 2009 at request of Plaintiff.
- 4 • On April 27, 2009, Court adopts Tentative Ruling and sets Case Management Conference
5 for July 27, 2009, Court allows Plaintiff ten days to respond to ruling. Plaintiff also files
6 First Amended Complaint and Declaration of Dee Thomas Murphy. (Attachment #15)
- 7 • On April 29, 2009, Defendant emails Plaintiff a harassing email threatening to SLAPP
8 Plaintiff again in regards to the Plaintiff's First Amended Complaint. (Attachment #15)
- 9 • On April 30, 2009, Plaintiff, upon investigation documents in his Court file, realized his
10 request for entry of Emergency Declaratory Judgment was not in the file.
- 11 • On May 1, 2009, Plaintiff questioned the Court Clerk as to why the request for entry of
12 Emergency Declaratory Judgment was not in the file.

13 Plaintiff hereby request the Court to reconsider its April 27, 2009 Ruling in its entirety based
14 upon the following facts:

- 15 1. The Defendants misuse of the SLAPP suit law in this case is used in an effort to
16 stonewall Plaintiff and implementation of Plaintiff's technology and is an abusive
17 use of the intent of the law as Defendants are public servants and not public
18 citizens.
- 19 2. The information presented to the Court in Plaintiff's First Amended Complaint
- 20 3. The Defendants are subject to the Data Quality Act, previously submitted to the
21 Court in Plaintiff's First Amended Complaint, and do not have a constitutional
22 right to bear false witness against Plaintiff or Plaintiff's technology
- 23 4. The Defendants are subject to the Duty of Care

24
25 **AUTHORITY UNDER WHICH**
26 **JUDGEMENT AND ORDER SHALL BE ADMINISTERED BY THIS COURT**

27 The Defendants are not just public citizens, but public servants having authority
28 commissioned pursuant to an Act of the United States Congress to uphold, administer,
promulgate and enforce the stricter federal water laws of US Code Title 33 Chapter 26

1 (“33USC26”). This Court has authority pursuant to the federal constitutional supremacy clause
2 which requires state law to yield to federal law, (Supreme Court of the State of California,
3 City of Burbank v. State Water Resources Control Board, (2005) 35 Cal.4th 613.), of which, by
4 law the U.S. Code, Title 33, Chapter 26 is “*prima facie* evidence” of the law in effect. The
5 *Statutes at Large* remains the ultimate authority. If a dispute arises as to the accuracy or
6 completeness of the codification, the courts will turn to the language in the United States Statutes
7 at Large.

8 The Governor of the State of California (Defendant) is required to adopt water quality
9 standards pursuant to 33USC26 §1313(c)(1), (c)(2)(A), (i)(1)(A), (i)(2)(A) & (i)(3), and
10 pursuant to criteria defined in 33USC26 §1314. The Defendant, as the State authority, is
11 obligated to adopt and or enforce any standard or limitation respecting discharges of pollutants,
12 or any requirements respecting control or abatement of pollution pursuant to 33USC26.

13
14 **IN THE INTEREST OF PUBLIC HEALTH AND WELFARE**

15 The Defendants, under the Duty of Care, have a fiduciary duty that requires them to
16 uphold and enforce laws that are in the best interest of the public health and welfare.

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

25 (Attachment #11)

26 The Defendant’s continual acts of negligence have caused the California Department of
27 Public Health to step in to take emergency action to cease the use of the municipal drinking
28 water wells in the Estero Bay region. (Attachment #12)

1 The Defendant's actions and refusal to acknowledge their obligation to administer
2 pursuant to federal law is resulting in:

- 3 • continual degradation of the Los Osos sustainable drinking water supplies
- 4 • continual violation of the Marine Protection Act pursuant to discharge of pollution into
5 the Morro Bay East Estuary State Marine Reserve
- 6 • continual violation of the Endangered Species Act
- 7 • continual disregard for the AB32 (Reference Attachment #2)
- 8 • continual disregard for the Governor's (Defendant's) State of Emergency – Water
9 Shortage PROCLAMATION. (Attachment #9)

10 Edmund G. Brown Jr., Attorney General of the State of California and Attorney for Defendants,
11 at the West Coast Green Conference in 2008 proclaimed, "*What we [the Citizens of California]*
12 *need is technology, innovation and paradigm shift.*" Despite the Attorney General's
13 proclamation, the Defendants continue to issue waivers and permits to allow continued
14 discharges of life threatening toxic and hazardous pollutants, negligently posing major threats to
15 public health and welfare, our sustainable drinking water resources, our natural resources and
16 environment at large.

17 **PRAYER FOR RELIEF**

18 Petitioner now prays for the Judge to seize the opportunity to address this moral issue and
19 order an "Emergency Declaratory Judgment" in the interest of public health and welfare as per
20 the following:

- 21 1. Order the Governor of the State of California to immediately execute the herein
22 attached Executive Order # CV-080-510 (Attachment #10).
- 23 2. The Court enter a Judgment ordering the Governor to implement the Los Osos
24 Going Green Project Proposal (previously submitted to Court in Exhibit #3, First
25 Amended Complaint) immediately with sanctions of maximum penalties to be
26 imposed upon Defendants for each day of delay beyond 60 days from the date of
27 the filing of this action as provided for in 33USC26 § 1319(c)(2).
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