

From the Desk of Joan C. Lavine

#43

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May 4, 2012

Mr. Charles R. Hoppin, Chairman or Current Chairperson
State Water Resources Control Board
1001 "I" Street
Sacramento, Ca. 95814
Via Fax: 1-916-341-5620
Via E-mail to: commentletters@waterboards.ca.gov
Via USPS Express Mail

Jeanine Townsend, Clerk to the California State Water Resources Control Board
State Water Resources Control Board
1001 "I" Street, 24th Floor
Sacramento, Ca. 95814
Phone number: 1-916-341-5600; Fax 1-916-341-5620

Attention: Jeanine Townsend, Clerk of the California State Water Resources Control Board

TO MR. CHARLES R. HOPPIN, THE CHAIRMAN OF THE CALIFORNIA STATE WATER RESOURCES QUALITY CONTROL BOARD, AND TO THE RESPECTIVE MEMBERS OF SAID BOARD:

Re: COMMENT LETTER – OWTS POLICY, and AB 885/Water Code, § 13291, proposed "draft" regulations, proposed policy statement and rules, dated March 20, 2012, posted on the SWRCB website on or about March 28, 2012

Re: Residential single-family dwelling zoned real property located at 23900 Malibu Road, Malibu, California 90265, Mapbook 4458, Page 007, Parcel 018, solely owned by Joan C. Lavine, individually, and located within the proposed Malibu Civic Center septic ban area, and incorporation of said Malibu Civic Center septic ban/prohibition into said statewide OWTS proposed regulations of California State Water Resources Quality Control Board Resolution No. R4-2009-007, passed by the Los Angeles Regional Water Resources Quality Control Board on November 9, 2009. and SWRCB Resolution 2010-0045, adopted September 21, 2010

I, Joan C. Lavine, hereby respectfully submit my comments opposing the proposed "revised" draft regulations, dated on or about March 20, 2012, and posted on or about March 28,

2012, on this California State Water Resources Control Board website on or about March 28, 2012 in response to Assembly Bill 885, codified as California Water Code, § 13291.

I request and petition that, if these “draft” proposed statewide regulations are put into effect, that my subject property at 23900 Malibu Road be treated as having an existing and legally permitted On-Site Wastewater Management System since 1993, and that my property at 23900 Malibu Road, Malibu, California 90265, be placed in Tier 0 (Tier “ZERO”), and be exempted from further SWRCB statewide regulation as provided for property under proposed Tier 0.

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I oppose and object to the incorporation in the subject draft proposed statewide OWTS revised regulations pursuant to Water C. § 13291, of the Amendment to the Water Quality Control Plan for the Los Angeles Region (Basin Plan) To Prohibit On-Site Wastewater Disposal Systems in the Malibu Civic Center Area, as contained in California State Water Resources Quality Control Board Resolution No. R4-2009-007, passed by the Los Angeles Regional Water Resources Quality Control Board on November 9, 2009, and SWRCB Resolution 2010-0045, adopted September 21, 2010. I request that said incorporation be stricken.

Hereinafter, I will refer to my property at 23900 Malibu Road, Malibu, California as “Lavine Malibu Road property” or the “Lavine 23900 Malibu Road property”.

I incorporate by reference as part of this Comment the following:

a. The current map, dated May 2, 2012, published on the SWRCB website regarding my property at 23900 Malibu, Malibu, California 90265, showing no nitrogen-compound impaired waters within 2000 feet of it, and no pathogen-impaired waters within 2000 feet of it, attached hereto and marked Exhibit “A” hereof.

b. The USGS chart prepared for the City of Malibu by the U.S. Geological Survey, by Dr. John Izbicki, prepared in or about August, 2010, concluding in a scientific study that DNA marker testing shows no human source of pathogens tested, particularly, enterococcus, and proving that the sources are naturally occurring from animals and plants in the Malibu Lagoon and the Malibu Creek. That is, the USGS found that any pathogens are “Acts of God”. Said chart is attached hereto and marked Exhibit “B” hereof.

c. City of Malibu waste disposal permit, approval and inspection, issued to me, dated in or about 1993, for the installation and use of on-site wastewater disposal system at my Lavine 23900 Malibu Road property, attached hereto and marked Exhibit “C” hereof.

d. My comments, dated July 9, 2010, filed with the State Water Resources Control Board on July 9, 2010, and July 12, 2010, attached hereto and marked Exhibit “D” hereof.

e. My comments, dated June 30, 2011, filed with the Regional Water Quality Control Board, Los Angeles Region, Region No. (4), on June 30, 2011, attached hereto and marked Exhibit “E” hereof, opposing the proposed MOU between the the Regional Water Quality Control Board, Los Angeles Region, Region No. (4), and the City of Malibu.

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f. Comments of Los Angeles County/ William T. Fujioka, Los Angeles County Executive Officer, comments, dated July 12, 2010, filed with the State Water Resources Control Board on July 12, 2010, attached hereto and marked Exhibit “F” hereof.

g. Comments of Santa Monica – Malibu Unified School District (in Los Angeles County, State of California), by Assistant Superintendent Janece L. Maez, Business and Financial Services and Chief Financial Officer, Comments, dated July 12, 2010, filed with the State Water Resources Control Board on July 12, 2010, attached hereto and marked Exhibit “G” hereof.

h. Comments of Dr. Walt Keller, dated July 11, 2010, and filed July 11, 2010, attached hereto and marked Exhibit “H” hereof.

i. Comments of Sacramento County, dated November 11, 2011, and Sacramento County Board of Supervisors resolution opposing said proposed statewide OWTS regulations, attached hereto and marked Exhibit “I” hereof.

j. The first amended petition/complaint in Lavine v. SWRCB, Los Angeles Superior Court, Case No. BS 128989, filed June 1, 2011, and served personally on SWRCB and LARWQCB, on June 1, 2011, and June 3, 2011, respectively.

STATEMENT OF FACTS:

I hereby incorporate statements of fact contained in my earlier comments, attached hereto and marked Exhibits “D” and “E”, inclusive, hereof.

This administrative agency, the California State Water Resources Board, has proposed statewide draft On-site Wastewater Management Treatment Systems rules, as posted in revised draft proposed regulations, dated March 20, 2012, posted March 28, 2012. They exclude the Malibu Civic Center from their statewide applicability by specifically repeating and incorporating the outright ban on OWTS in the Malibu Civic Center without exception.

However, no proof exists that residential on-site wastewater treatment and management systems cause or are the sources of any water degradation, ground or other pollution in the Malibu Civic Center. There is no nexus between residential wastewater treatment/management systems and perceived manmade water or ground pollution in the Malibu Civic Center.

The SWRCB has failed to provide any evidence, site-specific to the Lavine 23900 Malibu Road property, that the Lavine Malibu Road property has caused or has been the source of any water contamination or ground contamination that the SWRCB is entitled to regulate. Its own test results and mapping, posted May 2, 2012, on its website establish no fault and no nexus between the allegations of harm and my Lavine 23900 Malibu Road property. Federal constitutional law requires that substantial evidence be site-specific to my property in proceedings that significantly adversely affect, impair, abridge, or destroy my significant vested rights, such as the subject proposed statewide OWTS regulations do. Nollan v. California Coastal

Commission, 483 US 825, at 841-842, 107 S.Ct. 3141, 3151, 97 L.Ed.2d 677 (1987), and Surfside Colony v. CCC, 226 Cal.App.3d 1260, at 1268. My property is significantly adversely affected, because the prohibition on on-site wastewater management has created a cloud on my property making it unsaleable and unmarketable. It has destroyed all economically viable use and economic benefit.

In or about August, 2010, the United States Geological Survey, in a study conducted by its staff lead investigator hydrologist John A. Izbicki, reported that its USGS team had investigated possible pollution and its possible sources at the Malibu Lagoon and Malibu Creek. Dr. Izbicki reported that the scientific evaluations concluded that NO human sourced contamination was found, but that rather enterococcus in the Malibu Lagoon or Malibu Creek was generated by plants and animals, particularly birds. See Exhibit "B" hereof.

This California State Water Resources Control Board's own reported test results of its own staff as reported and posted on the webpages for the proposed regulations earlier this week, on May 2, 2012, that are the subject of this Comment identify my Malibu Road property as being situated so that no nitrogen-compound impaired waters are within 2000 feet of it, and no pathogen-impaired waters are within 2000 feet of it, attached hereto and marked Exhibit "A" hereof.

During 1993, I obtained a permit from the City of Malibu, the municipal governing entity with jurisdiction and authority to regulate OWTSS, to install and operate an on-site waste disposal system, i.e., a septic system at my Malibu Road property, which a copy of which is attached hereto and marked Exhibit "C" hereof. And I installed one and have relied on that permit to use that OWTSS lawfully.

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Without credible, reliable evidence, unsubstantiated claims have been made by both SWRCB and LARWQC staff, and by various groups such as Heal The Bay and Baykeepers, that residential septic systems may be contaminating either ground water or coastal waters. The truth is that no nexus between residential septic systems, on the one hand, and ground water or coastal water pollution, on the other, in the Malibu Civic Center has been established. The contrary has been established by this SWRCB's own investigations as shown on the SWRCB website map attached hereto in Exhibit "C" hereof.

The credible identified sources of suspected contamination in the Malibu Lagoon and Malibu Creek are flora and fauna situated within the Malibu Lagoon and Malibu Creek, the Tapia sewage treatment plant in the Santa Monica Mountains, seepage from the Santa Monica Mountains, the watersheds in and flowing through them, pollution coming from the Santa Monica Bay, and possibly commercial operations. Most of these suspected contamination sources are outside the jurisdictional boundaries of the City of Malibu and outside the Malibu Civic Center septic ban district, and are not within the control of myself. A major portion are naturally occurring, not manmade.

I have not at any time been given notice of any violation, system failure, nuisance, or contamination at my Lavine Malibu Road property, whether involving pollution, water contamination or ground pollution, nor have I been notified that my activity operating an on-site

wastewater is unlawful or un-permitted.

3 → **The State Water Resources Control Board lacks direct condemnation authority or power.**

The California State Water Resources Board through its Los Angeles Regional Water Quality Control Board delegated to municipal governments the limited jurisdiction it had regarding the regulation and permitting of septic system use and operation, first by resolution and then by "memorandums of understanding". See Resolution Nos. 52-4, 53-6, R04-008, attached to my Comments, filed July 12, 2010, and attached hereto in Exhibit "D".

ARGUMENT AND COMMENTS OF JOAN C. LAVINE IN OPPOSITION TO PROPOSED "DRAFT" REGULATIONS FOR STATEWIDE REGULATION OF OWTS, DATED MARCH 20, 2012, AND POSTED ON THE INTERNET ON MARCH 28, 2012

4 → **1. The SWRCB lacks authority to enact statewide OWTS regulations, under Water Code, § 13291, because that code section omits guidelines and fails to establish policy criteria.**

Water Code, § 13291, constitutes an unconstitutional delegation of powers. An unconstitutional delegation of power occurs when the Legislature confers upon an administrative agency the unrestricted authority to make fundamental policy determinations. Kugler v. Yocum (1968) 69 Cal.2d 371; Clean Air Constituency Et Al., Petitioners, V. California State Air Resources Board, 11 Cal.3d 11 Cal. 3d 801, 816, 523 P.2d 617; 114 CR at 577, 586 (1974). No guidelines or policy provisions are established by the State Legislature in Water C., § 13291.

Under no circumstances does the SWRCB have the authority to set policy. The California State Legislature lacks constitutional authority to delegate the power to set policy to an administrative agency.

I therefore object to the attempt by this administrative agency to exercise or assert power or authority to set policy regarding OWTS as a null and void act.

5 → **2. I object to the invidiously discriminatory and uneven-handed treatment of property owners in the Malibu Civic Center area in the subject proposed statewide regulations by virtue of this SWRCB proposing to enact statewide OWTS regulations, but then not applying same rules and regulations in an even-handed manner to the Malibu Civic Center property, their owners, occupants and users, as the rest of the state.**

6 → **3. The proposed draft Wat. C. § 13291, regulations lack protocols or procedures for: giving property owners written, specific notice of wrong-doing and response timelines, the opportunity to be heard, and the right to evidentiary hearings, the right to discovery, the right to decisions based on substantial evidence, and the right to appeal.**

7 → **4. The proposed draft Wat. C. § 13291, regulations lack a property owner's, permittee's or citee's Bill of Rights enumerating their constitutional, statutory and Due Process rights.**

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5. This agency's staff advocating the elimination of OWTS and boards' panel members fail to deal at arm's length with one another in the rulemaking process. This agency's team participating in the advocacy and advancement of positions and agendas opposing OWTS and seeking to eliminate OWTS are not separated from those advising the boards. The SWRCB advocacy staff team in fact has drafted and controlled the preparation of the regulations designed to eliminate OWTS. This creates a conflict of interest so that the public and property owners, occupants and users affected by these proposed draft regulations regarding OWTS cannot receive a fair, impartial hearing or vote from a board panel that is dealing at arm's length with all participants and parties. It creates a means by which the SWRCB/LARWQCB advocacy team staff and staff counsel have attorney-client ex parte communications with the board members which cannot be accessed by the affected public.

I request that the SWRCB provide the identities of the team members and their capacities who have drafted the subject proposed statewide OWTS regulations and who participate in advancing and advocating their adoption.

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6. I contend that these proposed draft statewide OWTS regulations are inherently and as construed and applied confiscatory and are unconstitutional "Takings" in violation of the "Takings" and "Due Process" Clauses of the 5th and 14th Amendments, U.S. Constitution, and Article I, Section 19, California Constitution. Penn. Coal Co. v. Mahon, 260 U.S. 260 U.S. 393, 43 S.Ct. 158, 28 A.L.R. 1321, 67 L.Ed. 322 (1922); Nollan v. California Coastal Com'n, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987); Lucas v. So. Carolina Coastal Com., 505 U.S. 1003, 112 S.Ct. 2886, 34 ERC 1897, 120 L.Ed.2d 798 (1992); Hawthorne Sav. & Loan v. City of Signal Hill, 19 Cal. App. 4th 148; 23 Cal. Rptr. 2d 272 (1993).

I object that these regulations banning OWTS go "too far" under Penn. Coal Co. v. Mahon, 260 US 393 (1922). I object that these proposed regulations inherently and as construed and applied to my Lavine 23900 Malibu Road property destroyed and will in the future destroy all viable economic value, benefit and use of it.

Most property owners operating OWTS do so pursuant to lawful permits and in conformity with the laws governing their use. I have been issued a lawful permit by the authority municipal authority, the city of Malibu, to install, operate and use OWTS. See Exhibit "C". Without notice to me, without a statement to me of what, if anything, I have done wrong or have done that is a violation of the terms and conditions of the permit and operation of OWTS, without proof of my committing any wrong-doing, without an evidentiary hearing, the SWRCB and its Los Angeles Regional Board legislatively revoked my permit on which I have relied for about 17 years by enacting a ban on the OWTS for which I had obtained in 1993 a permit to install and operate it.

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7. I object that these statewide OWTS proposed regulations are too costly and place unreasonable, confiscatory tax and assessment burdens on the property owners, users and occupants. I object that this will cause many modest-means people to lose their homes. I object the potential effect of destroying substantial amounts of low-cost and moderate cost housing. These are unfunded and unreasonable mandates that are arbitrary, capricious, and lack good cause.

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I object to the effect of substantially undermining the tax base of Los Angeles County and the City of Malibu by destroying the viable economic benefit and use of the Malibu Civic Center, amounting to between \$5 billion and \$10 billion.

I object to the cost-shifting to residential property owners and the failure of this SWRCB to assume any and all costs of installing alternate compliant waste disposal systems.

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8. I also object that use of a quasi-legislative process is improper and that it has the prejudicial effect of confiscating and “Taking” valuable property interests. Quasi-adjudicatory procedure should be implemented instead.

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9. I object to this SWRCB not allowing participants reasonable opportunity to comment on and respond to any changes in these proposed regulations. If changes are made, I request the opportunity to be heard in response. Without an opportunity to participate in addressing changes, a fundamental denial of a fair hearing results where the resolution to be voted on is materially changed after the deadline for filing comments and mounting written challenges to it. It has in the past resulted in a prejudicial denial of fair notice of what is to be considered and voted on and a reasonable opportunity to be heard and to interpose an opposition to it in violation of procedural due process of law. Mullane v. Central Hanover Bank, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950); Due Process of Law Clauses, 5th and 14th Amendments, U.S. Constitution.

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10. I object to the unfair scheduling of multiple simultaneous and overlapping proceedings related to OWTS regulation, and deadlines giving insufficient time for consideration and preparation, so that individuals who wish to participate in the proceedings involved cannot effectively do so in order to protect their interests. This SWRCB agency and its Los Angeles Regional Water Quality Control Board have scheduled a hearing in Sacramento on May 2, 2012, a meeting and workshop on May 3, 2012, in Los Angeles, and the filing of these comments on May 4, 2012, by 12:00 noon PDT, in Sacramento. The wordy proposed regulations exceed 250 pages, and accompanying policy statement is an additional 52 pages. These multiple hearings and deadline are bunched this week so that no individual can cope with them effectively, and would need a team of attorneys and staff to do so. They require so much time and effort that an individual working full or part-time would not be able to participate. Hearings and deadlines were scheduled so that they were crowded into one week and in different locations several hundreds of miles from the hearings and filing locations. This is fundamentally unfair and denies the public the right to be heard. In addition, a hearing/trial on my writ application was scheduled for Monday, April 30, 2012, in Los Angeles.

I also object to the use of “drafts” and the failure of this SWRCB to post the actual proposed regulations and the actual proposed resolution and to allow for comment and participation on the actual proposals.

WHEREFORE, I, Joan C. Lavine, the undersigned property owner of the Lavine 23900 Malibu Road property, pray that the proposed statewide draft OWTS regulations be rejected. If they are enacted and adopted I request that they be modified so that my property is treated as a

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Tier “0” (zero) property and that the Members of this State Water Resources Quality Control Board, reject the total ban and prohibition of on-site waste management by opposing and voting “NO”.

Dated: May 4, 2012

Respectfully submitted,

JOAN C. LAVINE

Attorney at Law, California State Bar No. 048169

Owner, 23900 Malibu Road, Malibu, California 90265

EXHIBIT "A"



Is My Property Near a Nutrient- or Pathogen-Impaired Water Body?

NOTE: We recommend clearing your cache to see the most up-to-date changes on this page. Here are step-by-step guides for doing this in some popular web browsers:
[Firefox](#) [Internet Explorer 8](#) [Internet Explorer 7](#) [Google Chrome](#) [Safari](#)

Zoom to Regional Board:

Los Angeles (4)

Show RB

Zoom to county:

Los Angeles

Show county

Enter Your Address : 23900 Malibu Road

Locate

Switch Basemap

23900 Malibu Rd, Malibu, CA 90265

No nitrogen-compound impaired waters within 2000 ft. of this point.

No pathogen-impaired waters within 2000 ft. of this point.

What Does This Mean?

0 300 600ft

(v.1.1, 03/16/12)

EXHIBIT "B"

USE OF ISOTOPIC, GENETIC, AND CHEMICAL DATA TO EVALUATE THE SOURCE OF FECAL INDICATOR BACTERIA NEAR MALIBU, CALIFORNIA

John A. Izbicki, Carmen A. Burton, and Peter W. Swarzenski

Introduction

Each year, over 550 million people visit California's public beaches. To protect beachgoers from exposure to waterborne disease, California state law requires water-quality monitoring for fecal indicator bacteria (FIB), such as enterococci and *Escherichia coli* (*E. coli*), at beaches with more than 50,000 yearly visitors. FIB are used to assess the microbiological quality of water because, although not typically disease causing, they are correlated with the occurrence of certain waterborne diseases. Periodically, tests show that FIB concentrations exceed U.S. Environmental Protection Agency (EPA) public health standards for recreational water in Malibu Lagoon and at several Malibu beaches (fig. 1).



Figure 1. Selected sample locations, Malibu, California.

There are several potential sources of FIB to Malibu Lagoon and the nearby coastline including:

- Seepage from commercial and residential onsite sewage treatment systems that may enter the lagoon or near-shore ocean water through the groundwater system
- Discharge or runoff from commercial and residential developments into Malibu Creek and Malibu Lagoon.
- Bird and wildlife feces, either deposited directly into the lagoon or onto beaches, or washed into these areas by tides and storms.

Conclusions

For onsite wastewater treatment systems to be a source of FIB to Malibu Lagoon or the near-shore ocean, bacteria must first move through the groundwater system. Low FIB concentrations in wells having a high fraction of imported water suggest that this is not occurring. In addition, large changes in microbial populations suggest that bacteria are being removed by death or attenuation after discharge from treatment systems. Isotopic data were useful in estimating the fraction of wastewater in groundwater samples and to evaluate the timing of groundwater discharge to the near-shore ocean. In contrast to FIB, wastewater indicator compounds increase as the fraction of imported water in a sample increases - confirming the presence of wastewater in the system.

Birds in Malibu Lagoon, a potential source of fecal indicator bacteria, Malibu, California, July 2009

Overview of fecal indicator bacteria concentrations

More than 450 samples were collected from wells, Malibu Creek, Malibu Lagoon and the near-shore ocean as part of this study (fig. 1). Onsite sewage treatment systems, groundwater, and surface water including Malibu Creek, Malibu Lagoon, and near-shore ocean sites (Surfrider Beach and Malibu Colony beach) were sampled and analyzed for enterococci, *E. coli*, and total coliforms. Most samples were collected during the dry season (July 2009), and at the end of rainy season (April 2010).

Enterococci were found at the highest concentrations in samples taken from onsite treatment systems (fig. 2). Groundwater samples had the lowest concentrations, usually less than the detection limit, during both the dry and wet season. Enterococci concentrations in Malibu Lagoon were greater than enterococci concentrations in groundwater samples. Water carrying FIB from onsite wastewater treatment systems must pass through the groundwater system before infiltrating into the lagoon and near-shore ocean. Low enterococci concentrations, generally less than the detection limit, in water from wells suggest that FIB are not moving through the groundwater system, and that groundwater discharge may not be an important source of FIB to Malibu Lagoon or the near-shore ocean.

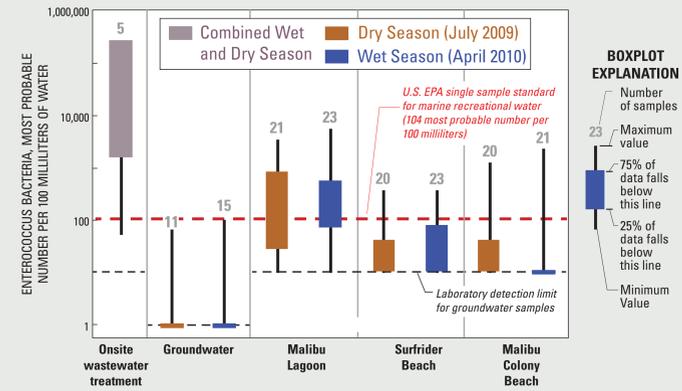
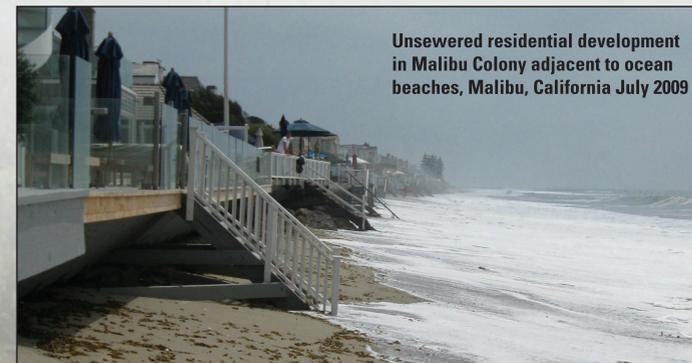


Figure 2. Enterococcus data from onsite wastewater treatment systems, groundwater, Malibu Lagoon and near-shore ocean, Malibu California, 2009-2010



Identification of wastewater and groundwater discharge

The naturally-occurring, stable isotopes of oxygen and hydrogen in the water molecule (oxygen-18 and deuterium, respectively) were used to determine the percentage of imported water that was used for water supply and then discharged as treated wastewater in a sample. This technique works because all the water used for public supply in the study area is imported from either northern California or the Colorado River and has an oxygen-18 and deuterium composition different from that of native water (fig. 3). Some groundwater samples contained as much as 70 percent treated wastewater, but did not contain detectable concentrations of FIB.

Radon-222 is a naturally occurring radioactive isotope that has high activity in groundwater and low activity in surface water. Radon-222 activity increases in surface water with increasing groundwater discharge. Increased radon-222 activity was used to evaluate changing FIB concentrations as groundwater discharge was occurring to Malibu Lagoon and the near-shore ocean. For example, in November 2009, there were small increases in enterococcus concentrations in the near-shore ocean at low tide as water from Malibu Lagoon discharged through the sand berm separating the lagoon from the ocean (fig. 4). In contrast, FIB concentrations remained below the detection limit as radon-222 activity increased and groundwater discharged at low tide adjacent to unsewered residential development in Malibu Colony.

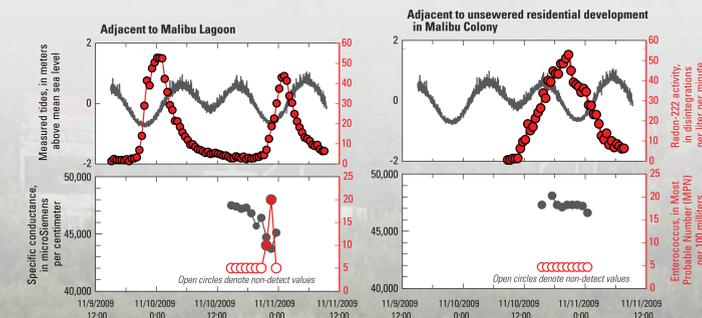


Figure 4. Tides, radon-222 activity, specific conductance, and enterococcus concentrations in the near-shore ocean adjacent to Malibu Lagoon, Malibu, California.

Genetic and chemical tracers of fecal indicator bacteria and wastewater

A combination of genetic, and chemical techniques were used with isotopic data to identify the source of FIB in groundwater, Malibu Lagoon, and the near-shore ocean. Terminal-Restriction Fragment Length Polymorphism (T-RFLP), uses restriction enzymes to cut DNA from microorganisms into fragments of different sizes known as amplicons. Microbial communities present in the discharge from onsite wastewater treatment systems and groundwater having as much as 70 percent wastewater have only 7 percent of amplicons present in both samples (fig. 5A and B). In contrast, as many as 30 percent of amplicons measured in samples from both kelp and the near-shore ocean were present in both samples (fig. 5D and E) consistent with possible contributions of FIB from kelp accumulated along the wrack line to the ocean at high tide.

Sixty nine organic compounds, including caffeine, fecal sterols, personal health-care products, and other compounds associated with human use, were analyzed. Indicators of human use were frequently detected in treated water from within onsite wastewater treatment systems and from sampled wells with a high percent of treated wastewater (fig. 6). However, these samples did not contain FIB. Although wastewater compounds are transported with the groundwater, FIB are removed.

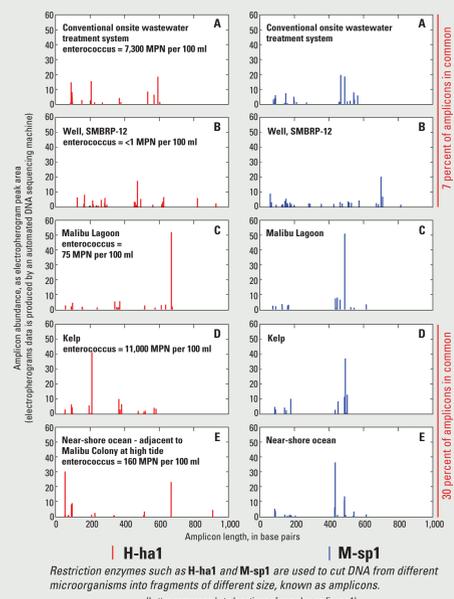


Figure 5. Selected T-RFLP amplicons from onsite wastewater treatment systems, a well having had fraction of treated wastewater in malibu lagoon, near Malibu California, July 2009.

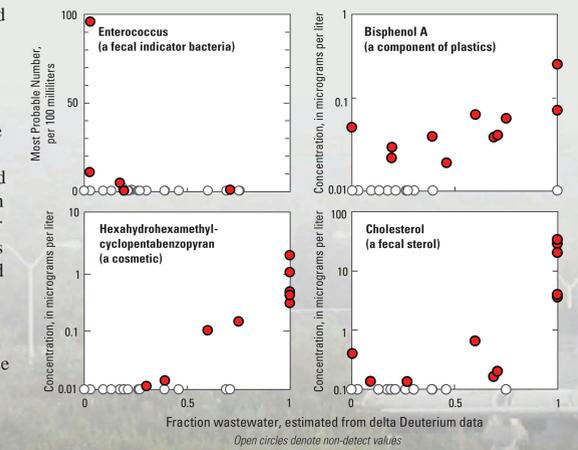


Figure 6. Enterococcus and selected wastewater indicator compounds in water from wells, as a function of the fraction wastewater, Malibu, California July, 2009 to April 2010.

EXHIBIT "C"

APPLICATION FOR SEWAGE DISPOSAL PERMIT

4 CITY OF MALIBU

FOR APPLICANT TO FILL IN (PRINT OR TYPE)

Building Address **23900 MALIBU RD.**
 Owner **JOAN G. LAVINE**
 Mail Address **Same**
 City **Malibu** Tel. No. _____
 Contractor **TBD**
 Address _____ Tel. No. _____
 City _____ Tel. No. _____
 State Lic. No. _____ Lic. Class _____

LICENSED CONTRACTOR'S DECLARATION

I hereby affirm that I am licensed under the provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.

License Class _____ License Number _____

Date _____ Contractor _____

OWNER-BUILDER DECLARATION

I hereby affirm that I am exempt from the Contractor's License Law for the following reason (Sec. 7031.5, Business and Professions Code):

- I, as owner of the property, or my employees with wages as their sole compensation, will do the work, and the structure is not intended or offered for sale (Sec. 7044, Business and Professions Code).
- I, as owner of the property, am exclusively contracting with licensed contractors to construct the project (Sec. 7044, Business and Professions Code).

I am exempt under Sec. B. & P. C. for this reason: Joan G. Lavine

Date October 5, 1992 Owner Joan G. Lavine

WORKERS' COMPENSATION DECLARATION

I hereby affirm that I have a certificate of consent to self-insure, or a certificate of Workers' Compensation Insurance, or a certified copy thereof (Sec. 3800, Lab. C.).

Policy No. _____ Company _____

Certified copy is hereby furnished. Certified copy is filed with the city building inspection department.

Date _____ Applicant _____

CERTIFICATE OF EXEMPTION FROM WORKERS' COMPENSATION INSURANCE

I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the Workers' Compensation Laws of California.

Date October 5, 1992 Applicant Joan G. Lavine

NOTICE TO APPLICANT: If, after making this Certificate of Exemption, you should become subject to the Workers' Compensation provisions of the Labor Code, you must forthwith comply with such provisions or this permit shall be deemed revoked.

CONSTRUCTION LENDING AGENCY

I hereby affirm that there is a construction lending agency for the performance of the work for which this permit is issued (Sec. 3097, Civ. C.).

Lender's Name _____ Lender's Address _____

This permit will expire if work is not started within **180** days of issuance or if the work is abandoned or suspended for **180** days. I certify that I have read this application and state that the above information is correct. I agree to comply with all city ordinances and state laws relating to building construction, and hereby authorize representatives of this city to enter upon the above-mentioned property for inspection purposes.

Joan G. Lavine Joanne October 5, 1992
 Signature of Applicant or Agent Date

Architect or Engineer	Lic. No.
Address	
City	Tel. No.
Applicant	Tel. No.
Address	
City	Zip
Legal Description	Lot No.
Block	Tract
Size of Lot	No. of Bldgs. Now on Lot
Use of Buildings	

Group	Bk	Map	Pg
CONNECTION DATA			
Station	Depth		
Manhole Reference		Upper	Lower
Y.	Type of Connection	P.L.	Length from M.L. to P.L.
Co. Imp. No.	Curb	P.C. No.	Job No.
Trunk Permit No.	Road Permit No.		
Affidavit	Waiver	Easement	Record. Instr. No.
			Date
Hwy. or St. Widening			
State Encroachment Permit No.			
Industrial Waste Approval			
Charges			
Connection Charge Fee			
Reimbursement Fee			
No.	Description of Work	Fee	
	House Sewer Connecting to Public Sewer		
	Septic Tank, Seepage Pit or Pit and/or Drainfield		
	House Sewer Connecting to Private Disposal System		
	Connect Additional Bldg. or Work to House Sewer		
1	Repair Seepage Pit, Drainfield Extrn, Cesspool, Drywell, Manhole Sewer or Disposal System	69.75	
	Permit	\$ 41.25	
	TOTAL FEE	\$111.00	

PLAN CHECK VALIDATION

CK. CASH M.O.
 PERMIT VALIDATION

10-5-92
 \$111.00 - SKM
 CK #1498 CASH
 M.O.

EXHIBIT "D"

From the Desk of Joan C. Lavine

Attorney at Law

9000 Sunset Blvd., Suite 1115

Los Angeles, California 90069, U.S.A.

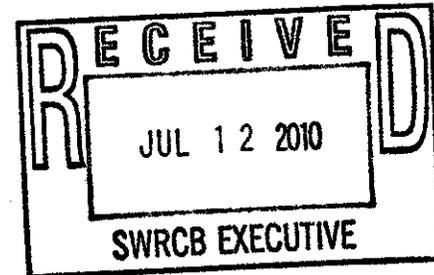
Office Phones: (213)627-3241; (310)652-2532

Fax Phone: (310)273-4924

E-mail addresses: JCLavine@aol.com OR FoodieJoan@gmail.com

July 9, 2010

Mr. Charles R. Hoppin, Chairman
State Water Resources Control Board
1001 "I" Street
Sacramento, Ca. 95814
Via Fax: 1-916-341-5620
Via E-mail to: commentletters@waterboards.ca.gov
Via USPS Express Mail



Attention: Jeanine Townsend, Clerk of the Board

TO MR. CHARLES R. HOPPIN, THE CHAIRMAN OF THE CALIFORNIA STATE WATER RESOURCES QUALITY CONTROL BOARD, AND TO THE RESPECTIVE MEMBERS OF SAID BOARD:

Re: COMMENT LETTER – MALIBU SEPTIC PROHIBITION (AMENDED)

Re: residential single-family dwelling zoned real property located at 23900 Malibu Road, Malibu, California 90265, Mapbook 4458, Page 007, Parcel 018, solely owned by Joan C. Lavine, individually, and located within the proposed Malibu Civic Center septic ban area, in California State Water Resources Quality Control Board Resolution No. R4-2009-007, passed by the Los Angeles Regional Water Resources Quality Control Board on November 9, 2009.

I, Joan C. Lavine, hereby respectfully submit my amended comments opposing the proposed Amendment to the Water Quality Control Plan for the Los Angeles Region (Basin Plan) To Prohibit On-Site Wastewater Disposal Systems in the Malibu Civic Center Area, as contained in California State Water Resources Quality Control Board Resolution No. R4-2009-007, passed by the Los Angeles Regional Water Resources Quality Control Board on November 9, 2009.

I hereby amend my original comments filed during June, 2010, before this State Board. I previously filed my original comments before this State Board on June 27, 2010, by E-Mail and by Fax, and on June 28, 2010, by delivery to the State Board's Clerk of a hard-copy and filing of same.

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LAVINE AMENDED COMMENT LETTER OPPOSING MALIBU SEPTIC PROHIBITION
STATE WATER RESOURCES QUALITY CONTROL BOARD RESOL. R4-2009-007

STATEMENT OF FACTS:

DESCRIPTION AND LOCATION OF SUBJECT LAVINE MALIBU ROAD PROPERTY WITHIN THE PROPOSED BAN ZONE: The undersigned property owner and objector Joan C. Lavine presently owns, and, at all times since 1971, has owned all right, title and interest in and to the fee simple rights in a residential real property, zoned R-1 for residential single-family dwellings, located at 23900 Malibu Road, Malibu, California 90265, Mapbook 4458, PAGE 007, Parcel 018. Hereinafter, the subject real property will be referred to as the "Lavine Malibu Road property".

This property owner Joan C. Lavine acquired the Lavine Malibu Road property from her Father Morris Lavine in or about 1971. Her Father Morris Lavine had purchased the property in or about 1945.

Said Lavine Malibu Road property is located in Malibu, California 90265, in the Malibu Civic Center area, to the south of Pacific Coast Highway, at the mouth of the Malibu Canyon, and on the beach front of the Malibu Colony, in an area known as the Malibu Colony outside the Colony gates.

Said Lavine Malibu Road property is located within the proposed California State Water Quality Control Board septic system ban district identified in California State Water Resources Quality Control Board Resolution No. R4-2009-007, passed by the Los Angeles Regional Water Resources Quality Control Board on November 9, 2009. Said property is subject to the proposed septic system ban in said Resolution R4-2009-007.

A single-family dwelling, in compliance with the designated R-1 zoning, exists on and occupies said property, and it has so existed and occupied it since about 1935. It has been used and occupied for its intended use as a single-family residence at all times since it was acquired by the Lavine family in or about 1945.

CONSTRUCTION AND OPERATION OF AN ON-SITE WASTE MANAGEMENT SYSTEM SINCE 1945 ON LAVINE MALIBU ROAD PROPERTY: At all relevant times mentioned herein since 1945, the municipal statutes, rules and regulations have authorized and permitted the lawful use and occupancy of the Lavine Malibu Road property, including, but not limited to the installation, use and operation of an on-site waste management system commonly known as a septic system. Thus, this property owner and objector Joan C. Lavine has at all relevant times held substantial vested real property interests in and to said Lavine Malibu Road property pursuant to said permitted construction at and use of said property.

From time to time, the property owners of the Lavine Malibu Road property, the undersigned Joan C. Lavine and her Father Morris Lavine, have obtained permits from the governing municipal agencies for the installation, upgrade, repair and operation of an on-site waste management system at the Lavine Malibu Road property. Pursuant to those permits and inspections by the duly authorized and duly acting building, health and safety officials, where required, the undersigned Joan C. Lavine and her Father Morris Lavine have installed, upgraded, repaired and operated an on-site waste management system known as a septic system.

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LAVINE AMENDED COMMENT LETTER OPPOSING MALIBU SEPTIC PROHIBITION
STATE WATER RESOURCES QUALITY CONTROL BOARD RESOL. R4-2009-007

MALIBU CIVIC CENTER LACKS A PUBLIC SEWER SYSTEM. NONE IS PLANNED: The Malibu Civic Center lacks a public sewer system available for residential property use on and in the vicinity of Malibu Road to the south of the Pacific Coast Highway.

No plans exist for the installation of a public sewer system by which residential property on or in the vicinity of Malibu Road, located to the south side of the Pacific Coast Highway, could be serviced or used presently or in the future.

As a consequence of there being no alternative waste management system(s) to the use of a septic system, either presently or in the planned future, the undersigned owner will be deprived of all beneficial, viable economic and practical use of her R-1 zoned Lavine Malibu Road property if the outright and total ban of septic systems in the Malibu Civic Center becomes law.

NO NOTICE HAS BEEN GIVEN TO LAVINE MALIBU ROAD PROPERTY OWNER JOAN C. LAVINE OF VIOLATIONS, DEFICIENCIES OR UPGRADE REQUIREMENTS REGARDING WASTE DISCHARGE AT THE LAVINE MALIBU ROAD PROPERTY. NOR HAS THIS PROPERTY OWNER BEEN GIVEN ANY OPPORTUNITY TO REMEDIATE IF ANY SUCH PROBLEMS DO EXIST.

Prior to the passage on November 9, 2009, by the Los Angeles Regional Water Quality Control Board, of the California State Water Resources Quality Control Board Resolution No. R4-2009-007, of the resolution banning use of septic systems in the Malibu Civic Center area, the undersigned property owner Joan C. Lavine was not in any way notified that her property impermissibly discharged waste, pollution or contaminants, violated any health, safety, environmental or clean water laws, or in any way was non-compliant with any law, rule or regulation over which the California State Water Resources Quality Control Board has jurisdiction. She has not been notified that her property in any way created or caused a nuisance. She has never been cited for any said potential hazards described herein and, in particular, in this paragraph. To the best of her knowledge, her Lavine Malibu Road property does not violate any applicable TMDLs, nor has she received notice of violation of any applicable TMDLs.

Prior to the passage on November 9, 2009, by the Los Angeles Regional Water Quality Control Board, of the California State Water Resources Quality Control Board Resolution No. R4-2009-007, of the resolution banning use of septic systems in the Malibu Civic Center area, the undersigned property owner was not in any way ordered to repair, remediate, cease and desist, correct, or bring her Lavine Malibu Road Property up to code. Thus, she has not been given the statutory and Due Process right to correct any perceived, unidentified deficiency so as to avoid her property being confiscated from her by an absolute ban on the use and operation of its septic system.

VALUATION OF THE SUBJECT PROPERTY BEFORE AND AFTER THE REGULATORY "TAKING": This undersigned property owner is of the opinion that the reasonable market value of her property would be about \$15,000,000 (Fifteen million dollars), but for the potential or actual total ban and prohibition of on-site waste management systems (septic systems) having the direct and proximate consequence of prohibiting all private residential use of her property.

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LAVINE AMENDED COMMENT LETTER OPPOSING MALIBU SEPTIC PROHIBITION
STATE WATER RESOURCES QUALITY CONTROL BOARD RESOL. R4-2009-007

Since the passage on November 9, 2009, by the Los Angeles Regional Water Quality Control Board, of the California State Water Resources Quality Control Board Resolution No. R4-2009-007, the resolution banning use of septic systems in the Malibu Civic Center area has substantially diminished the market value of the Lavine Malibu Road property. It will render said property substantially unmarketable and unsaleable at its reasonable market value by making it uninhabitable as of 2019. See Water C. § 13399.2.

SIGNIFICANT REDUCTION IN AVAILABLE RESIDENTIAL HOUSING AND CLOSING OF COMMERCIAL AND RECREATIONAL OPERATIONS BY SEPTIC BAN IN ENTIRE MALIBU CIVIC CENTER AREA: The Malibu Civic Center is a densely built residential and commercial hub in Malibu. The proposed Malibu Civic Center septic ban will have the practical direct and proximate consequence of removing all available Malibu residential housing units in that ban area, consisting of at least 400 residential units, some of which are multifamily units, and displacing several thousand people. It is estimated that about ten (10) percent of the City of Malibu's residents and occupants will lose their residential housing under such a ban and prohibition.

Among those residential properties that the septic system ban will affect is the removal of the Lavine Malibu Road property as available residential housing.

The Malibu Civic Center is a major commercial and recreational center, too. Most, if not all, commercial and recreational operations in the Malibu Civic Center use on-site waste management systems. Prohibiting septic system use in the entire Malibu Civic Center would shutter those commercial and recreational endeavors. The financial consequence would be a loss to the public and the community of the Malibu Lagoon, Malibu Surfrider Beach, Malibu Pier, Adamson House, the Malibu Shopping Plaza with a Ralphs Market, the only major supermarket within about 8 to 10 miles in easterly Malibu, and other shopping areas, to mention some of the lost tax revenue bases and recreational areas.

Los Angeles County officials notified Los Angeles Regional Board members during the November 9, 2009, hearing on Resolution No. R4-2009-007, that the proposed septic ban would cause it to close its county beaches in the ban area, and to be unable to provide emergency fire and paramedic services from the current Los Angeles County Fire Station 88 on Malibu Road within the septic ban district.

THE SEPTIC BAN WOULD CAUSE SIGNIFICANT REDUCTION IN THE MUNICIPAL, COUNTY AND STATE TAX BASES, BOTH FROM REAL PROPERTY TAXES AND FROM THE OPERATION OF COMMERCIAL BUSINESSES THAT GENERATE SALES AND OTHER TAX REVENUES.

By significantly diminishing the market value of the real properties in the ban area, and, by 2019, rendering them valueless, unsaleable and uninhabitable, a septic system ban will have the immediate impact of diminishing assessed valuations of all real property in the Malibu Civic Center and removing a substantial portion of assessed taxable valuation of occupied real property from the tax bases of the various government entities so that the City of Malibu and Los Angeles County would lose substantial real property tax revenue. The State of California will likewise

be impacted by a loss of sales tax revenue from the closure of commercial and recreational operations.

NO EVIDENCE WAS RECEIVED INTO THE RECORD AT THE NOVEMBER 9, 2010, REGIONAL BOARD HEARING THAT POLLUTION WAS/IS GENERATED AT THE UNDERSIGNED PROPERTY OWNER'S MALIBU ROAD PROPERTY OR ANY OTHER RESIDENTIAL PROPERTY IN THE PROPOSED BAN/PROHIBITION DISTRICT, THAT PRESENTLY OR CAN REASONABLY BE EXPECTED IN THE FUTURE TO CONTAMINATE WATERS. NO FINDINGS OF FACT SUPPORTING A CLAIM OF CONTAMINATION OR PROHIBITION DUE TO CONTAMINATION WERE MADE BY THE REGIONAL BOARD EITHER

Without credible, reliable evidence, unsubstantiated claims have been made that residential septic systems may be contaminating either ground water or coastal waters. The truth is that no nexus between residential septic systems on the one hand, and ground water or coastal water pollution on the other, in the Malibu Civic Center has been established.

The credible identified sources of suspected contamination in the Malibu Lagoon and Malibu Creek are the Tapia sewage treatment plant in the Santa Monica Mountains, seepage from the Santa Monica Mountains, the watersheds in and flowing through them, pollution coming from the Santa Monica Bay, and possibly commercial operations. Most of these suspected contamination sources are outside the jurisdictional boundaries of the City of Malibu and outside the Malibu Civic Center septic ban district. These mostly likely sources were supported by substantial evidence introduced by those in opposition to the resolution.

THE STATE WATER RESOURCES CONTROL BOARD LACKS CONSTITUTIONAL OR STATUTORY AUTHORITY TO PERMIT, REGULATE OR BAN SEPTIC SYSTEMS.

The State Water Resources Control Board lacks direct condemnation authority or power.

The California State Water Resources Board through its Los Angeles Regional Water Quality Control Board delegated to municipal governments the limited jurisdiction it had regarding the regulation and permitting of septic system use and operation, first by resolution and then by "memorandums of understanding". See Resolution Nos. 52-4, 53-6, R04-008.

**ARGUMENT AND COMMENTS OF JOAN C. LAVINE IN
OPPOSITION TO THE REGIONAL WATER QUALITY
CONTROL BOARD, RESOLUTION NO. R4-2009-007
(AMENDED):**

1. THE SEPTIC SYSTEM BAN AND PROHIBITION PROPOSED BY RESOLUTION NO. R4-2009-007, WHICH THE LOS ANGELES REGIONAL WATER RESOURCES QUALITY CONTROL BOARD VOTED ON AND PASSED ON NOVEMBER 9, 2009, ENTIRELY FAILS TO COMPLY WITH THE STATUTORY REQUIREMENTS,

CONDITIONS AND PREREQUISITES OF WATER C. § 13280, AND CONSTITUTIONAL RESTRICTIONS ON ITS EXERCISE OF ITS POLICE POWERS, REQUIRING IT TO ALLOW USE OF SEPTIC SYSTEMS WHERE WATER QUALITY CAN BE ATTAINED.

Water C. § 13280 provides:

§ 13280. Determination denying discharge of water from disposal systems; substantial evidence

A determination that discharge of waste from existing or new individual disposal systems or from community collection and disposal systems which utilize subsurface disposal should not be permitted shall be supported by substantial evidence in the record that discharge of waste from such disposal systems will result in violation of water quality objectives, will impair present or future beneficial uses of water, will cause pollution, nuisance, or contamination, or will unreasonably degrade the quality of any waters of the state.

The Regional Board did not receive one scintilla of evidence to support a determination that discharge of waste should not be permitted by the Lavine Malibu Road property. It, in fact, did not expressly make a determination that discharge of waste from the Lavine Malibu Road property disposal system will result in violation of water quality objectives, will impair present or future beneficial uses of water, will cause pollution, nuisance, or contamination, or will unreasonably degrade the quality of any waters of the state. And, as argued on below in argument section 3, no findings of fact to support such a determination were made by the Regional Board.

This Board's police power cannot be exercised to prohibit an activity where that activity can be regulated to eliminate the evil, harm or problem at issue, without entirely prohibiting it. San Diego TB v. City of East San Diego, 186 Cal. 252, 200 P. 393 (1921). The exercise of its police power to prohibit an activity, where regulation can reach the same goal and result, is arbitrary, capricious and unreasonable, and in violation of the guarantees of Due Process of Law under the 5th and 14th Amendments, U.S. Constitution, and California Constitution, Article I, Sections 7 and 19.

2. THE TOTAL SEPTIC SYSTEM BAN AND PROHIBITION PROPOSED BY RESOLUTION NO. R4-2009-007, AND THE HEARING, TRIAL AND DETERMINATIONS ON NOVEMBER 9, 2009, BEFORE THE LOS ANGELES REGIONAL WATER RESOURCES QUALITY CONTROL BOARD, HAVE FAILED TO COMPLY WITH THE STATUTORY CONDITIONS AND PREREQUISITES OF WATER C. § 13282 THAT WASTE DISCHARGES "SHALL BE PERMITTED SO LONG AS THE SYSTEMS ARE ADEQUATELY DESIGNED, LOCATED, SIZED, SPACED, CONSTRUCTED, AND MAINTAINED".

Water C. § 13282 provides in relevant part:

§ 13282. Design, construction and maintenance of systems; notice

(a) If it appears that adequate protection of water quality, protection of beneficial uses of water, and prevention of nuisance, pollution, and contamination can be attained by appropriate design, location, sizing, spacing, construction, and maintenance of individual disposal systems in lieu of elimination of discharges from systems, and if an authorized public agency provides satisfactory assurance to the regional board that the systems will be appropriately designed, located, sized, spaced, constructed, and maintained, the discharges shall be permitted so long as the systems are adequately designed, located, sized, spaced, constructed, and maintained.

The proposed ban totally prohibiting on-site residential waste management systems (septic systems) ignores the statutory requirement of Water C. § 13282, as well as the constitutional due process limits of the State and Regional Boards' police powers: That discharges be permitted 1) if water quality, protection and prevention of harm can be "attained by appropriate design, location, sizing, spacing, construction, and maintenance of individual disposal systems in lieu of elimination of discharges from systems, and 2) if an authorized public agency provides satisfactory assurance to the regional board that the systems will be appropriately designed, located, sized, spaced, constructed, and maintained".

By purporting to assert its police power to prohibit septic system usage by a total, outright ban, without first evaluating and determining whether the statutory criteria for water safety can be attained by appropriate design, location, sizing, spacing, construction, maintenance of individual disposal systems, the Los Angeles Regional Water Quality Control Board disregarded its obligations and responsibilities constrained by constitutional due process limits on its police powers and statutorily mandated by Water C. § 13282, to allow the use of septic systems where the statutory standards set forth in Water C. § 13282 are met.

The Los Angeles Regional Water Quality Control has exceeded its authority and has omitted to act when it should have or has acted in a manner contrary to law by resolving to ban and prohibit on-site wastewater disposal systems, i.e. septic systems, in the Malibu Civic Center rather than complying with the mandates of Water C. § 13282.

3. THE RESOLUTION'S PROPOSED TOTAL BAN AND PROHIBITION OF THE USE OF ON-SITE WASTE MANAGEMENT SYSTEMS IS NOT SUPPORTED BY EVIDENCE OR FINDINGS OF FACT THAT ESTABLISH A PROXIMATE CAUSAL CONNECTION, THAT IS, A NEXUS, BETWEEN WATER QUALITY IMPAIRMENT AND A POLLUTING OR CONTAMINATING RESIDENTIAL ON-SITE WASTE SYSTEM. THUS, NO LEGAL BASIS COMPORTING WITH DUE PROCESS OF LAW IS ESTABLISHED FOR ON-SITE SYSTEMS TO BE ENTIRELY BANNED AND PROHIBITED.

No evidence has been introduced into the record that the on-site wastewater disposal system, a septic system, on the Lavine Malibu Road property has polluted or otherwise

contaminated the area. No proof of violation of water quality standards has been offered or introduced into evidence. No proof of violation of water quality goals or objectives has been offered or introduced into evidence. No proof of violation or lack of compliance with TMDLs was introduced into the record. No proof of nuisance has been offered or introduced into the record. There is no factual basis, and, thus, no causal connection or nexus, between unsubstantiated allegations of existence of pollution or contamination of ground or waters around it, particularly as to the Lavine Malibu Road property, and alleged impairment of water quality or water quality goals. There were no findings made, either, of any such violations or lack of compliance.

The proposed septic system ban and prohibition therefore lacks a factual or legal basis, and lacks findings of same, to ban and prohibit the use on-site waste management commonly called septic system in the Malibu Civic Center area. See Southern California Edison v. State Board, 116 Cal.App.3d 751, 172 CR 306 (1981, 4th Dist.).

4. THE PROPOSED OUTRIGHT, UNCONDITIONAL, COMPLETE SEPTIC SYSTEM BAN TO BE PUT INTO EFFECT FOR THE MALIBU CIVIC CENTER, WHILE AREAS IN RIVERSIDE COUNTY ARE ALLOWED TO CONTINUE THE USE OF SEPTIC SYSTEMS IF ALTERNATIVE PUBLIC SEWER SYSTEMS DO NOT EXIST, IS INVIDIOUSLY DISCRIMINATORY AND UNEVEN-HANDED. MALIBU PROPERTY OWNERS ARE THUS DENIED THE EQUAL APPLICATION AND EQUAL PROTECTION OF THE LAW IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS, U.S. CONSTITUTION BY THIS UNEQUAL TREATMENT.

Real property interests in the Malibu Civic Center are entitled to be treated and regulated by the same standards, rules and regulations and in the same fair and equitable manner as those in the Palm Springs area in the Mission Creek Aquifer and Desert Hot Springs Aquifer, where septic systems are to be outlawed only on the condition that a public sewer system is in place at the time of the ban going into effect.

Although an outright, unconditional, complete prohibition on the use of septic systems is proposed for the Malibu Civic Center where there is no alternative waste management system, the state Legislature has permitted the continued operation of septic systems in Riverside County if no available alternative exists there. See Water C. § 13281(b)(1), providing:

(b)(1) To the extent that resources are available for that purpose, the regional board shall prohibit the discharge of waste from existing or new individual disposal systems on parcels of less than one-half acre that overlie the Mission Creek Aquifer or the Desert Hot Springs Aquifer in Riverside County, if a sewer system is available.

Like areas of Riverside County exempted by Water C. § 13281(b)(1), the Malibu Civic Center does not have the alternative of a public sewer system into which this property owner's property can be connected. None is proposed or planned. It is respectfully submitted that property interests in the Malibu Civic Center, including this opposing property owner's Lavine Malibu Road property, are entitled to the same even-handed treatment and regulatory standard of continued use of septic systems as those similarly situated in the Mission Creek Aquifer or the

Desert Hot Springs Aquifer in Riverside County that lack a public sewer system.

Outright prohibition of on-site wastewater disposal systems in the entire Malibu Civic Center area is disproportionately harsh, and this disproportionate treatment of similarly situated Malibu property owners violates the Malibu Civic Center property owners' rights to the Equal Application and Equal Protection of the Laws, guaranteed by the 5th and 14th Amendments, U.S. Constitution, and Article I, Section 1, California Constitution.

5. THE STATE WATER RESOURCES QUALITY CONTROL BOARD LACKS DIRECT CONDEMNATION OR EMINENT DOMAIN AUTHORITY.

The State Water Resources Quality Control Board's legislatively authorized administrative authority is limited to permitting and regulating authority over the use of on-site waste systems, known as septic systems. The California State Water Resources Quality Control Board lacks statutory or delegated authority to completely outright ban septic systems in a manner that denies all reasonable viable, beneficial economic use of the property, because it does not have direct eminent domain or direct condemnation authority. Thus, California State Water Resources Quality Control Board would exceed its jurisdiction and act without jurisdiction by banning the use of septic systems in the Malibu Civic Center.

6. THE STATE LEGISLATURE HAS EXPRESSLY LIMITED THE ENFORCEMENT AUTHORITY OF THE STATE WATER RESOURCES CONTROL BOARD AND ITS REGIONAL BOARDS OVER MINOR VIOLATIONS, RANGING FROM ORDERING REPAIRS TO CIVIL PENALTIES. WATER C. § 13399.2.

Banning septic system use and operation is outside the scope of their law enforcement authority to regulate minor violations granted the state and regional boards. Water C. § 13399.2 provides in pertinent part:

§ 13399.2. Detection of violation; issuance of notice to comply; time for compliance; appeal; failure to comply; contents of notice; civil penalty

(a) An authorized representative of the state board or regional board, who, in the course of conducting an **inspection**, detects a **minor violation** shall issue a **notice** to comply before leaving the site at which the **minor violation** is alleged to have occurred if the authorized representative finds that a **notice** to comply is warranted.

(b) A person who receives a notice to comply pursuant to subdivision (a) shall have the period specified in the notice to comply from the date of receipt of the notice to comply in which to achieve compliance with the requirement cited on the notice to comply. Within five working days of achieving compliance, the person who received the notice to comply shall sign the notice to comply, and return it to the representative of the state board or regional board, stating that the person has complied with the notice to comply. A false statement that compliance has been

achieved is a violation of this division pursuant to subdivision (a) of Section 13268, Section 13385, or subdivision (e) of Section 13387.

(c) A single **notice** to comply shall be issued for all **minor violations** cited during the same **inspection** and the **notice** to comply shall separately list each cited **minor violation** and the manner in which each **minor violation** may be brought into compliance.

d) A **notice** to comply shall not be issued for any **minor violation** that is corrected immediately in the presence of the **inspector**. Immediate compliance in that manner may be noted in the **inspection** report, but the person shall not be subject to any further action by the representative of the state board or regional board.

(e) Except as otherwise provided in subdivision (g), a notice to comply shall be the only means by which the representative of the state board or regional board shall cite a minor violation. The representative of the state board or regional board shall not take any other enforcement action specified in this division against a person who has received a notice to comply if the person is in compliance with this section.

This undersigned property owner objects that a septic system ban prohibiting all use of on-site waste management directed at her property and the entire Malibu Civic Center far exceeds the statutory authority and police powers and jurisdiction of the State Water Resources Control Board or regional boards to obtain compliance with minor violations by the giving of a notice to comply pursuant to Water C. § 13399.2. Said boards exceed their jurisdiction to act and act without jurisdiction by banning septic systems where their enforcement authority is limited by statute as set forth hereinabove.

This proposed total, complete ban prohibiting the use and operation of a duly permitted septic system, without notice of deficiencies, without opportunity to remediate, and in the absence of alternative waste management systems, has the practical effect of a denying of all private economically viable use of the real property as of 2019, and has drastically diminished its marketability by destroying its fee simple title and reducing it to a term of years. This is an impermissible regulatory "Taking" under the Due Process Clause of the Fifth and Fourteenth Amendments, U.S. Constitution. Lucas v. South Carolina Coastal Council, 505 US 1003, 120 L.Ed.2d 798, 112 S.Ct. 2886 (1992); Hawthorne Sav. & Loan v. City of Signal Hill, 19 Cal.App.4th 148 (1992).

7. THE STATE WATER RESOURCES BOARD AND ITS LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD, CONTRARY TO THEIR STATUTORY OBLIGATIONS UNDER WATER C. § 13399.2, HAVE FAILED TO GIVE THIS PROPERTY OWNER NOTICE OF ANY DEFICIENCIES OR A FAIR AND REASONABLE OPPORTUNITY FOR HER TO REMEDIATE ANY PERCEIVED DEFICIENCIES. A PROPOSED TOTAL BAN PROHIBITING ENTIRELY THE USE OF HER SEPTIC SYSTEM WITHOUT FAIR OR ANY NOTICE TO THIS PROPERTY OWNER AND A REASONABLE OPPORTUNITY FOR HER TO COMPLY WITH ANY DEFICIENCIES IS CONFISCATORY,

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LAVINE AMENDED COMMENT LETTER OPPOSING MALIBU SEPTIC PROHIBITION
STATE WATER RESOURCES QUALITY CONTROL BOARD RESOL. R4-2009-007

ARBITRARY AND CAPRICIOUS, AND IS A COMPENSABLE "TAKING" UNDER THE FIFTH AND FOURTEENTH AMENDMENTS, U.S. CONSTITUTION. THESE PER SE PREJUDICIAL DENIALS OF HER STATUTORY AND FEDERAL DUE PROCESS RIGHTS DEPRIVE THIS STATE BOARD OF THE AUTHORITY TO TAKE ACTION(S) PROVIDED FOR BY THE RESOLUTION R4-2009-007.

This property owner has not been given notice of any deficiencies regarding septic system operation and use at her Lavine Malibu Road property. She has not been given a fair and reasonable opportunity to remediate any perceived deficiencies. Failure to give notice and opportunity to repair and remediate perceived or alleged pollution before depriving this property owner of all reasonable viable economic benefit to her substantial vested property rights violates this property owner's Due Process rights to fair notice and a reasonable opportunity to be heard, is confiscatory, arbitrary and capricious, and is in violation of the "takings" and "due process" clauses of the Fifth and Fourteenth Amendments, U.S. Constitutions. Hawthorne Sa. & Loan v. City of Signal Hill, 19 Cal.App.4th 148, 23 Cal.Rptr.2d 272 (1993, 2nd Dist.).

Not only do the state board and regional board lack authority to outright ban and prohibit the use and operation of all septic systems in an area as articulated herein and thus exceed their jurisdiction to act and act without jurisdiction, but said boards have failed to comply with Water C. § 13399.2, requiring that they give notice of any deficiencies regarding septic system operation and use at the Lavine Malibu Road property. Owner Joan Lavine has not been given a fair and reasonable opportunity to remediate any perceived deficiencies. Failure to give notice and opportunity to repair and remediate perceived or alleged pollution before depriving this property owner of all reasonable viable economic benefit to her substantial vested property rights violates this property owner's Due Process rights to fair notice and a reasonable opportunity to be heard, is confiscatory, arbitrary and capricious, and constitutes regulatory "taking" in violation of the "Takings" and "Due Process" clauses of the Fifth and Fourteenth Amendments, U.S. Constitutions. Hawthorne Sav. & Loan v. City of Signal Hill, 19 Cal.App.4th 148, 23 Cal.Rptr.2d 272 (1993, 2nd Dist.). Lucas v. South Carolina Coastal Council, 505 US 1003, 120 L.Ed.2d 798, 112 S.Ct. 2886 (1992).

8. THE WATER QUALITY CONTROL BOARD RESOLUTION NO. R4-2009-007, PREJUDICIALLY VIOLATES WATER C. § 13291.7 BY INTERFERING WITH THE JURISDICTION OF MUNICIPALITIES OVER LAND USE REGULATION.

The California State Water Resources Board through its Los Angeles Regional Water Quality Control Board delegated any jurisdiction it had regarding the regulation or permitting of septic system use and operation to municipal governments, first by resolution and then by "memorandums of understanding". This goes back to years 1952 and 1953: State Water Resources Regulations Nos. 52-4 and 53-6; and Regulation No. R04-008 enacted in 2004. The current "Basin Plan" for the Los Angeles Regional Water Quality Control Board was enacted in 1994. See Basin Plan pages 4-17 and 4-46 to 4-47 referring to septic systems.

The California Constitution and the California Legislature have also established jurisdiction in municipal government to regulate land use. Calif. Constitution, Art. 11, Sec. 7.

The California State Water Resources Board and its Los Angeles Regional Water Quality Control Board are prohibited by California legislation, Calif. Water C. 13291.7, from interfering with land use regulation and jurisdiction of municipalities. By purporting to assert jurisdiction and authority by outright banning the use of septic systems as on-site waste disposal systems, it does just that: it interferes with the jurisdiction of municipalities over land use regulation by usurping the authority of municipal entities to regulate land use regarding waste management.

9. IN THE ABSENCE OF UNIFORM STATEWIDE STANDARDS AND REGULATIONS REQUIRED BY WATER C. § 13291(a) TO HAVE BEEN ENACTED BY THIS STATE BOARD, ANY EXISTING NON SELF-EXECUTING STATUTORY OR REGULATORY AUTHORITY WHICH LEGISLATIVELY OR AS LAW ENFORCEMENT, REGULATES BY PROHIBITING THE USE OF SEPTIC SYSTEMS, IS INOPERATIVE.

In the early part of this decade, in year 2000, proposed legislation by the California Legislature in AB 885/SB 290, was passed and put into effect, codified as California Water Code, §§ 13290 and 13291. Water C. § 13291 requires the California State Water Resources Board to have enacted statewide uniform standards and regulations for permitting and regulating "on-site waste management systems". Those enabling regulations and standards have not been enacted to date. Legislation and administrative provisions, obviously not self-executing, for the permitting and regulation of septic systems under the Water Code are consequently inoperative and unenforceable due to the lack of these enabling uniform standards and regulations.

Where the State Water Resources Control Board and its Regional Boards assert perceived power without lawful grant of authority to do so, they have usurped authority where none resides in them. By their usurpation they act without jurisdiction and in excess of it. Assertion of naked power without constitutional and statutory grant of authority is totalitarian and undemocratic, and violates both procedural and substantive Due Process of Law, guaranteed by the 5th and 14th Amendments, U.S. Constitution.

10. AMENDMENT OF THE BAN RESOLUTION R4-2009-007, AFTER THE REGIONAL BOARD'S COMMENT AND FILING DEADLINE, WHILE IT WAS PENDING BEFORE THE LOS ANGELES REGIONAL BOARD, PREJUDICIALLY DENIED THOSE OPPOSING IT A REASONABLE OPPORTUNITY TO BE HEARD IN VIOLATION OF DUE PROCESS OF LAW. On October 27, 2009, after the time for comment was closed, the pending proposed amendment scheduled for hearing and vote before the Los Angeles Regional Water Quality Control Board, on November 5, 2009, was itself amended. The Regional Board nevertheless refused to permit further comment in opposition or otherwise after the original deadline. This is a fundamental denial of a fair hearing where the resolution to be voted on was materially changed after the deadline for filing comments and mounting written challenges to it. It resulted in a prejudicial denial of fair notice of what to be considered and voted on and a reasonable opportunity to be heard and to interpose an opposition to it in violation of procedural due process of law. Mullane v. Central Hanover Bank, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950); Due Process of Law Clauses, 5th and 14th Amendments, U.S. Constitution.

The November 9, 2009, Los Angeles Regional Board hearing was managed in such a manner that most property owners were denied a fair opportunity to be heard orally. Several

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LAVINE AMENDED COMMENT LETTER OPPOSING MALIBU SEPTIC PROHIBITION
STATE WATER RESOURCES QUALITY CONTROL BOARD RESOL. R4-2009-007

hundred persons appeared at the one-day hearing, and many asked to speak. Individual owners were given less than five minutes to speak to protect their homes, and their oral testimony and offering of exhibits during the hearing were rejected and not made a part of the record as "untimely". The regional board should have scheduled several hearings over several days so as to accommodate all those property owners wanting to be heard.

The regional board generally rejected exhibits offered by commenting witnesses to be introduced into the record at the November 9, 2009, hearing in violation of the rights of those witnesses to be heard and to have access to the board with rebutting evidence.

CONCLUSION: The proposed Resolution No. R4-2009-007 would constitute such complete prohibition on the use of this opposing property owner's Lavine Malibu Road property that the prohibition would deny all economically beneficial or productive use of this property owner's land and therefore would be a regulatory taking in violation of the "takings" and "due process" clauses of the Fifth and Fourteenth Amendments, U.S. Constitution.

The proposed septic system ban and prohibition contained in the pending resolution to amend Los Angeles Regional Water Quality Control Board regulations, Resolution No. R4-2009-007, is inherently and as construed and applied to this property owner and her property located at 23900 Malibu Road, Malibu, California 90265, confiscatory, arbitrary and capricious, and constitutes an illegal "taking" of the undersigned owner's real property in violation of the Takings and Due Process of Law Clauses of the Fifth and Fourteenth Amendments, U.S. Constitution, the California Constitution, Article I, Section 19, and the State of California eminent domain statutes beginning at CCP § 1230.020, et seq. Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 112 S.Ct. 2886 (1992).

The November 9, 2009, Los Angeles Regional Water Quality Control Board vote to approve the septic system ban and prohibition is void for all of the above reasons.

WHEREFORE, Joan C. Lavine, the undersigned property owner of the Lavine 23900 Malibu Road property, within the proposed septic system ban zone, prays that the Members of this State Water Resources Quality Control Board, reject the total ban and prohibition of on-site waste management by opposing and voting "NO" on the proposed resolution, R4-2009-007.

Dated: July 9, 2010

Respectfully submitted,

JOAN C. LAVINE
Owner, 23900 Malibu Road, Malibu, California
Attorney at Law, California State Bar No. 048169

EXHIBIT "E"

From the Desk of Joan C. Lavine

Attorney at Law
9000 Sunset Blvd., Suite 1001
Los Angeles, California 90069, U.S.A.
Office Phones: (213)627-3241; (310)652-2532
Fax Phone: (310)273-4924
E-mail address: JCLavine@aol.com

HAND DELIVERED

CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD
LOS ANGELES REGION

2011 JUN 30 PM 10 51

RECEIVED

Thursday, June 30, 2011

TO THE LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD, AND TO
THE MEMBERS THEREOF

Attention: Dr. Eric Wu, Chief of Groundwater Permitting Unit
Attention: Clerk, Los Angeles Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, Ca. 90013
E-Mail: ewu@waterboards.ca.gov

Re: June 21, 2011, "Tentative Memorandum of Understanding With City of Malibu on the
Malibu Civic Center Prohibition and Opportunity For Public Comment", dated June 21, 2011,
(17 pages) and the "Tentative" resolution, dated June 21, 2011, in regard thereto.

Dear Sirs and Madams of the Los Angeles Regional Water Quality Control Board:

I hereby submit my comments OPPOSING the "Tentative Memorandum of
Understanding With City of Malibu on the Malibu Civic Center Prohibition and Opportunity For
Public Comment", dated June 21, 2011, (17 pages) and the "Tentative" Resolution, dated June
21, 2011, in regard thereto, as follows.

1. No causal connection exists between Malibu Civic Center residential septic systems and
pollution of or toxic waste discharge into water or ground within the Malibu Civic Center
area.

City of Malibu scientific studies prove that NO pollution, contamination or degradation
of ground, water or air comes from residential septic systems in the Malibu Civic Center.
Those studies completely exonerate residential septic systems as a cause or source of
water degradation. See Izbicki chart attached hereto as Exhibit "C" and incorporated
herein by reference as thought fully set forth herein.

This LA Regional Water Quality Control Board itself has not conducted scientific
evaluations that would provide proof one way or the other as to whether a nexus exists
between residential septic systems and degradation of water or ground in the Malibu
Civic Center.

From the Desk of Joan C. Lavine

Attorney at Law

9000 Sunset Blvd., Suite 1001

Los Angeles, California 90069, U.S.A.

Office Phones: (213)627-3241; (310)652-2532

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E-mail address: JCLavine@aol.com

Thursday, June 30, 2011

TO THE LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD, AND TO
THE MEMBERS THEREOF

Attention: Dr. Eric Wu, Chief of Groundwater Permitting Unit
Attention: Clerk, Los Angeles Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, Ca. 90013
E-Mail: ewu@waterboards.ca.gov

Re: June 21, 2011, "Tentative Memorandum of Understanding With City of Malibu on the Malibu Civic Center Prohibition and Opportunity For Public Comment", dated June 21, 2011, (17 pages) and the "Tentative" resolution, dated June 21, 2011, in regard thereto.

Dear Sirs and Madams of the Los Angeles Regional Water Quality Control Board:

I hereby submit my comments OPPOSING the "Tentative Memorandum of Understanding With City of Malibu on the Malibu Civic Center Prohibition and Opportunity For Public Comment", dated June 21, 2011, (17 pages) and the "Tentative" Resolution, dated June 21, 2011, in regard thereto, as follows.

1. No causal connection exists between Malibu Civic Center residential septic systems and pollution of or toxic waste discharge into water or ground within the Malibu Civic Center area.

City of Malibu scientific studies prove that NO pollution, contamination or degradation of ground, water or air comes from residential septic systems in the Malibu Civic Center. Those studies completely exonerate residential septic systems as a cause or source of water degradation. See Izbicki chart attached hereto as Exhibit "C" and incorporated herein by reference as thought fully set forth herein.

This LA Regional Water Quality Control Board itself has not conducted scientific evaluations that would provide proof one way or the other as to whether a nexus exists between residential septic systems and degradation of water or ground in the Malibu Civic Center.

This LA Regional Water Board has acknowledged it has no facts regarding the Lavine Malibu Road property specifically, which is about a mile west of the Malibu Lagoon, Cross Creek

2. Because no causal connection exists between the Malibu Civic Center residential septic systems, removing residential septic systems as the means of waste management cannot conceivably solve whatever pollution problems exist that may be coming from entirely unrelated other sources.

Those other sources are likely to be non-human animal and plant based, disbursal by the Las Virgenes Water District's Tapia Treatment Plant in Calabassas of its partially treated wastewater, and commercial businesses in close proximity to the Malibu Lagoon, Malibu Surfrider Beach and Malibu Pier and Malibu Creek. The Malibu areas listed in this paragraph are at least a mile away from the Lavine property, and up to three to four miles away from other residential properties in the septic ban zone. The Tapia Treatment Plant is located about 10 to 15 miles north of Malibu, over the Santa Monica Mountains and is entirely outside both the septic ban zone and the City of Malibu.

The proposed "solution" of routing sewage across the Santa Monica Mountains to the Tapia Treatment Plant, frequently fined for its sewage spills and water degradation as a known polluter and "discharger", is simply not a real remedy to the perceived issues and problems.

The June 21, 2011, posted proposed MOU embraces a quasi-legislative means of addressing the legal issues and problems, which is not permitted under California law and materially, substantially violates it. Both the Los Angeles Regional Water Quality Control Board and the City of Malibu are required to use quasi-judicial processes as both the amendment to the LA Regional Basin Plan and the MOU at bar are quasi-judicial acts. See Horn v. Ventura County, 24 Cal.3d 605, 156 CR 718 (1979).

Posting the MOU online on a website is constitutionally inadequate notice of the pending June 21, 2011, posted proposed MOU in prejudicial violation of Due Process of Law as guaranteed by the 5th and 14th Amendments, U.S. Constitution. Just ten (10) days within which to file comments opposing the pending proposed MOU at bar between June 21, 2011, at 4:15 p.m. and July 1, 2011, at 5:00 p.m., and a hearing on July 14, 2011, about fifty miles north of Malibu in Simi Valley are each constitutionally inadequate and unreasonable notice and an inadequate and unreasonable opportunity to be heard in prejudicial violation of Due Process of Law.

3. The currently proposed Memorandum of Understanding (MOU), posted on the LA Regional Water Board's on June 21, 2011, at about 4:15 p.m. PDT, is an incoherent, unenforceable agreement, with loopholes and escape clauses that make it illusory. It appears to materially vary both boundaries and terms and conditions from the LA Regional Basin Plan amendment which it purports to implement.
4. Although unenforceable and impractical, the septic ban in the LA Regional Basin amendment, Resolution R4-2009-007 and State Water Board Resolution 2010-0045, nevertheless creates a cloud over the properties in the Malibu Civic Center ban zone, that has already devaluated the residential properties and has and will continue to cause

egregious, extensive financial harm to the property owners without consideration to the monumental economic hardship it has visited on them. Both the LA Basin Plan amendment and this MOU fail to address and resolve the severe adverse financial impact on the residential property owners.

5. The political reality of the practical effect and function of the pending MOU released for review on June 21, 2011, and the septic ban it purports to implement as a remedy, is actually that the goal and result of the septic ban and this MOU are to function as cost-shifting in an attempt to force residential property owners to bear the burden of expenses of installing treatment plants for the benefit of commercial and developer interests.

It has the additional improper, illegal payoff of devaluating what had been very valuable and desirable real estate so that it can be bought at fire sale prices.

I incorporate herein by reference as though fully set forth herein my previous comments and petition for writs and complaint for inverse condemnation, as follows:

1. My Comments, dated July 9, 2010, filed July 12, 2011, before the State Water Resources Control Board, attached hereto and marked Exhibit "A", hereof.
2. My Comments, filed on June 27, 2011, before the City of Malibu, attached hereto and marked Exhibit "B", hereof.
3. The Izbicki chart prepared in or about August, 2010, attached hereto and marked Exhibit "C", hereof.
4. My first amended petition for writs and in inverse condemnation, Lavine v. State Water Quality Control Board, LASC BS 128989, filed June 1, 2011, a copy of which was hand-delivered to your offices and received by attorney Sarah Olinger on June 1, 2011.

I urge you to VOTE NO on the pending resolution (unnumbered) and to thereby REJECT the pending proposed MOU for the for foregoing reasons. Thank you.

Very truly yours,

JOAN C. LAVINE
Property Owner of 23900 Malibu Road, Malibu, California 90265

Transmitted via hand-delivery and via E-mail.

EXHIBIT "A"

From the Desk of Joan C. Lavine

Attorney at Law

9000 Sunset Blvd., Suite 1115

Los Angeles, California 90069, U.S.A.

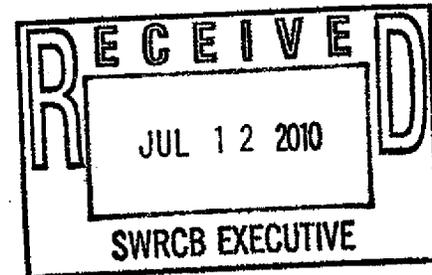
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Fax Phone: (310)273-4924

E-mail addresses: JCLavine@aol.com OR FoodieJoan@gmail.com

July 9, 2010

Mr. Charles R. Hoppin, Chairman
State Water Resources Control Board
1001 "I" Street
Sacramento, Ca. 95814
Via Fax: 1-916-341-5620
Via E-mail to: commentletters@waterboards.ca.gov
Via USPS Express Mail



Attention: Jeanine Townsend, Clerk of the Board

TO MR. CHARLES R. HOPPIN, THE CHAIRMAN OF THE CALIFORNIA STATE WATER RESOURCES QUALITY CONTROL BOARD, AND TO THE RESPECTIVE MEMBERS OF SAID BOARD:

Re: COMMENT LETTER – MALIBU SEPTIC PROHIBITION (AMENDED)

Re: residential single-family dwelling zoned real property located at 23900 Malibu Road, Malibu, California 90265, Mapbook 4458, Page 007, Parcel 018, solely owned by Joan C. Lavine, individually, and located within the proposed Malibu Civic Center septic ban area, in California State Water Resources Quality Control Board Resolution No. R4-2009-007, passed by the Los Angeles Regional Water Resources Quality Control Board on November 9, 2009.

I, Joan C. Lavine, hereby respectfully submit my amended comments opposing the proposed Amendment to the Water Quality Control Plan for the Los Angeles Region (Basin Plan) To Prohibit On-Site Wastewater Disposal Systems in the Malibu Civic Center Area, as contained in California State Water Resources Quality Control Board Resolution No. R4-2009-007, passed by the Los Angeles Regional Water Resources Quality Control Board on November 9, 2009.

I hereby amend my original comments filed during June, 2010, before this State Board. I previously filed my original comments before this State Board on June 27, 2010, by E-Mail and by Fax, and on June 28, 2010, by delivery to the State Board's Clerk of a hard-copy and filing of same.

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LAVINE AMENDED COMMENT LETTER OPPOSING MALIBU SEPTIC PROHIBITION
STATE WATER RESOURCES QUALITY CONTROL BOARD RESOL. R4-2009-007 000985

STATEMENT OF FACTS:

DESCRIPTION AND LOCATION OF SUBJECT LAVINE MALIBU ROAD PROPERTY WITHIN THE PROPOSED BAN ZONE: The undersigned property owner and objector Joan C. Lavine presently owns, and, at all times since 1971, has owned all right, title and interest in and to the fee simple rights in a residential real property, zoned R-1 for residential single-family dwellings, located at 23900 Malibu Road, Malibu, California 90265, Mapbook 4458, PAGE 007, Parcel 018. Hereinafter, the subject real property will be referred to as the "Lavine Malibu Road property".

This property owner Joan C. Lavine acquired the Lavine Malibu Road property from her Father Morris Lavine in or about 1971. Her Father Morris Lavine had purchased the property in or about 1945.

Said Lavine Malibu Road property is located in Malibu, California 90265, in the Malibu Civic Center area, to the south of Pacific Coast Highway, at the mouth of the Malibu Canyon, and on the beach front of the Malibu Colony, in an area known as the Malibu Colony outside the Colony gates.

Said Lavine Malibu Road property is located within the proposed California State Water Quality Control Board septic system ban district identified in California State Water Resources Quality Control Board Resolution No. R4-2009-007, passed by the Los Angeles Regional Water Resources Quality Control Board on November 9, 2009. Said property is subject to the proposed septic system ban in said Resolution R4-2009-007.

A single-family dwelling, in compliance with the designated R-1 zoning, exists on and occupies said property, and it has so existed and occupied it since about 1935. It has been used and occupied for its intended use as a single-family residence at all times since it was acquired by the Lavine family in or about 1945.

CONSTRUCTION AND OPERATION OF AN ON-SITE WASTE MANAGEMENT SYSTEM SINCE 1945 ON LAVINE MALIBU ROAD PROPERTY: At all relevant times mentioned herein since 1945, the municipal statutes, rules and regulations have authorized and permitted the lawful use and occupancy of the Lavine Malibu Road property, including, but not limited to the installation, use and operation of an on-site waste management system commonly known as a septic system. Thus, this property owner and objector Joan C. Lavine has at all relevant times held substantial vested real property interests in and to said Lavine Malibu Road property pursuant to said permitted construction at and use of said property.

From time to time, the property owners of the Lavine Malibu Road property, the undersigned Joan C. Lavine and her Father Morris Lavine, have obtained permits from the governing municipal agencies for the installation, upgrade, repair and operation of an on-site waste management system at the Lavine Malibu Road property. Pursuant to those permits and inspections by the duly authorized and duly acting building, health and safety officials, where required, the undersigned Joan C. Lavine and her Father Morris Lavine have installed, upgraded, repaired and operated an on-site waste management system known as a septic system.

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LAVINE AMENDED COMMENT LETTER OPPOSING MALIBU SEPTIC PROHIBITION
STATE WATER RESOURCES QUALITY CONTROL BOARD RESOL. R4-2009-007

MALIBU CIVIC CENTER LACKS A PUBLIC SEWER SYSTEM. NONE IS PLANNED: The Malibu Civic Center lacks a public sewer system available for residential property use on and in the vicinity of Malibu Road to the south of the Pacific Coast Highway.

No plans exist for the installation of a public sewer system by which residential property on or in the vicinity of Malibu Road, located to the south side of the Pacific Coast Highway, could be serviced or used presently or in the future.

As a consequence of there being no alternative waste management system(s) to the use of a septic system, either presently or in the planned future, the undersigned owner will be deprived of all beneficial, viable economic and practical use of her R-1 zoned Lavine Malibu Road property if the outright and total ban of septic systems in the Malibu Civic Center becomes law.

NO NOTICE HAS BEEN GIVEN TO LAVINE MALIBU ROAD PROPERTY OWNER JOAN C. LAVINE OF VIOLATIONS, DEFICIENCIES OR UPGRADE REQUIREMENTS REGARDING WASTE DISCHARGE AT THE LAVINE MALIBU ROAD PROPERTY. NOR HAS THIS PROPERTY OWNER BEEN GIVEN ANY OPPORTUNITY TO REMEDIATE IF ANY SUCH PROBLEMS DO EXIST.

Prior to the passage on November 9, 2009, by the Los Angeles Regional Water Quality Control Board, of the California State Water Resources Quality Control Board Resolution No. R4-2009-007, of the resolution banning use of septic systems in the Malibu Civic Center area, the undersigned property owner Joan C. Lavine was not in any way notified that her property impermissibly discharged waste, pollution or contaminants, violated any health, safety, environmental or clean water laws, or in any way was non-compliant with any law, rule or regulation over which the California State Water Resources Quality Control Board has jurisdiction. She has not been notified that her property in any way created or caused a nuisance. She has never been cited for any said potential hazards described herein and, in particular, in this paragraph. To the best of her knowledge, her Lavine Malibu Road property does not violate any applicable TMDLs, nor has she received notice of violation of any applicable TMDLs.

Prior to the passage on November 9, 2009, by the Los Angeles Regional Water Quality Control Board, of the California State Water Resources Quality Control Board Resolution No. R4-2009-007, of the resolution banning use of septic systems in the Malibu Civic Center area, the undersigned property owner was not in any way ordered to repair, remediate, cease and desist, correct, or bring her Lavine Malibu Road Property up to code. Thus, she has not been given the statutory and Due Process right to correct any perceived, unidentified deficiency so as to avoid her property being confiscated from her by an absolute ban on the use and operation of its septic system.

VALUATION OF THE SUBJECT PROPERTY BEFORE AND AFTER THE REGULATORY "TAKING": This undersigned property owner is of the opinion that the reasonable market value of her property would be about \$15,000,000 (Fifteen million dollars), but for the potential or actual total ban and prohibition of on-site waste management systems (septic systems) having the direct and proximate consequence of prohibiting all private residential use of her property.

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LAVINE AMENDED COMMENT LETTER OPPOSING MALIBU SEPTIC PROHIBITION
STATE WATER RESOURCES QUALITY CONTROL BOARD RESOL. R4-2009-007 000087

Since the passage on November 9, 2009, by the Los Angeles Regional Water Quality Control Board, of the California State Water Resources Quality Control Board Resolution No. R4-2009-007, the resolution banning use of septic systems in the Malibu Civic Center area has substantially diminished the market value of the Lavine Malibu Road property. It will render said property substantially unmarketable and unsaleable at its reasonable market value by making it uninhabitable as of 2019. See Water C. § 13399.2.

SIGNIFICANT REDUCTION IN AVAILABLE RESIDENTIAL HOUSING AND CLOSING OF COMMERCIAL AND RECREATIONAL OPERATIONS BY SEPTIC BAN IN ENTIRE MALIBU CIVIC CENTER AREA: The Malibu Civic Center is a densely built residential and commercial hub in Malibu. The proposed Malibu Civic Center septic ban will have the practical direct and proximate consequence of removing all available Malibu residential housing units in that ban area, consisting of at least 400 residential units, some of which are multifamily units, and displacing several thousand people. It is estimated that about ten (10) percent of the City of Malibu's residents and occupants will lose their residential housing under such a ban and prohibition.

Among those residential properties that the septic system ban will affect is the removal of the Lavine Malibu Road property as available residential housing.

The Malibu Civic Center is a major commercial and recreational center, too. Most, if not all, commercial and recreational operations in the Malibu Civic Center use on-site waste management systems. Prohibiting septic system use in the entire Malibu Civic Center would shutter those commercial and recreational endeavors. The financial consequence would be a loss to the public and the community of the Malibu Lagoon, Malibu Surfrider Beach, Malibu Pier, Adamson House, the Malibu Shopping Plaza with a Ralphs Market, the only major supermarket within about 8 to 10 miles in easterly Malibu, and other shopping areas, to mention some of the lost tax revenue bases and recreational areas.

Los Angeles County officials notified Los Angeles Regional Board members during the November 9, 2009, hearing on Resolution No. R4-2009-007, that the proposed septic ban would cause it to close its county beaches in the ban area, and to be unable to provide emergency fire and paramedic services from the current Los Angeles County Fire Station 88 on Malibu Road within the septic ban district.

THE SEPTIC BAN WOULD CAUSE SIGNIFICANT REDUCTION IN THE MUNICIPAL, COUNTY AND STATE TAX BASES, BOTH FROM REAL PROPERTY TAXES AND FROM THE OPERATION OF COMMERCIAL BUSINESSES THAT GENERATE SALES AND OTHER TAX REVENUES.

By significantly diminishing the market value of the real properties in the ban area, and, by 2019, rendering them valueless, unsaleable and uninhabitable, a septic system ban will have the immediate impact of diminishing assessed valuations of all real property in the Malibu Civic Center and removing a substantial portion of assessed taxable valuation of occupied real property from the tax bases of the various government entities so that the City of Malibu and Los Angeles County would lose substantial real property tax revenue. The State of California will likewise

be impacted by a loss of sales tax revenue from the closure of commercial and recreational operations.

NO EVIDENCE WAS RECEIVED INTO THE RECORD AT THE NOVEMBER 9, 2010, REGIONAL BOARD HEARING THAT POLLUTION WAS/IS GENERATED AT THE UNDERSIGNED PROPERTY OWNER'S MALIBU ROAD PROPERTY OR ANY OTHER RESIDENTIAL PROPERTY IN THE PROPOSED BAN/PROHIBITION DISTRICT, THAT PRESENTLY OR CAN REASONABLY BE EXPECTED IN THE FUTURE TO CONTAMINATE WATERS. NO FINDINGS OF FACT SUPPORTING A CLAIM OF CONTAMINATION OR PROHIBITION DUE TO CONTAMINATION WERE MADE BY THE REGIONAL BOARD EITHER

Without credible, reliable evidence, unsubstantiated claims have been made that residential septic systems may be contaminating either ground water or coastal waters. The truth is that no nexus between residential septic systems on the one hand, and ground water or coastal water pollution on the other, in the Malibu Civic Center has been established.

The credible identified sources of suspected contamination in the Malibu Lagoon and Malibu Creek are the Tapia sewage treatment plant in the Santa Monica Mountains, seepage from the Santa Monica Mountains, the watersheds in and flowing through them, pollution coming from the Santa Monica Bay, and possibly commercial operations. Most of these suspected contamination sources are outside the jurisdictional boundaries of the City of Malibu and outside the Malibu Civic Center septic ban district. These mostly likely sources were supported by substantial evidence introduced by those in opposition to the resolution.

THE STATE WATER RESOURCES CONTROL BOARD LACKS CONSTITUTIONAL OR STATUTORY AUTHORITY TO PERMIT, REGULATE OR BAN SEPTIC SYSTEMS.

The State Water Resources Control Board lacks direct condemnation authority or power.

The California State Water Resources Board through its Los Angeles Regional Water Quality Control Board delegated to municipal governments the limited jurisdiction it had regarding the regulation and permitting of septic system use and operation, first by resolution and then by "memorandums of understanding". See Resolution Nos. 52-4, 53-6, R04-008.

**ARGUMENT AND COMMENTS OF JOAN C. LAVINE IN
OPPOSITION TO THE REGIONAL WATER QUALITY
CONTROL BOARD, RESOLUTION NO. R4-2009-007
(AMENDED):**

1. THE SEPTIC SYSTEM BAN AND PROHIBITION PROPOSED BY RESOLUTION NO. R4-2009-007, WHICH THE LOS ANGELES REGIONAL WATER RESOURCES QUALITY CONTROL BOARD VOTED ON AND PASSED ON NOVEMBER 9, 2009, ENTIRELY FAILS TO COMPLY WITH THE STATUTORY REQUIREMENTS,

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LAVINE AMENDED COMMENT LETTER OPPOSING MALIBU SEPTIC PROHIBITION
STATE WATER RESOURCES QUALITY CONTROL BOARD RESOL. R4-2009-007 000089

CONDITIONS AND PREREQUISITES OF WATER C. § 13280, AND CONSTITUTIONAL RESTRICTIONS ON ITS EXERCISE OF ITS POLICE POWERS, REQUIRING IT TO ALLOW USE OF SEPTIC SYSTEMS WHERE WATER QUALITY CAN BE ATTAINED.

Water C. § 13280 provides:

§ 13280. Determination denying discharge of water from disposal systems; substantial evidence

A determination that discharge of waste from existing or new individual disposal systems or from community collection and disposal systems which utilize subsurface disposal should not be permitted shall be supported by substantial evidence in the record that discharge of waste from such disposal systems will result in violation of water quality objectives, will impair present or future beneficial uses of water, will cause pollution, nuisance, or contamination, or will unreasonably degrade the quality of any waters of the state.

The Regional Board did not receive one scintilla of evidence to support a determination that discharge of waste should not be permitted by the Lavine Malibu Road property. It, in fact, did not expressly make a determination that discharge of waste from the Lavine Malibu Road property disposal system will result in violation of water quality objectives, will impair present or future beneficial uses of water, will cause pollution, nuisance, or contamination, or will unreasonably degrade the quality of any waters of the state. And, as argued on below in argument section 3, no findings of fact to support such a determination were made by the Regional Board.

This Board's police power cannot be exercised to prohibit an activity where that activity can be regulated to eliminate the evil, harm or problem at issue, without entirely prohibiting it. San Diego TB v. City of East San Diego, 186 Cal. 252, 200 P. 393 (1921). The exercise of its police power to prohibit an activity, where regulation can reach the same goal and result, is arbitrary, capricious and unreasonable, and in violation of the guarantees of Due Process of Law under the 5th and 14th Amendments, U.S. Constitution, and California Constitution, Article I, Sections 7 and 19.

2. THE TOTAL SEPTIC SYSTEM BAN AND PROHIBITION PROPOSED BY RESOLUTION NO. R4-2009-007, AND THE HEARING, TRIAL AND DETERMINATIONS ON NOVEMBER 9, 2009, BEFORE THE LOS ANGELES REGIONAL WATER RESOURCES QUALITY CONTROL BOARD, HAVE FAILED TO COMPLY WITH THE STATUTORY CONDITIONS AND PREREQUISITES OF WATER C. § 13282 THAT WASTE DISCHARGES "SHALL BE PERMITTED SO LONG AS THE SYSTEMS ARE ADEQUATELY DESIGNED, LOCATED, SIZED, SPACED, CONSTRUCTED, AND MAINTAINED".

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Water C. § 13282 provides in relevant part:

§ 13282. Design, construction and maintenance of systems; notice

(a) If it appears that adequate protection of water quality, protection of beneficial uses of water, and prevention of nuisance, pollution, and contamination can be attained by appropriate design, location, sizing, spacing, construction, and maintenance of individual disposal systems in lieu of elimination of discharges from systems, and if an authorized public agency provides satisfactory assurance to the regional board that the systems will be appropriately designed, located, sized, spaced, constructed, and maintained, the discharges shall be permitted so long as the systems are adequately designed, located, sized, spaced, constructed, and maintained.

The proposed ban totally prohibiting on-site residential waste management systems (septic systems) ignores the statutory requirement of Water C. § 13282, as well as the constitutional due process limits of the State and Regional Boards' police powers: That discharges be permitted 1) if water quality, protection and prevention of harm can be "attained by appropriate design, location, sizing, spacing, construction, and maintenance of individual disposal systems in lieu of elimination of discharges from systems, and 2) if an authorized public agency provides satisfactory assurance to the regional board that the systems will be appropriately designed, located, sized, spaced, constructed, and maintained".

By purporting to assert its police power to prohibit septic system usage by a total, outright ban, without first evaluating and determining whether the statutory criteria for water safety can be attained by appropriate design, location, sizing, spacing, construction, maintenance of individual disposal systems, the Los Angeles Regional Water Quality Control Board disregarded its obligations and responsibilities constrained by constitutional due process limits on its police powers and statutorily mandated by Water C. § 13282, to allow the use of septic systems where the statutory standards set forth in Water C. § 13282 are met.

The Los Angeles Regional Water Quality Control has exceeded its authority and has omitted to act when it should have or has acted in a manner contrary to law by resolving to ban and prohibit on-site wastewater disposal systems, i.e. septic systems, in the Malibu Civic Center rather than complying with the mandates of Water C. § 13282.

3. THE RESOLUTION'S PROPOSED TOTAL BAN AND PROHIBITION OF THE USE OF ON-SITE WASTE MANAGEMENT SYSTEMS IS NOT SUPPORTED BY EVIDENCE OR FINDINGS OF FACT THAT ESTABLISH A PROXIMATE CAUSAL CONNECTION, THAT IS, A NEXUS, BETWEEN WATER QUALITY IMPAIRMENT AND A POLLUTING OR CONTAMINATING RESIDENTIAL ON-SITE WASTE SYSTEM. THUS, NO LEGAL BASIS COMPORTING WITH DUE PROCESS OF LAW IS ESTABLISHED FOR ON-SITE SYSTEMS TO BE ENTIRELY BANNED AND PROHIBITED.

No evidence has been introduced into the record that the on-site wastewater disposal system, a septic system, on the Lavine Malibu Road property has polluted or otherwise

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contaminated the area. No proof of violation of water quality standards has been offered or introduced into evidence. No proof of violation of water quality goals or objectives has been offered or introduced into evidence. No proof of violation or lack of compliance with TMDLs was introduced into the record. No proof of nuisance has been offered or introduced into the record. There is no factual basis, and, thus, no causal connection or nexus, between unsubstantiated allegations of existence of pollution or contamination of ground or waters around it, particularly as to the Lavine Malibu Road property, and alleged impairment of water quality or water quality goals. There were no findings made, either, of any such violations or lack of compliance.

The proposed septic system ban and prohibition therefore lacks a factual or legal basis, and lacks findings of same, to ban and prohibit the use on-site waste management commonly called septic system in the Malibu Civic Center area. See Southern California Edison v. State Board, 116 Cal.App.3d 751, 172 CR 306 (1981, 4th Dist.).

4. THE PROPOSED OUTRIGHT, UNCONDITIONAL, COMPLETE SEPTIC SYSTEM BAN TO BE PUT INTO EFFECT FOR THE MALIBU CIVIC CENTER, WHILE AREAS IN RIVERSIDE COUNTY ARE ALLOWED TO CONTINUE THE USE OF SEPTIC SYSTEMS IF ALTERNATIVE PUBLIC SEWER SYSTEMS DO NOT EXIST, IS INVIDIOUSLY DISCRIMINATORY AND UNEVEN-HANDED. MALIBU PROPERTY OWNERS ARE THUS DENIED THE EQUAL APPLICATION AND EQUAL PROTECTION OF THE LAW IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS, U.S. CONSTITUTION BY THIS UNEQUAL TREATMENT.

Real property interests in the Malibu Civic Center are entitled to be treated and regulated by the same standards, rules and regulations and in the same fair and equitable manner as those in the Palm Springs area in the Mission Creek Aquifer and Desert Hot Springs Aquifer, where septic systems are to be outlawed only on the condition that a public sewer system is in place at the time of the ban going into effect.

Although an outright, unconditional, complete prohibition on the use of septic systems is proposed for the Malibu Civic Center where there is no alternative waste management system, the state Legislature has permitted the continued operation of septic systems in Riverside County if no available alternative exists there. See Water C. § 13281(b)(1), providing:

(b)(1) To the extent that resources are available for that purpose, the regional board shall prohibit the discharge of waste from existing or new individual disposal systems on parcels of less than one-half acre that overlie the Mission Creek Aquifer or the Desert Hot Springs Aquifer in Riverside County, if a sewer system is available.

Like areas of Riverside County exempted by Water C. § 13281(b)(1), the Malibu Civic Center does not have the alternative of a public sewer system into which this property owner's property can be connected. None is proposed or planned. It is respectfully submitted that property interests in the Malibu Civic Center, including this opposing property owner's Lavine Malibu Road property, are entitled to the same even-handed treatment and regulatory standard of continued use of septic systems as those similarly situated in the Mission Creek Aquifer or the

Desert Hot Springs Aquifer in Riverside County that lack a public sewer system.

Outright prohibition of on-site wastewater disposal systems in the entire Malibu Civic Center area is disproportionately harsh, and this disproportionate treatment of similarly situated Malibu property owners violates the Malibu Civic Center property owners' rights to the Equal Application and Equal Protection of the Laws, guaranteed by the 5th and 14th Amendments, U.S. Constitution, and Article I, Section 1, California Constitution.

5. THE STATE WATER RESOURCES QUALITY CONTROL BOARD LACKS DIRECT CONDEMNATION OR EMINENT DOMAIN AUTHORITY.

The State Water Resources Quality Control Board's legislatively authorized administrative authority is limited to permitting and regulating authority over the use of on-site waste systems, known as septic systems. The California State Water Resources Quality Control Board lacks statutory or delegated authority to completely outright ban septic systems in a manner that denies all reasonable viable, beneficial economic use of the property, because it does not have direct eminent domain or direct condemnation authority. Thus, California State Water Resources Quality Control Board would exceed its jurisdiction and act without jurisdiction by banning the use of septic systems in the Malibu Civic Center.

6. THE STATE LEGISLATURE HAS EXPRESSLY LIMITED THE ENFORCEMENT AUTHORITY OF THE STATE WATER RESOURCES CONTROL BOARD AND ITS REGIONAL BOARDS OVER MINOR VIOLATIONS, RANGING FROM ORDERING REPAIRS TO CIVIL PENALTIES. WATER C. § 13399.2.

Banning septic system use and operation is outside the scope of their law enforcement authority to regulate minor violations granted the state and regional boards. Water C. § 13399.2 provides in pertinent part:

§ 13399.2. Detection of violation; issuance of notice to comply; time for compliance; appeal; failure to comply; contents of notice; civil penalty

(a) An authorized representative of the state board or regional board, who, in the course of conducting an **inspection**, detects a **minor violation** shall issue a **notice** to comply before leaving the site at which the **minor violation** is alleged to have occurred if the authorized representative finds that a **notice** to comply is warranted.

(b) A person who receives a notice to comply pursuant to subdivision (a) shall have the period specified in the notice to comply from the date of receipt of the notice to comply in which to achieve compliance with the requirement cited on the notice to comply. Within five working days of achieving compliance, the person who received the notice to comply shall sign the notice to comply, and return it to the representative of the state board or regional board, stating that the person has complied with the notice to comply. A false statement that compliance has been

achieved is a violation of this division pursuant to subdivision (a) of Section 13268, Section 13385, or subdivision (e) of Section 13387.

(c) A single **notice** to comply shall be issued for all **minor violations** cited during the same **inspection** and the **notice** to comply shall separately list each cited **minor violation** and the manner in which each **minor violation** may be brought into compliance.

d) A **notice** to comply shall not be issued for any **minor violation** that is corrected immediately in the presence of the **inspector**. Immediate compliance in that manner may be noted in the **inspection** report, but the person shall not be subject to any further action by the representative of the state board or regional board.

(e) Except as otherwise provided in subdivision (g), a notice to comply shall be the only means by which the representative of the state board or regional board shall cite a minor violation. The representative of the state board or regional board shall not take any other enforcement action specified in this division against a person who has received a notice to comply if the person is in compliance with this section.

This undersigned property owner objects that a septic system ban prohibiting all use of on-site waste management directed at her property and the entire Malibu Civic Center far exceeds the statutory authority and police powers and jurisdiction of the State Water Resources Control Board or regional boards to obtain compliance with minor violations by the giving of a notice to comply pursuant to Water C. § 13399.2. Said boards exceed their jurisdiction to act and act without jurisdiction by banning septic systems where their enforcement authority is limited by statute as set forth hereinabove.

This proposed total, complete ban prohibiting the use and operation of a duly permitted septic system, without notice of deficiencies, without opportunity to remediate, and in the absence of alternative waste management systems, has the practical effect of a denying of all private economically viable use of the real property as of 2019, and has drastically diminished its marketability by destroying its fee simple title and reducing it to a term of years. This is an impermissible regulatory "Taking" under the Due Process Clause of the Fifth and Fourteenth Amendments, U.S. Constitution. Lucas v. South Carolina Coastal Council, 505 US 1003, 120 L.Ed.2d 798, 112 S.Ct. 2886 (1992); Hawthorne Sav. & Loan v. City of Signal Hill, 19 Cal.App.4th 148 (1992).

7. THE STATE WATER RESOURCES BOARD AND ITS LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD, CONTRARY TO THEIR STATUTORY OBLIGATIONS UNDER WATER C. § 13399.2, HAVE FAILED TO GIVE THIS PROPERTY OWNER NOTICE OF ANY DEFICIENCIES OR A FAIR AND REASONABLE OPPORTUNITY FOR HER TO REMEDIATE ANY PERCEIVED DEFICIENCIES. A PROPOSED TOTAL BAN PROHIBITING ENTIRELY THE USE OF HER SEPTIC SYSTEM WITHOUT FAIR OR ANY NOTICE TO THIS PROPERTY OWNER AND A REASONABLE OPPORTUNITY FOR HER TO COMPLY WITH ANY DEFICIENCIES IS CONFISCATORY,

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ARBITRARY AND CAPRICIOUS, AND IS A COMPENSABLE "TAKING" UNDER THE FIFTH AND FOURTEENTH AMENDMENTS, U.S. CONSTITUTION. THESE PER SE PREJUDICIAL DENIALS OF HER STATUTORY AND FEDERAL DUE PROCESS RIGHTS DEPRIVE THIS STATE BOARD OF THE AUTHORITY TO TAKE ACTION(S) PROVIDED FOR BY THE RESOLUTION R4-2009-007.

This property owner has not been given notice of any deficiencies regarding septic system operation and use at her Lavine Malibu Road property. She has not been given a fair and reasonable opportunity to remediate any perceived deficiencies. Failure to give notice and opportunity to repair and remediate perceived or alleged pollution before depriving this property owner of all reasonable viable economic benefit to her substantial vested property rights violates this property owner's Due Process rights to fair notice and a reasonable opportunity to be heard, is confiscatory, arbitrary and capricious, and is in violation of the "takings" and "due process" clauses of the Fifth and Fourteenth Amendments, U.S. Constitutions. Hawthorne Sa. & Loan v. City of Signal Hill, 19 Cal.App.4th 148, 23 Cal.Rptr.2d 272 (1993, 2nd Dist.).

Not only do the state board and regional board lack authority to outright ban and prohibit the use and operation of all septic systems in an area as articulated herein and thus exceed their jurisdiction to act and act without jurisdiction, but said boards have failed to comply with Water C. § 13399.2, requiring that they give notice of any deficiencies regarding septic system operation and use at the Lavine Malibu Road property. Owner Joan Lavine has not been given a fair and reasonable opportunity to remediate any perceived deficiencies. Failure to give notice and opportunity to repair and remediate perceived or alleged pollution before depriving this property owner of all reasonable viable economic benefit to her substantial vested property rights violates this property owner's Due Process rights to fair notice and a reasonable opportunity to be heard, is confiscatory, arbitrary and capricious, and constitutes regulatory "taking" in violation of the "Takings" and "Due Process" clauses of the Fifth and Fourteenth Amendments, U.S. Constitutions. Hawthorne Sav. & Loan v. City of Signal Hill, 19 Cal.App.4th 148, 23 Cal.Rptr.2d 272 (1993, 2nd Dist.). Lucas v. South Carolina Coastal Council, 505 US 1003, 120 L.Ed.2d 798, 112 S.Ct. 2886 (1992).

8. THE WATER QUALITY CONTROL BOARD RESOLUTION NO. R4-2009-007, PREJUDICIALLY VIOLATES WATER C. § 13291.7 BY INTERFERING WITH THE JURISDICTION OF MUNICIPALITIES OVER LAND USE REGULATION.

The California State Water Resources Board through its Los Angeles Regional Water Quality Control Board delegated any jurisdiction it had regarding the regulation or permitting of septic system use and operation to municipal governments, first by resolution and then by "memorandums of understanding". This goes back to years 1952 and 1953: State Water Resources Regulations Nos. 52-4 and 53-6; and Regulation No. R04-008 enacted in 2004. The current "Basin Plan" for the Los Angeles Regional Water Quality Control Board was enacted in 1994. See Basin Plan pages 4-17 and 4-46 to 4-47 referring to septic systems.

The California Constitution and the California Legislature have also established jurisdiction in municipal government to regulate land use. Calif. Constitution, Art. 11, Sec. 7.

The California State Water Resources Board and its Los Angeles Regional Water Quality Control Board are prohibited by California legislation, Calif. Water C. 13291.7, from interfering with land use regulation and jurisdiction of municipalities. By purporting to assert jurisdiction and authority by outright banning the use of septic systems as on-site waste disposal systems, it does just that: it interferes with the jurisdiction of municipalities over land use regulation by usurping the authority of municipal entities to regulate land use regarding waste management.

9. IN THE ABSENCE OF UNIFORM STATEWIDE STANDARDS AND REGULATIONS REQUIRED BY WATER C. § 13291(a) TO HAVE BEEN ENACTED BY THIS STATE BOARD, ANY EXISTING NON SELF-EXECUTING STATUTORY OR REGULATORY AUTHORITY WHICH LEGISLATIVELY OR AS LAW ENFORCEMENT, REGULATES BY PROHIBITING THE USE OF SEPTIC SYSTEMS, IS INOPERATIVE.

In the early part of this decade, in year 2000, proposed legislation by the California Legislature in AB 885/SB 290, was passed and put into effect, codified as California Water Code, §§ 13290 and 13291. Water C. § 13291 requires the California State Water Resources Board to have enacted statewide uniform standards and regulations for permitting and regulating "on-site waste management systems". Those enabling regulations and standards have not been enacted to date. Legislation and administrative provisions, obviously not self-executing, for the permitting and regulation of septic systems under the Water Code are consequently inoperative and unenforceable due to the lack of these enabling uniform standards and regulations.

Where the State Water Resources Control Board and its Regional Boards assert perceived power without lawful grant of authority to do so, they have usurped authority where none resides in them. By their usurpation they act without jurisdiction and in excess of it. Assertion of naked power without constitutional and statutory grant of authority is totalitarian and undemocratic, and violates both procedural and substantive Due Process of Law, guaranteed by the 5th and 14th Amendments, U.S. Constitution.

10. AMENDMENT OF THE BAN RESOLUTION R4-2009-007, AFTER THE REGIONAL BOARD'S COMMENT AND FILING DEADLINE, WHILE IT WAS PENDING BEFORE THE LOS ANGELES REGIONAL BOARD, PREJUDICIALLY DENIED THOSE OPPOSING IT A REASONABLE OPPORTUNITY TO BE HEARD IN VIOLATION OF DUE PROCESS OF LAW. On October 27, 2009, after the time for comment was closed, the pending proposed amendment scheduled for hearing and vote before the Los Angeles Regional Water Quality Control Board, on November 5, 2009, was itself amended. The Regional Board nevertheless refused to permit further comment in opposition or otherwise after the original deadline. This is a fundamental denial of a fair hearing where the resolution to be voted on was materially changed after the deadline for filing comments and mounting written challenges to it. It resulted in a prejudicial denial of fair notice of what to be considered and voted on and a reasonable opportunity to be heard and to interpose an opposition to it in violation of procedural due process of law. Mullane v. Central Hanover Bank, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950); Due Process of Law Clauses, 5th and 14th Amendments, U.S. Constitution.

The November 9, 2009, Los Angeles Regional Board hearing was managed in such a manner that most property owners were denied a fair opportunity to be heard orally. Several

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hundred persons appeared at the one-day hearing, and many asked to speak. Individual owners were given less than five minutes to speak to protect their homes, and their oral testimony and offering of exhibits during the hearing were rejected and not made a part of the record as "untimely". The regional board should have scheduled several hearings over several days so as to accommodate all those property owners wanting to be heard.

The regional board generally rejected exhibits offered by commenting witnesses to be introduced into the record at the November 9, 2009, hearing in violation of the rights of those witnesses to be heard and to have access to the board with rebutting evidence.

CONCLUSION: The proposed Resolution No. R4-2009-007 would constitute such complete prohibition on the use of this opposing property owner's Lavine Malibu Road property that the prohibition would deny all economically beneficial or productive use of this property owner's land and therefore would be a regulatory taking in violation of the "takings" and "due process" clauses of the Fifth and Fourteenth Amendments, U.S. Constitution.

The proposed septic system ban and prohibition contained in the pending resolution to amend Los Angeles Regional Water Quality Control Board regulations, Resolution No. R4-2009-007, is inherently and as construed and applied to this property owner and her property located at 23900 Malibu Road, Malibu, California 90265, confiscatory, arbitrary and capricious, and constitutes an illegal "taking" of the undersigned owner's real property in violation of the Takings and Due Process of Law Clauses of the Fifth and Fourteenth Amendments, U.S. Constitution, the California Constitution, Article I, Section 19, and the State of California eminent domain statutes beginning at CCP § 1230.020, et seq. Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 112 S.Ct. 2886 (1992).

The November 9, 2009, Los Angeles Regional Water Quality Control Board vote to approve the septic system ban and prohibition is void for all of the above reasons.

WHEREFORE, Joan C. Lavine, the undersigned property owner of the Lavine 23900 Malibu Road property, within the proposed septic system ban zone, prays that the Members of this State Water Resources Quality Control Board, reject the total ban and prohibition of on-site waste management by opposing and voting "NO" on the proposed resolution, R4-2009-007.

Dated: July 9, 2010

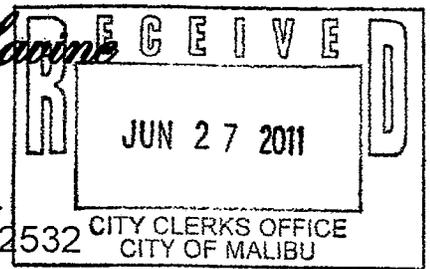
Respectfully submitted,

JOAN C. LAVINE
Owner, 23900 Malibu Road, Malibu, California
Attorney at Law, California State Bar No. 048169

EXHIBIT "B"

From the Desk of Joan C. Lavine

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COPY

Monday, June 27, 2011

Re: Property Owner Joan C. Lavine's comments, opposition and objections to City of Malibu council meeting Agenda Item 6.A., a resolution to approve and adopt a June, 2011, Proposed Memorandum of Understanding between City of Malibu and Los Angeles Regional Water Quality Control Board (LARWQCB) to implement LARWQCB Resol. R4-2009-007/SWRCB Resol. 2010-0045, septic ban Amendments to the LARWQCB Basin Plan banning and prohibiting on-site wastewater management systems, adopted by the California State Water Resources Control Board, in Resolution 2010-0045, and the Los Angeles Regional Water Quality Control Board

TO THE CITY OF MALIBU CITY COUNCIL, AND TO THE COUNCILMEMBERS THEREOF:

Dear Madams and Sirs:

I hereby urge that you protect your constituents, your municipality's commercial and residential property owners and the City of Malibu itself by VOTING NO on June 27, 2011, General City Council Meeting of City of Malibu, Agenda Item No. 6.A. and that you thereby REJECT the proposed MOU surrendering to the State and L.A. Regional Water Boards' Malibu Civic Center ban of on-site wastewater management systems (septic systems).

I oppose the City of Malibu General City Council Meeting scheduled for June 27, 2011, Agenda Item No.6.A., a resolution to approve and adopt a June, 2011, Proposed Memorandum of Understanding between City of Malibu and Los Angeles Regional Water Quality Control Board (LARWQCB) to implement Amendments to the LARWQCB Basin Plan banning and prohibiting on-site wastewater management systems, adopted by the California State Water Resources Control Board, in Resolution 2010-0045, and the Los Angeles Regional Water Quality Control Board, for the following reasons.

1. The proposed MOU surrenders to the LARWQCB Malibu Civic Center on-site wastewater management systems ban. It surrenders authority to the LARWQCB and SWRCB that I do not believe they have. It appears to expand the ban enacted by the LARWQCB in its Resolution R4-2009-007, and in SWRCB Resolution 2010-0045. It contains so many complicated ifs, ands and buts, that it is impossible to understand how it will work in practice, which may make it unenforceable.

From the Desk of Joan C. Lavine

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2. The installation of sewers is generally opposed by a substantial majority of the residents of the City of Malibu, which is a small residential community of under 15,000 persons.
3. The City of Malibu was formed in 1991 in protest to the mandatory installation of sewers within its jurisdiction, and in order to protect Malibu from them. The 1991 vote for the City of Malibu to incorporate was passed as an overwhelming referendum opposing the construction of sewers in Malibu.
4. The implementation of the June, 2011, proposed MOU between the City and the LARWQCB is so financially burdensome as to force Malibu residents and property owners to sell under adverse market conditions or to abandon their properties. It would severely victimize many older homeowners whose primary asset is their residences.

The three-step implementation plan would first pressure property owners to install costly "advanced" septic systems that cost anywhere from \$60,000 to \$150,000.

Then property owners would be coerced to tax themselves at very high rates to install a sewer system, pay for property connection construction costs associated with a municipal sewer system, and on top of that pay for very high estimated \$1000 monthly sewer service usage fees.

The currently proposed MOU will place a considerable financial burden on me, because I have invested considerable sums of money in the purchase, taxes and care of my Malibu Road Property. I am in my mid-60's and do not have the wherewithal to re-invent my legal career in order to replenish what I have lost, at least \$15 million in assets.

5. I object that the "Fiscal Impact" statement in the City of Malibu supplemental staff, only made public on the City's internet website last Friday, June 24, 2011, is woefully inadequate. It entirely ignores the real financial and personal harms to your constituents, area property owners and commercial interests: The Malibu Civic Center septic system ban has precipitously diminished the values of all the properties in the ban zone. The fiscal impact of this is that several properties on the market have not been sold, and that there are reports that buyers have withdrawn from sales negotiations when told about the septic system ban on a subject property. Some owners may now be "under water" on loans and mortgages and may encounter lenders who will call in those loans and force owners into foreclosure. Owners will likely be unable to obtain mortgages using their ban zone property as collateral. They will likely be unable to obtain refinancing of their properties. They will likely be unable to use their residences to obtain reverse mortgages.

The staff report fails to mention the massive adverse financial consequences to the City's own finances, by drastic diminution in assessed value of the City's most valuable properties, and the consequent loss of its tax base and tax revenue stream due to the septic ban and loss of value of real property it owns.

6. On-site wastewater management systems (septic systems) were in 1991 and remain to the present the most environmentally friendly means of disposing of residential and local commercial wastewater in Malibu.
7. Local septic systems used by residents in the Malibu Civic Center area are not causing pollution of the ground, water or air. They are not causing nuisances. The City's investigations through its own geologists and those of the U.S. Geological Survey have not identified a human-generated source of pollution. There is no factual basis to ban them as they are not a public health hazard. I incorporate the studies posted on the City of Malibu's website of U.S. Geological Survey hydrologist John Izbecki and of the city of Malibu geologists and hired consultants Layton & Associates which establish by impartial scientific studies that residential septic systems are not causing pollution and that the bacterial and viral wastes come from non-human sources, i.e., fowl, algae, other plants and animals.

As to my property, the SWRCB in its responses acknowledged it has no information about my property regarding the operation of a septic system to support allegations of my property being a "discharger".

8. The adoption of the proposed MOU is likely to expose the City of Malibu to extensive inverse condemnation liability and litigation over the illegal, unnoticed, quasi-legislative revocation of permits that have become substantial vested property rights of the Malibu Civic Center property owners, including myself. Settled case law is that a non-judicial, ex parte permit revocation, without just or good cause, of a permit on which property owners have relied and constructed is a "taking" under the U.S. and California Constitutions, for which the property owners are entitled to just compensation. Property owners in the Malibu area have generally obtained septic system installation permits, pursuant to which their systems have been installed and approved for use. Thus, those permits are vested property rights, and cannot be revoked in the absence of a good cause factual basis to do so and pursuant to a quasi-judicial process. Trans-Ocean Oil Co. v. Santa Barbara, 85 Cal.App.2d 776 (2nd Dist., 1948); City of San Marino v. L.A. Catholic Archdiocese, 180 Cal.App.2d 657, 4 Cal.Rptr. 547 (1960, 2nd Dist.)
9. The tolling provisions in the proposed MOU may not be valid, binding or enforceable. They need to be carefully evaluated by municipal and administrative law counsel.

I object that the City of Malibu has failed to give fair, adequate or any notice of June 27, 2011, City of Malibu agenda item 6.A. I also object that this lack of fair notice constitutes a denial of adequate notice and a reasonable opportunity to be heard in violation of the Due Process Clauses of the 5th and 14th Amendments, U.S. Constitution, the First Amendment, U.S. Constitution, and Article I, Sections 1, 7, 13, and 19, California Constitution.

I object that the City is required to give the kind of notice that is mostly likely to apprise its constituents of what they must defend against. That kind of service is personal, not published.

Notice posted on a website is inadequate to notify the public of a measure of such magnitude in its affect on substantial property interests of their owners.

I urge you to take your General City Council Meeting Agenda Item 6.A. off calendar and urge that you not vote on that agenda item 6.A. Instead, I urge you to take the following actions.

1. I urge you to hire the best administrative law litigation attorneys you can find, and to step up to the plate to sue the LARWQCB and SWRCB in order to protect your constituents, your tax base and yourself from untold liability and loss.
2. I urge the City Council to contact its municipal pool insurer CJPIA (California Joint Powers Insurance Authority) and to obtain their executives' and attorneys' opinions and evaluations in order to determine what the City's liability exposure and liability risks are if it were to enter into the currently proposed MOU.
3. I urge that the City Council confer with municipal tax counsel to determine how much its tax base will be reduced by the septic ban, and by how much it has already been adversely impacted and reduced.

However, if you do proceed to take a vote this evening I urge that you take the following positions and vote consistently with them.

1. I urge that you vote AGAINST the MOU and that you NOT participate in destroying the values of a substantial number of your residents, constituents and property owners on about 400 residential properties in the Malibu Civic Center, occupied by about 1500 people.
2. I urge you to cast your vote AGAINST the MOU that would place about 400 of your constituent residential property owners in the position that they cannot borrow, cannot refinance, cannot obtain reverse mortgages, and they would face their lenders potentially calling in loans because the value of the collateral has been destroyed. I urge you not to cast a vote for the MOU that would place your constituents in financial crisis by making the sale of their properties impossible, or, if they can find a buyer, only at fire sale pricing and at great loss.
3. I urge that you vote AGAINST the MOU and that you NOT participate in destroying your tax base of 400 properties and numerous commercial properties that provide at least 25 percent of the City of Malibu's annual revenue stream.
4. I urge that you vote AGAINST the MOU and that you NOT participate in the "taking", the confiscation, of all the property in the Malibu Civic Center area so that the City becomes liable for the property values of 400 residential properties and numerous commercial property in inverse condemnation along with the SWRCB and the LARWQCB .

Thank you for allowing me to have the opportunity to submit my comments in opposition to the proposed MOU on the June 27, 2011, agenda item no. 6.A.

Very truly yours, 

JQAN C. LAVINE, Malibu Civic Center Property Owner

EXHIBIT "C"

USE OF ISOTOPIC, GENETIC, AND CHEMICAL DATA TO EVALUATE THE SOURCE OF FECAL INDICATOR BACTERIA NEAR MALIBU, CALIFORNIA

John A. Izbicki, Carmen A. Burton, and Peter W. Swarzenski

Introduction

Each year, over 550 million people visit California's public beaches. To protect beachgoers from exposure to waterborne disease, California state law requires water-quality monitoring for fecal indicator bacteria (FIB), such as enterococci and *Escherichia coli* (*E. coli*), at beaches with more than 50,000 yearly visitors. FIB are used to assess the microbiological quality of water because, although not typically disease causing, they are correlated with the occurrence of certain waterborne diseases. Periodically, tests show that FIB concentrations exceed U.S. Environmental Protection Agency (EPA) public health standards for recreational water in Malibu Lagoon and at several Malibu beaches (fig. 1).



Figure 1. Selected sample locations, Malibu, California.

There are several potential sources of FIB to Malibu Lagoon and the nearby coastline including:

- Seepage from commercial and residential onsite sewage treatment systems that may enter the lagoon or near-shore ocean water through the groundwater system
- Discharge or runoff from commercial and residential developments into Malibu Creek and Malibu Lagoon.
- Bird and wildlife feces, either deposited directly into the lagoon or onto beaches, or washed into these areas by tides and storms.

Conclusions

For onsite wastewater treatment systems to be a source of FIB to Malibu Lagoon or the near-shore ocean, bacteria must first move through the groundwater system. Low FIB concentrations in wells having a high fraction of imported water suggest that this is not occurring. In addition, large changes in microbial populations suggest that bacteria are being removed by death or attenuation after discharge from treatment systems. Isotopic data were useful in estimating the fraction of wastewater in groundwater samples and to evaluate the timing of groundwater discharge to the near-shore ocean. In contrast to FIB, wastewater indicator compounds increase as the fraction of imported water in a sample increases - confirming the presence of wastewater in the system.

Birds in Malibu Lagoon, a potential source of fecal indicator bacteria, Malibu, California, July 2009

Overview of fecal indicator bacteria concentrations

More than 450 samples were collected from wells, Malibu Creek, Malibu Lagoon and the near-shore ocean as part of this study (fig. 1). Onsite sewage treatment systems, groundwater, and surface water including Malibu Creek, Malibu Lagoon, and near-shore ocean sites (Surfrider Beach and Malibu Colony beach) were sampled and analyzed for enterococci, *E. coli*, and total coliforms. Most samples were collected during the dry season (July 2009), and at the end of rainy season (April 2010).

Enterococci were found at the highest concentrations in samples taken from onsite treatment systems (fig. 2). Groundwater samples had the lowest concentrations, usually less than the detection limit, during both the dry and wet season. Enterococci concentrations in Malibu Lagoon were greater than enterococci concentrations in groundwater samples. Water carrying FIB from onsite wastewater treatment systems must pass through the groundwater system before infiltrating into the lagoon and near-shore ocean. Low enterococci concentrations, generally less than the detection limit, in water from wells suggest that FIB are not moving through the groundwater system, and that groundwater discharge may not be an important source of FIB to Malibu Lagoon or the near-shore ocean.

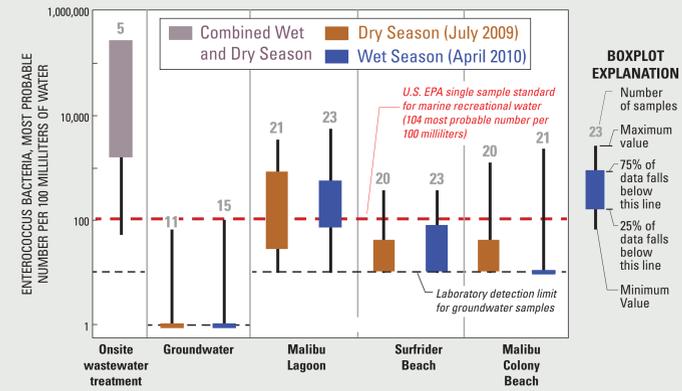
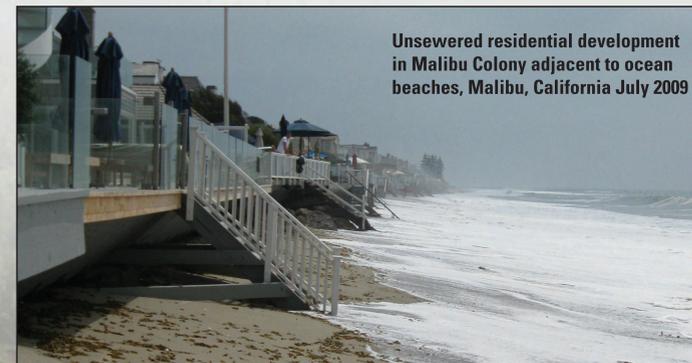


Figure 2. Enterococcus data from onsite wastewater treatment systems, groundwater, Malibu Lagoon and near-shore ocean, Malibu California, 2009-2010



Identification of wastewater and groundwater discharge

The naturally-occurring, stable isotopes of oxygen and hydrogen in the water molecule (oxygen-18 and deuterium, respectively) were used to determine the percentage of imported water that was used for water supply and then discharged as treated wastewater in a sample. This technique works because all the water used for public supply in the study area is imported from either northern California or the Colorado River and has an oxygen-18 and deuterium composition different from that of native water (fig. 3). Some groundwater samples contained as much as 70 percent treated wastewater, but did not contain detectable concentrations of FIB.

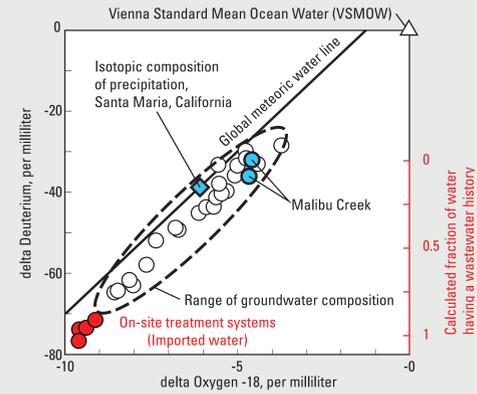


Figure 3. delta Oxygen-18 and delta deuterium data in water from onsite wastewater treatment systems, wells, and Malibu Creek, near Malibu, California, July 2009 and April 2010

Radon-222 is a naturally occurring radioactive isotope that has high activity in groundwater and low activity in surface water. Radon-222 activity increases in surface water with increasing groundwater discharge. Increased radon-222 activity was used to evaluate changing FIB concentrations as groundwater discharge was occurring to Malibu Lagoon and the near-shore ocean. For example, in November 2009, there were small increases in enterococcus concentrations in the near-shore ocean at low tide as water from Malibu Lagoon discharged through the sand berm separating the lagoon from the ocean (fig. 4). In contrast, FIB concentrations remained below the detection limit as radon-222 activity increased and groundwater discharged at low tide adjacent to unsewered residential development in Malibu Colony.

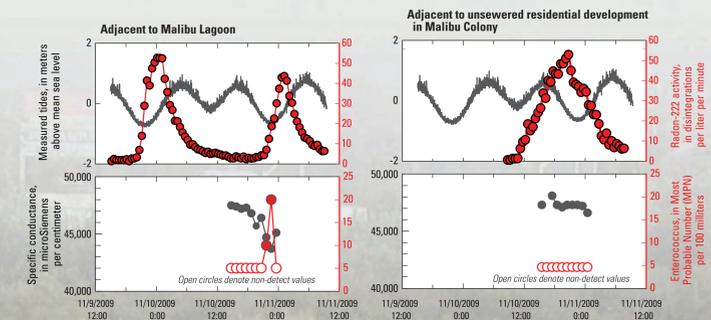


Figure 4. Tides, radon-222 activity, specific conductance, and enterococcus concentrations in the near-shore ocean adjacent to Malibu Lagoon, Malibu, California.

Genetic and chemical tracers of fecal indicator bacteria and wastewater

A combination of genetic, and chemical techniques were used with isotopic data to identify the source of FIB in groundwater, Malibu Lagoon, and the near-shore ocean. Terminal-Restriction Fragment Length Polymorphism (T-RFLP), uses restriction enzymes to cut DNA from microorganisms into fragments of different sizes known as amplicons. Microbial communities present in the discharge from onsite wastewater treatment systems and groundwater having as much as 70 percent wastewater have only 7 percent of amplicons present in both samples (fig. 5A and B). In contrast, as many as 30 percent of amplicons measured in samples from both kelp and the near-shore ocean were present in both samples (fig. 5D and E) consistent with possible contributions of FIB from kelp accumulated along the wrack line to the ocean at high tide.

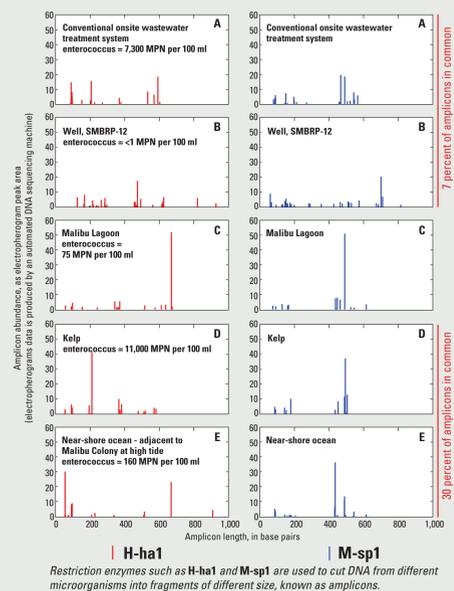


Figure 5. Selected T-RFLP amplicons from onsite wastewater treatment systems, a well having had fraction of treated wastewater in malibu lagoon, near Malibu California, July 2009.

Sixty nine organic compounds, including caffeine, fecal sterols, personal health-care products, and other compounds associated with human use, were analyzed. Indicators of human use were frequently detected in treated water from within onsite wastewater treatment systems and from sampled wells with a high percent of treated wastewater (fig. 6). However, these samples did not contain FIB. Although wastewater compounds are transported with the groundwater, FIB are removed.

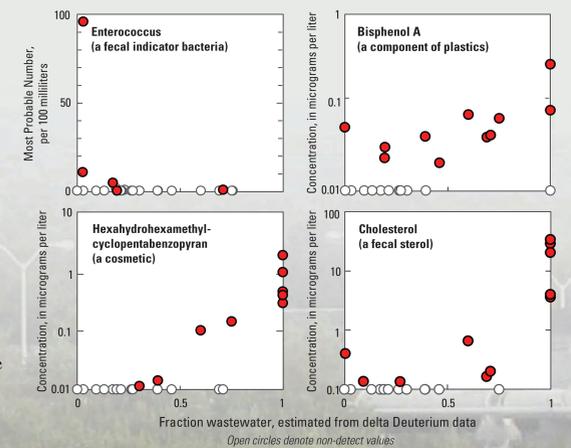


Figure 6. Enterococcus and selected wastewater indicator compounds in water from wells, as a function of the fraction wastewater, Malibu, California July, 2009 to April 2010.

EXHIBIT "F"



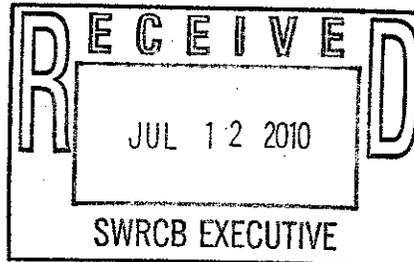
County of Los Angeles
CHIEF EXECUTIVE OFFICE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 713, Los Angeles, California 90012
(213) 974-1101
<http://ceo.lacounty.gov>

WILLIAM T FUJIOKA
Chief Executive Officer

July 12, 2010

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814



Board of Supervisors
GLORIA MOLINA
First District

MARK RIDLEY-THOMAS
Second District

ZEV YAROSLAVSKY
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

Dear Ms. Townsend:

COMMENT LETTER – MALIBU SEPTIC PROHIBITION

Enclosed are the County of Los Angeles' comments on the amendment to the Water Quality Control Plan for the Los Angeles Region to incorporate a prohibition of on-site wastewater disposal/treatment systems in parts of the City of Malibu and unincorporated Los Angeles County.

We look forward to your consideration of our comments. If you have any questions, please contact Mr. Mark Pestrella, Deputy Director, Los Angeles County Department of Public Works, at (626) 458-4001, or via e-mail at mpestrel@dpw.lacounty.gov.

Sincerely,

WILLIAM T FUJIOKA
County Executive Officer

WTF:BC
DSP:os

Enclosure (1)

- c: Supervisor Zev Yaroslavsky, Third Supervisorial District
P. Michael Freeman, Fire Chief
Margaret Donnellan Todd, County Librarian
Dr. Jonathan E. Fielding, Director and Health Officer of Public Health
Gail Farber, Director of Public Works
Richard J. Bruckner, Director of Regional Planning

**COUNTY OF LOS ANGELES
COMMENTS ON AMENDMENT TO THE LOS ANGELES REGION BASIN PLAN TO
INCORPORATE ON-SITE WASTEWATER DISPOSAL SYSTEM PROHIBITION FOR
THE MALIBU CIVIC CENTER AREA**

**1. REQUEST FOR PROVISION ALLOWING THE CONTINUED USE OF ON-SITE
WASTEWATER TREATMENT SYSTEMS**

The County of Los Angeles ("County") owns four public facilities in the area affected by the On-site Wastewater Treatment System ("OWTS") prohibition adopted in the Basin Plan amendment. The facilities are: County Fire Station 88, Road Maintenance Yard 336, a public restroom facility located at Surfrider Beach, and the Malibu Civic Center (which houses the County library, Superior Court, and field office of Waterworks District 29). These County facilities provide critical public services. Fire Station 88 is an essential public safety facility as defined by the State of California Building Code.

The U.S. Environmental Protection Agency and both State and local health departments have all confirmed that OWTS are a safe and effective means of private sewage disposal. The OWTSs serving the County facilities within the proposed prohibition area have been approved by the local building official, health officer and the Los Angeles Water Board ("Regional Board"). Additionally, the County believes it can produce evidence that these systems do not cause or contribute to exceedances of groundwater and/or surface water standards.

The County therefore requests that the State Board either amend the Basin Plan Amendment or return the Amendment to the Regional Board with directions to include a provision allowing the continued use of OWTSs at the above-identified County facilities.

This issue was raised by the County in its comments before the Regional Board. A review of the Regional Board's several responses to all comments made did not reveal any response to this comment.

As an additional comment directed to the State Board, if the Board elects not to exempt these critical County facilities and approves the Basin Plan amendment, the County would request that it be afforded a safe harbor (*i.e.*, continued operation of the OWTS beyond the deadlines set forth in the Basin Plan amendment) if the alternative to individual OWTSs is not operational by the dates called for in the Basin Plan amendment. Obviously, shutdown of such critical facilities as a fire station and a court operation would be drastic and create potential health and safety concerns for the residents of the Malibu area.

2. **NEED FOR STATE BOARD REVIEW OF ISSUES CONCERNING ALTERNATIVES TO OWTS**

Water Code section 13283 provides that the State Board must, in reviewing a determination "that discharge of waste from existing or new individual disposal systems should not be permitted," include "a preliminary review of possible alternatives necessary to achieve protection of water quality and present and future beneficial uses of water, and prevention of nuisance, pollution, and contamination, including, but not limited to, community collection and waste disposal systems which utilize subsurface disposal, and possible combinations of individual disposal systems, community collection and disposal systems which utilize subsurface disposal, and conventional treatment systems."

The State Board's notice does not include evidence of any of the review required by Water Code section 13283. Moreover, the amended notice proposes to cut off the right of interested parties to comment with the submission of the comments due on July 12, 2010, even though the Section 13283 review has not been released to the public. State Board staff must conduct the review required by Section 13283 and provide that review to interested parties for comment prior to the State Board taking action on the Basin Plan amendment.

The Regional Board has indicated that it has conducted the Section 13283 review, stating in paragraph 9 of the final Regional Board resolution that "the Regional Board has conducted a preliminary review of possible alternatives, as documented in the staff report." A review of the Final Environmental Staff Report does not, however, reveal any discussion of the required alternatives of "community collection and waste disposal systems which utilize subsurface disposal" or a combination of such systems, individual disposal systems and conventional treatment systems, as is specifically required by Water Code section 13283.

As this comment concerns either actions by the State Board taken following the Regional Board's action in adopting the Basin Plan amendment, or the Final Environmental Staff Report, prepared after the deadline for comments, it could not have been raised by the County before the Regional Board.

3. **NOTICE AND HEARING REQUIREMENTS**

The notice and hearing provided by the Regional Board for the Basin Plan amendment did not meet the legal requirements set forth in the Administrative Procedure Act ("APA") or the regulations applicable to Regional Board hearings in Title 23 of the Code of Regulations.

Notice of the proposed prohibition was provided via publication, via e-mail and to persons who had requested notice. However, notice was not provided to individual property owners or business owners who would be affected by the OWTS prohibition. Also, the hearing notice provided only that interested persons

could file written comments, and would be given an opportunity to speak at the Regional Board meeting on November 5, 2009. Such a failure to provide adequate notice and opportunity to be heard violated statutory and regulatory protections. See, e.g., Govt. Code section 11410.10 *et seq.*; Title 23 Code Reg. sections 648-648.8.

While amendment of a Basin Plan is a regulatory act, and ordinarily not subject to an adjudicative hearing requirement, specific provisions of the Water Code require the Board to make determinations of fact before deciding to prohibit OWTS operation in the Civic Center area. The Board must make one or more findings as to the impact of OWTS on water quality (Water Code section 13280) and must do so by considering "all relevant evidence related to the discharge," including specific issues set forth in Water Code section 13281(a), which include evidence of contamination, existing and planned land use, the factors set forth in Water Code section 13241 and other issues. These findings require an adjudicative hearing, as provided in Title 23 Code Reg. section 648(a): "[A]djudicative proceeding" means an evidentiary hearing for determination of facts pursuant to which . . . a Regional Board formulates and issues a decision." See also Govt. Code section 11410.10 (requirement for adjudicative hearing applies to "a decision by an agency if, under the federal or state Constitution or a federal or state statute, an evidentiary hearing for determination of facts is required for formulation and issuance of the decision"). In addition, the property rights of homeowners and business owners are directly affected by the OWTS ban, requiring adherence to constitutional requirements of due process, including adequate notice and hearing.

The APA provides that "the agency shall give the person to which the agency action is directed notice and an opportunity to be heard, including the opportunity to present and rebut evidence." Govt. Code section 11425.10(a)(1). The hearing regulations applicable to the Regional Board provide that the parties to an adjudicative hearing "shall include the person or persons to whom the agency action is directed." Title 23 Code Reg. section 648.1(a). However, affected persons were not given the opportunity to present written evidence at the hearing. Moreover, the proposed Basin Plan amendment was modified at the hearing, after the end of the comment periods (both oral and written) without prior notice or opportunity to comment, in violation of the requirements of Govt. Code section 11346.8(c). The failure of the Regional Board to provide proper notice to affected property owners and to provide interested parties with the rights guaranteed to them under the California statutory law and the Regional Board's own procedural regulations require that the Basin Plan amendment be returned to the Regional Board with directions that proper notice and a hearing be held in accordance with law and regulation.

Most of this comment regarding the procedural inadequacy of the notice and hearing provided by the Regional Board was raised before the Regional Board, with the exception of matters relating to the conduct of the hearing itself, which

obviously was conducted after the deadline for comment. Board staff responded to the County's comment regarding inadequate notice by indicating that it met the "legal requirements for noticing" and "took additional discretionary efforts to outreach to the community." This response, however, did not indicate that individual notice to property owners – the requirement of the APA – was made. With respect to the County's comment concerning the inadequacy of the hearing provided, the Regional Board staff noted only that "[t]his Basin Plan amendment is a quasi-legislative action. Therefore, the APA does not apply." As noted above, the County disagrees with this analysis, as the need for fact finding and due process concerns require an adjudicative hearing.

4. **CONCERNS REGARDING SUBSTITUTE ENVIRONMENTAL DOCUMENT COMPLIANCE AND COMPLIANCE WITH WATER CODE SECTION 13241**

Project and Alternatives

The Final Environmental Staff Report ("ESR") prepared for the project does not fully define the project. According to the ESR, the project consists of the prohibition of OWTSs. The alternatives discussed include: (1) an initiative by local government to cease discharges through OWTS by providing community services to collect and dispose/reuse wastewater; and (2) a "no action" alternative. However, since it is directly foreseeable that the community will necessarily require an alternative to OWTS, and since the Regional Board's proposed Resolution directs the City to plan and construct a project to comply with the prohibition, Alternative 1 should be considered as part of the project and its effects on the environment should be analyzed along with the prohibition. Additionally, the ESR does not separately analyze the project and each of the three "possible projects" that are suggested under Alternative 1 in order to provide a meaningful ability to compare the impacts from each.

Further, the ESR does not analyze any alternatives involving a partial ban (for example directed toward dischargers for whom a direct link has been established with the impairments cited). The environmental impacts anticipated from a targeted prohibition would likely be less than the proposed total prohibition. A discussion of reasonably foreseeable alternative means of compliance with the prohibition is required by Public Resources Code section 21159(a). A review of possible alternatives to achieve protection of water quality is also required by the State Board, pursuant to Section 13283 of the Water Code (see discussion in Section 2, above).

Regional Board staff responded to these comments by indicating, first, that it lacked "sufficient detail" to "make more than a preliminary analysis of potential impacts." With respect, such a response represents a plain violation of the Regional Board's obligations, as was found by the Court of Appeal in *City of Arcadia v. State Water Resources Control Board* (2006) 135 Cal.App.4th 1392. That case established that staff must analyze the foreseeable impacts and

foreseeable mitigation associated with the proposed project. Even though precise details cannot be known at this time, there is sufficient detail in the ESR to enable staff to discuss environmental impacts at the level required under CEQA. Second, staff responded that a partial OWTS ban was not reasonable because "there is not sufficient data about the status of individual OWTSs to make it a reasonable alternative. A partial ban would not eliminate or reduce significant environmental impacts as there would still be the need for compliance projects." This response ignores the thrust of the comment, which would focus not on individual OWTS but rather on areas where there allegedly was an impact on water quality. In any event, the ESR did not provide a sufficient discussion of why the partial prohibition was rejected, in violation of CEQA's requirements.

Mitigation

With respect to the project or Alternative 1, the ESR does not identify mitigation measures required which would reduce impacts to below a level of significance. The analysis of Alternative 1 contains a checklist which identifies potentially significant impacts to several areas, including water, land use, public service, utilities and service systems and recreation, as well as mandatory findings of significance. However, the discussion of these impacts, as well as specific mitigation measures designed to reduce the impacts, are deferred to project level review. Since these impacts are reasonably foreseeable as a result of the proposed prohibition on OWTS, the impacts should be fully vetted and reasonably foreseeable mitigation measures should be identified as part of the ESR. Such analysis is required under Public Resources Code section 21159(a). See *City of Arcadia*.

Similarly, for impacts identified as less than significant with mitigation incorporated, the ESR does not identify specific measures and demonstrate how they would reduce the severity of the impact to below the level of significance.

With respect to aesthetics, the County previously commented that impacts were not properly analyzed. The ESR has been revised to find a less than significant impact with mitigation incorporated. Additionally, the analysis in this section notes that during construction, "the aesthetics of residents and visitors may be offended," and that the impacts would be temporary. CEQA does not exempt impacts which may be temporary in nature. Further, there is no indication of how or whether the use of temporary screens or landscaping would effectively reduce the aesthetic impact identified.

In discussing human health impacts, while the final ESR was revised to indicate that the impacts would be "less than significant with mitigation incorporated," the suggested mitigation was merely reference to compliance with unidentified "Health and Safety Plans" and unspecified "Cal OSHA regulations." The level of detail did not rise to that required by CEQA.

The section entitled "Discussion of Environmental Evaluation" concludes that there are mitigation measures available to reduce potentially significant environmental impacts to less than significant levels without describing the measures necessary or the manner in which they will reduce the impacts.

The Regional Board's response to these comments¹ was inadequate, as it used the excuse that since "details of these projects do not exist," a more detailed analysis was not possible. Certainly, the options outlined in the ESR for addressing the volume of wastewater suggest immediately identifiable impacts as well as mitigation measures. And, it was not the job of the commenters to perform this analysis, as suggested by the Regional Board in citing the CEQA guidelines, title 14 Code Reg. section 15086(d). This section applies to comments made by "responsible agencies" and "trustee agencies" in response to a draft EIR, and not to the comments of public agencies on a substitute environmental document. Citation of this section is inapposite and did not excuse the Regional Board's failure.

Unavoidable Significant Adverse Impacts

The unavoidable significant adverse impacts section does not specify which impacts would be significant and unavoidable, as required by Section 15126.2 of the CEQA Guidelines.

The Regional Board responded to this comment by indicating that it had supplemented the discussion of unavoidable significant adverse impacts in the final ESR. That discussion, however, is still not adequate. Instead of grappling with the impacts, the ESR only notes that to "the extent that there are unavoidable significant adverse impacts, those impacts are temporary in nature, predominately arising from construction of compliance projects, and temporary nuisance impacts associated with abatement of the use of OWTSSs." This "discussion" does not describe these impacts, even though the ESR appears to acknowledge that they exist.

Feasibility

The ESR does not contain information to demonstrate that a project could be completed within the periods required in the Basin Plan Amendment. In the event that these timeframes are insufficient to allow for completion of an alternative system for wastewater discharge, the ESR should identify the impact of a prohibition in the absence of another means of addressing wastewater disposal for the area subject to the prohibition.

A similar comment was made by the County to the Regional Board. Regional Board staff responded by stating that "[s]taff does not believe that it is a

¹ The revised analysis of human health impacts was made after the County's comments were submitted.

reasonably foreseeable conclusion that no action will be taken by the prohibition deadline date, and thus did not evaluate the impacts from the losing of the entire Malibu Civic Center area." With respect, this response was inapposite to the issue raised by the County. The issue concerned the problem, also raised earlier in these comments, of what would occur if the alternative system to individual OWTS was not completed by the deadlines set forth in the Basin Plan amendment. Because the amendment does not have any "safe harbor" for the property owners affected by the OWTS ban, presumably, those property owners will be required to find other wastewater disposal alternatives. Such alternatives clearly would have environmental consequences. For example, were the County not able to operate Fire Station No. 88, fire protection in the Malibu area would be adversely affected. Given the significant steps required even to fund a central wastewater treatment plant (which will also require the formation of a special assessment district, a step requiring an election and potential additional delay), the potential for environmental consequences arising from the ceasing of operation of individual OWTS is "reasonably foreseeable."

Global Climate Change

The County noted in comments to the Regional Board that the ESR does not address the impacts to global climate change from the project or from any of the alternatives, including construction related impacts and impacts from removal of existing equipment. The Regional Board's response indicates that greenhouse gases were not quantified due to a lack of agency guidance on how to determine the significance of greenhouse gases. However, as of the date the ESR was completed, methodologies are available to perform a quantitative and/or qualitative analysis of global climate change effects of the project. This type of analysis is not considered speculative. Some sections of the ESR have been revised to mention climate change. However, there is no analysis provided and no support for the simple conclusion that there will be no change in climate under the Air Quality Section. The ESR did not identify the direct and indirect GHG impacts from construction and operation of the project on either a project or cumulative impacts level, which is required due to the global nature of this type of impact.

Salt Water Intrusion

Given that the Malibu Civic Center area is located in close proximity to the ocean, the OWTS prohibition could have serious consequences on the underlying groundwater aquifer due to potential seawater intrusion in the long-term. The impact from possible intrusion has not been analyzed.

Regional Board staff did not address the issue of seawater intrusion in the final ESR or in the responses to comments. However, in responding to a comment from the City of Malibu, staff acknowledged that "seawater intrusion may have contributed to degradation of water quality." In light of that acknowledgement,

staff should have responded to the County's comment, which suggested that eliminating the discharges from OWTS (which form a freshwater barrier) would encourage additional seawater intrusion.

Recommendation

In the final ESR, Regional Board staff concludes that the proposed project (defined solely as the prohibition) constitutes the most environmentally advantageous program. As noted above, the proposed project should include the design of a project to provide an alternative means of discharging wastewater. Notwithstanding this argument, no comparison between the impacts from the project as defined and proposed Alternative 1 is provided. Further, there is no discussion of an alternative consisting of a targeted prohibition or a possible hybrid approach which could both meet the stated goals of the project and address the discharges which may be linked to the cited water quality impairments.

Growth Inducing Impacts

The ESR finds that the proposed prohibition is not expected to induce growth in the Civic Center area since it will not lead to additional immigration and "would not remove an obstacle to land use...". This statement has not been adequately supported.

The final ESR continues to find a less than significant impact with mitigation. The language in Section 12 of the ESR concludes that "the proposed project will not create an additional demand for housing, nor will the development of any compliance project" which has not been supported. The mitigation proposed appears to be the City of Malibu's update of its General Plan to develop a growth reduction strategy. This type of measure is speculative and is not binding mitigation. Section 15126.4 of the CEQA Guidelines requires that mitigation measures be fully enforceable. Project that would remove obstacles to population growth, including the example provided in this section of the Guidelines, of a major expansion of a wastewater treatment plant, must be analyzed.

Amendment of Project Without Environmental Review

There were significant changes in the project after CEQA comments had been submitted. In particular, the removal of the zero discharge exemption option and amendments to the Basin Plan amendment that changed project boundaries and compliance schedules were not subject to CEQA analysis.

Water Code section 13241 Issues

In making the determination whether to ban discharges from OWTS in a given area, the Regional Board is required to consider "all relevant evidence" related to the discharge, including "those factors set forth in Section 13241" Water Code section 13281(a). Nowhere in the final ESR accompanying the Basin Plan Amendment is there an adequate discussion of these factors, which are: "(a) Past, present, and probable future beneficial uses of water. (b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto. (c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area. (d) Economic considerations. (e) The need for developing housing within the region. (f) The need to develop and use recycled water."

While certain aspects of these factors are discussed in the ESR (which contains a discussion of the potential costs of alternatives to OWTS, a centralized treatment plant, sewer lines and decentralized treatment plants), that discussion is fragmented and incomplete. There also is no discussion on the need for developing housing within the region, and how a ban on OWTS might affect that need. While the ESR proposes that the treatment plants could generate recycled water, there is no discussion of how that recycled water might be used in the Malibu Civic Center area. The ESR acknowledges, for example, that some of the recycled water generated might have to be disposed of to the subsurface due to limited availability for use. This issue requires additional consideration. And, there is no discussion of the "coordinated control of all factors which affect water quality in the area," given that no consideration is given to considering other factors that would affect water quality, including other potential sources of bacteria or using a hybrid approach (as suggested above) focusing on certain OWTS rather than a blanket prohibition on all OWTS in the Civic Center area.

The County notes also that the final Regional Board resolution approving the Basin Plan amendment contained no specific findings on the Water Code section 13241 factors or on the other factual determinations required under Water Code section 13281(a) to be made by the Regional Board before it acts to ban OWTS discharges.

This comment was made before the Regional Board, which responded that it had made the requisite analysis in the final ESR and that it had made the requisite findings in the final resolution. However, as noted above, neither the ESR nor the resolution contains the analysis or findings required by the Water Code.

EXHIBIT "G"



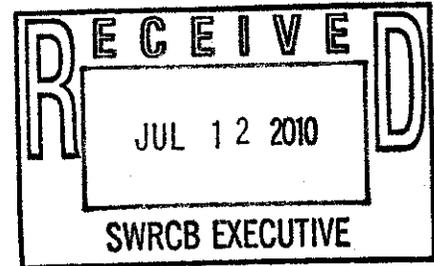
Santa Monica Malibu Schools

Extraordinary Public Education

VIA EMAIL

July 12, 2010

Jeanine Townsend
Clerk of the Board
State Water Resources Control Board
1001 I Street
Sacramento, California 95814



Re: **Comment Letter – Malibu Septic Prohibition**

Dear Ms. Townsend,

This letter serves as the Santa Monica-Malibu Unified School District's ("District") comments on the Proposed Approval of an Amendment to the Water Quality Control Plan for the Los Angeles Region to Prohibit On-site Wastewater Disposal Systems in the Malibu Civic Center Area ("Proposed Amendment").

The District operates Webster Elementary School within Winter Canyon, a portion of the Civic Center area that is included within the area of the Proposed Amendment, which would impose an eventual total ban on all septic systems. Webster Elementary School has been using a septic system since 1951. If the Proposed Amendment is approved as is, Webster Elementary School would have to stop using its septic system in approximately four years on November 5, 2015, abandon the septic system, and expend substantial funds to contribute to and connect with a future localized sewer system, pump and haul sewage to a remote sewer connection, or even worse. All of the options available to the District after a total ban are very expensive to both implement and to maintain. With State funding for schools being cut repeatedly, the District has no source of funding for these additional costs and would likely need to make additional cuts to staff positions.

The District supports both the State Water Resources Control Board and the Los Angeles Regional Water Quality Control Board's ("LA Water Board") efforts to protect our ocean and beaches and agrees that the status quo cannot continue. However, as explained in the "District's Comment Letter" dated October 5, 2009 on the Proposed Amendment, the LA Water Board's proposed fix by eventually banning all septic systems appears to go far beyond that necessary to achieve the Basin Plan's water quality goals. As discussed further below, the LA Water Board's responses to the District's comments was wholly lacking and demonstrate that the LA Water Board failed to take the District's comments seriously and was unwilling to fairly evaluate other alternatives that are less drastic than the total ban. For example, the City of Malibu has proposed a well thought out alternative that the District would prefer to the total ban.

A Reasonable Range of Alternatives Was Not Considered.

In the District's Comment Letter, it pointed out that in the LA Water Board's September 1, 2009 presentation at Pepperdine University and in its Draft Environmental Staff Report dated July 31, 2009, the LA Water Board presented only three alternatives to the proposed ban: (1) continued hauling (which the LA Water Board has declined to evaluate); (2) initiative by local entity; and (3) no action. Under the initiative-by-local-entity alternative, the LA Water Board further listed: action by the City of Malibu, existing or newly formed utility, existing or newly formed water authority, public benefit (non-profit) corporation, and privately-run organizations (for-profit corporations, partnerships, and proprietors). Further, the District explained that aside from the no-action alternative, the remaining two alternatives

Santa Monica-Malibu Unified School District

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would ban septic systems. The District commented that these three alternatives do not cover a reasonable range of feasible alternatives.

In Response #137, the LA Water Board claimed that it could not evaluate a central plant alternative suggested by another because it did not have sufficient details. Similarly, it claimed that a partial prohibition alternative was rejected because there was insufficient data on individual systems and there would still be the need for compliance projects. The LA Water Board stated that enhanced enforcement of individual permits was not considered to be a viable alternative because enforcement against Waste Discharge Requirement ("WDR") violators would not restore the water's beneficial uses of the entire region.

Section 3777(a)(2) of Title 23 of the California Code of Regulations requires the LA Water Board to analyze "reasonable alternatives to the proposed activity," which is identical to the California Environmental Quality Act's ("CEQA") mandate to analyze a reasonable range of project alternatives. The two total ban alternatives and the no action alternative are not all reasonable alternatives. Its claim that there is a lack of information is not sufficient to ignore a suggested alternative. If the information can be obtained, the LA Water Board is required to get it through additional studies, testing, or modeling. Only if the alternative is infeasible in some way can the LA Water Board not study it, but only after the LA Water Board provides substantial evidence that the suggested alternative or obtaining the information is indeed infeasible. The LA Water Board has done neither. Its response lacks substantive analysis and is entirely inadequate.

Less Drastic Alternatives Were Not Meaningfully Analyzed.

In the District's Comment Letter, it requested that the LA Water Board examine additional feasible, less drastic alternatives such as: (1) diligent investigation and enforcement to ensure the proper operation and maintenance of septic systems; and (2) practical septic system enhancements that would further reduce the pollutant load on the groundwater.

The LA Water Board responded in #177, "Many alternatives were considered but none met the objectives of the prohibition. A partial prohibition would not meet the objective because, based upon experience with compliance with and enforcement actions take on individual WDRs, water quality is not improving enough to restore beneficial uses in an acceptable time frame."

Aside from a cryptic reference to a partial prohibition alternative, the LA Water Board's response fails to identify any specific alternative considered other than the two septic ban alternatives and the no action alternative. The LA Water Board's response gives no specifics to the reader what other less drastic alternatives were considered, if any. Without such information and why they are infeasible, the response is nothing more than a bare, unsupported conclusion that lacks substantial evidence and violates the State Water Resources Control Board's certified regulatory CEQA process. Further, the response fails to provide any meaningful, explanation or substantial evidence of the extent that the LA Water Board has taken enforcement actions on individual WDRs. A slight slap on the hand would surely not be adequate enforcement of WDR violators. What does the LA Water Board consider to be an acceptable time frame for water quality to improve? Furthermore, the LA Water Board did not respond to the District's suggested alternative to practical septic system enhancements that would either increase a septic system's efficiency or add new treatments (such as peroxide) that could reduce pathogens and other pollutants. In sum, the response is merely dismissive, conclusory, and not in good faith.

The LA Water Board Has Not Considered More Aggressive Enforcement.

The District's Comment Letter noted that the Proposed Amendment's draft resolution cites, among other things, poor records of compliance for septic systems as a contributing factor to water quality degradation

Jeanine Townsend

July 12, 2010

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and that no public agency has provided assurances that properly designed septic systems would be adequate. The District then queried what improvements to water quality would occur if the LA Water Board took the necessary steps to ensure that septic systems are being properly designed, operated, and maintained; why does the LA Water Board simply rely on the lack of assurances of other public agencies; and should not the LA Water Board determine whether properly operated and maintained septic systems would provide sufficient improvements to meet the Basin Plan's water quality objectives?

In Response #20, the LA Water Board responds with a single sentence: "Most of these systems were permitted by City or County and are under City or County's oversight." This response is inadequate. The LA Water Board has exclusive authority to issue WDRs. Through WDRs, the LA Water Board also has the authority to require dischargers to demonstrate that their on-site waste water discharge systems will achieve the limitations in the WDRs and to revoke WDRs from recalcitrant violators and ban their discharges. By its response, it appears that the LA Water Board has shirked its regulatory obligations and is opting for a "solution" that is easiest on the LA Water Board, yet the most burdensome for the District and others within the Proposed Amendment area.

Conclusion.

As shown above, the LA Water Board's responses are wholly lacking in that they are general responses that are conclusory and lack refuting substantial evidence. Accordingly, the State Water Resources Control Board should not approve the Proposed Amendment, vacate the LA Water Board's approval, and direct the LA Water Board to take a serious look at the District's comments and meaningfully analyze the suggested less drastic alternatives before re-approving the Proposed Amendment.

The District appreciates this additional opportunity to comment on the Proposed Amendment.

Sincerely,



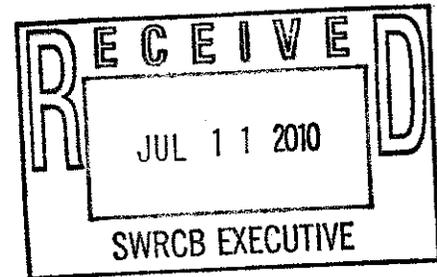
Janece L. Maez
Assistant Superintendent,
Business and Financial Services
Chief Financial Officer

cc: Tim Cuneo, Superintendent, SMMUSD
Stuart A. Sam, Director of Facility Improvement Projects, SMMUSD
Hunter Gaines, Senior Project Manager, Parsons/CCM
Stan M. Barankiewicz II, Esq., Orbach Huff & Suarez LLP

EXHIBIT "H"

From: Walt Keller <mbuwalt@verizon.net>
To: <jtownsend@waterboards.ca.gov>
Date: Sunday, July 11, 2010 9:17 PM
Subject: Comment letter - Malibu Septic Prohibition

TO: Mr. Charles R. Hoppin, Chair
State Water Resources Control Board
Attn: Jeanine Townsend, Clerk of the Board



Mr. Hoppin and Board members;

Based on results of recent studies, which DO NOT show any connection between existing residential septic systems and the Lagoon water contamination, I am opposed to the LA Reg. Water Control Board's prohibition of on-site wastewater systems in the Malibu Civic Center.

The City is continuing to conduct additional studies and the State Board's hearing should not be held until all the scientific evidence is available for consideration. I attended the Regional hearing and reviewed their technical memos which were used as a basis for the prohibition. There was no data that showed that the residential septic systems were contaminating the Lagoon. Water Code 13280 requires that if such systems are to be prohibited, there must be substantial evidence in the record supporting that decision. There is none. There is evidence that the water is polluted - but there is no evidence as to the cause. First the cause(s) must be identified before action is taken and money spent to "cure" that condition. If whatever funds are available to solve this problem are spent on a "solution" which does NOT solve that problem because the cause was not properly identified, funds will not be available to provide a real solution.

Prohibiting on-site systems ties the hands of the city to consider anything other than the age-old sewer fix. Sewers have been used - and have failed - for centuries. This is hardly a high tech solution.

Please delay the hearing until all data is in - and make sure the solution chosen will actually produce clean water in the Lagoon.

Dr. Walter F. Keller

EXHIBIT "I"



Countywide Services Agency

Environmental Management
Department

Environmental Compliance Division
Elise Rothschild, Chief

County of Sacramento

Bradley J. Hudson, County Executive

Bruce Wagstaff, Agency Administrator

Val F. Siebal, Department Director

November 11, 2011

State Water Resources Control Board
Division of Water Quality
1001 I Street, 15th Floor
P.O. Box 2231
Sacramento, CA 95812

Dear State Water Resources Control Board Members,

SUBJECT: Comments On Draft Water Quality Control Policy For Siting, Design, Operation And Maintenance of Onsite Water Treatment System (OWTS), released September 30, 2011.

Sacramento County Environmental Management Department (SCEMD) has reviewed the draft Water Quality Control Policy for Siting, Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems (OWTS Policy) that was released for public comment on September 30, 2011 by the State Water Resources Control Board. Even though the proposed OWTS Policy is an improvement and incorporates many of the comments made on the 2008 draft regulation, we find the policy to be unworkable in its current version for the needs and resources available in Sacramento County.

Sacramento County has approximately 20,000 active OWTS (see Table 4-6 Substitute Environmental Document). SCEMD has had local authority over the siting, design, installation, and operation of these systems for more than 50 years. Our existing OWTS ordinance and programs are fully protective. During this period, there has been no evidence leading us to believe that OWTS, as currently designed, installed, and operated within this county, are jeopardizing public health or our drinking water sources. SCEMD has been monitoring small drinking water systems over the span of 40 years for both nitrates and pathogens with no evidence of contamination from OWTS. We attribute the success of the OWTS regulatory program to several factors including: general knowledge of county-specific geology and hydrology, careful planning with respect to land development, a comprehensive OWTS ordinance, and staff that are well trained and competent in the field of environmental health, on-site wastewater treatment, and water protection.

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Mr. Charles R. Hoppin, Chairman
State Water Resources Control Board
November 10, 2011

The current draft policy would directly impact 95% of new installations or repairs in Sacramento County by placing these OWTS into Tier 2. Disposal fields deeper than 10 feet would not qualify for Tier 1 as the current policy does not give the flexibility of OWTS to be allowed into Tier 1.

Under the Tier 2 requirements, an approved Local Area Management Plan (LAMP) would be required which includes several components that will require more oversight and costs to SCEMD and the residents with OWTS in Sacramento County. Even in a better economy, the requirements are not merited. These include:

- Undefined data collection and reporting requirements as part of a Groundwater/surface water monitoring plan and assessment for the possible effects of OWTS activity. The LAMP requirements are not well defined and do not allow sufficient flexibility for the local programs to implement their own monitoring program. This will result in more oversight and increase staff time to collect the data and prepare the assessment.
- Maintain and report septic pump truck records. This requirement will increase staff time and costs in order to gather the data and place it in a format that is acceptable to the state. The California Health and Safety Code 117435(a) states that this requirement is optional by the use of the term "may." The regional treatment plants already receive and report this data from pumper trucks as part of their waste discharge requirements by the Regional Board. This is a duplication of reporting data to the state.
- Requirements for monitoring and maintenance of OWTS. Again, this requirement will increase staff time and costs.

Draft policy language does not contain a "grandfather" clause for existing lots and would supersede Sacramento County OWTS Ordinance; therefore OWTS would be regulated under Tier 2 within the LAMP requirements. Sacramento Counties Ordinance allows new installations on 1.0 acre or 2.0 acre lots depending on if there is a well. Construction on these parcels would not be allowed with the 2.5 acre limit stated in this policy. This will result in higher costs to homeowners or the inability to repair or install OWTS. This will be a statewide issue.

The SWRCB has not stated that there has been a substantive economic impact analysis completed for this policy; despite that the mandates within the document are unfunded and there will be a substantial economic impact to local programs and residents of the State of California utilizing OWTS. We request that an economic impact analysis be performed for this draft policy and comments be taken on that analysis.

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State Water Resources Control Board
November 10, 2011

The policy demonstrates a "one size fits all" approach when developing siting and design criteria for Tier 1. Problems from OWTS should be addressed on a site specific basis rather than imposing one size fits all requirements.

SCEMD has additional comments and concerns regarding the draft OWTS policy. We have included these in an attached document. The Sacramento County Board of Supervisors also expressed their concerns regarding this Policy. A copy of their resolution detailing their objections is also attached.

In closing, we acknowledge that the proposed OWTS Policy does provide a better approach to AB 885 implementation in comparison to previous proposals. However, it still contains requirements that are unsubstantiated both scientifically and legally, and are costly and overly burdensome to property owners of OWTS and SCEMD as the local implementing agency. Therefore, SCEMD opposes adoption and implementation of the OWTS Policy as currently drafted and requests the Board consider our comments and concerns in revising the proposed policy.

We look forward to your response and an opportunity to comment on a second draft.

Sincerely,



Val F. Siebal
Director

VFS:vmk

Encl.: Comments Attachment
Sacramento County Board of Supervisors Position Statement on OWTS Draft Policy



Countywide Services Agency

Environmental Management
Department

Environmental Compliance Division
Elise Rothschild, Chief

County of Sacramento

Bradley J. Hudson, County Executive

Bruce Wagstaff, Agency Administrator

Val F. Siebal, Department Director

November 10, 2011

State Water Resources Control Board
Division of Water Quality
1001 I Street, 15th floor
P.O. Box 2231
Sacramento, CA 95812

Dear State Water Resources Control Board,

SUBJECT: Comments Attachment

GENERAL COMMENTS

After careful review of the draft OWTS Policy, we have concluded that:

1. The policy does not establish necessity for the higher degree of regulatory oversight required for the standard gravity flow OWTS utilized throughout this county. Over 19,000 OWTS (95% of active systems) will be placed in this higher regulatory tier when a repair is needed. These systems and their designs have been proven over the years to be viable and protective methods for wastewater disposal. This proven track record is based on the Sacramento County Environmental Management Departments (SCEMDs) 50 years of experience regulating these systems in addition to scientific research and past groundwater sampling events. These systems have allowed individuals to safely develop land that might not be suitable for a classic "text book" type of OWTS (Tier 1). Tier 1 is overly restrictive, there are too many unjustified setback requirements. Other viable systems are not recognized in the Tier 1 criteria (e.g. deep trenches, seepage pits, etc).
- The policy demonstrates a "one size fits all" approach when developing low risk siting and design criteria for Tier 1. Tier 1 criteria does not include the many other low risk siting and design parameters that can safely be used to mitigate public health and water quality issues (beds, deep trenches, pits, pressure dosed systems, etc.) in areas with soils that may not be favorable for the type of system required in Tier 1. This "one size fits all" approach to deal with specific isolated cases of improperly designed and operated OWTS (Stinson Beach, Malibu, Rincon Beach, Los Osos, etc) is at the expense of the vast majority of existing systems throughout the state that were properly sited and designed (the Preliminary Substitute Environmental Document indicates this is approximately 90% of OWTS in the state, see Table 4.4.).
- SCEMD advocates several changes to the reporting requirements identified in Tier 2 (detailed in the "Specific Comments" section below). With the public comments period ending there is not sufficient time to develop a reporting format for Tier 2 (and other)

requirements. We advocate that this policy be amended to include an extension of time solely for development of the reporting format for Tier 2 (and other) requirements. This will allow the State and local agencies time to develop a reporting format that realistically meets the needs of all parties yet is not too cumbersome.

- SCEMD advocates that the draft policy prohibits RWQCB's from adding additional requirements beyond those listed in the policy.

SPECIFIC COMMENTS REGARDING POLICY SECTIONS

Section 1 Definitions

1. "Groundwater". First water is often times too high in total suspended solids or available in such a low yield that it is not considered useable water. The policy's definition is too broad and will unjustifiably place a large percentage of county residents into a higher regulatory tier when a repair is needed. The definition of groundwater should be changed to that listed in California Water Code 10752.
2. "Replaced OWTS". The definition should be changed to allow for the replacement of distribution boxes, manifolds, drip line emitters, etc. Something as simple as replacing a D-box could trigger the replacement of an entire system.
3. "Supplemental Treatment". Please specify what are the performance requirements referenced in this definition.

Section 7 Minimum Site Evaluation and Siting Standards

1. 7.5.3 Provide an explicit legal definition for "unstable land mass" and "earth sides".
2. 7.5.5 Provide an explicit legal definition for "vernal pools", "wetlands", "lakes", and "ponds".
3. 7.5.5 Please specify when a vernal pool or wetland becomes an "officially recognized" surface water body subject to this policy.
4. 7.5.5 Approximately 70% of Sacramento County is made up of alluvial deposits that impede the downward migration of rainwater into underlying aquifers. As a result, many areas within the county remain flooded during the winter and spring seasons. According to the Federal Department of Fish and Wildlife, wetlands are defined by plants, soils, and frequency of flooding, and there is no single, indisputable, ecologically sound definition for wetlands. Vernal pools are defined as shallow depressions that hold water seasonally. Many existing lots may not be able to meet the 200 foot setback without considerable increases in system repair costs or enrollment in a Local Agency Management Program.

Please address the economic impact this setback will have on County residents within the flood prone areas when a repair to their existing OWTS is needed.

- 5. 7.5.5 The policy requires a 200 foot setback from vernal pools, wetlands, lakes, ponds, or other bodies where etc, etc, etc.

Delete this requirement or specify code, regulation, or published scientific data that supports this 200 foot requirement when a system is properly designed with specific emphasis on vernal pools and wetlands (assume Tier 1 soils criteria is met).

- 6. 7.5.6 Historically, setbacks from public water wells to shallow disposal fields has been 100 feet (DWR Bulletin 74-90 and CDPH drinking water standards). Bulletin 74-90 also allows for deviations from this setback when a site can support it or when other measures can be obtained to provide the same level of water and public health protection as would be achieved by the 100 foot setback (deeper wells, deeper annular seals, treatment, etc).

Delete this requirement or provide citations to published scientific data that support this increased setback when all other siting and design criteria specified in Tier 1 can be met.

- 7. 7.5.7 Same issue as 7.5.6. Setbacks to deeper disposal field types have historically been 150 feet.

Delete this requirement or provide citations to published scientific data that support this requirement.

- 8. 7.5.5-7.5.10 The setback standards specified in these sections are not supported scientifically in this policy and can create an undue hardship on property owners when a repair to their OWTS is needed. Setbacks to sensitive receptors are dependent on a multitude of parameters such as wastewater quality and quantity, geology, climate, and topography.

Delete this requirement, instead accept locally approved setbacks contained in local ordinances.

- 9. 7.6.2-7.6.4 OWTS permit approval is based on compliance with minimum standards adopted in local and State codes. Requirements more stringent than what is codified are unwarranted and cannot be enforced. These requirements place a burden of time and resource expenditure on the local permitting agency and parties wishing to repair or install an OWTS. This level of reporting is not justified and is an unfunded requirement. These sections should be deleted from the Policy.

- 10. 7.7 This restriction on maximum ground slope (25%) may limit an individual's ability to develop land or repair an existing system.

Delete this requirement. Allow the LAMP to address this issue.

11. 7.8 One single family dwelling unit per 2.5 acres for the protection of water quality is not scientifically supported and is a one size fits all statement that will impact development within this County. It will also impose additional regulation and cost onto existing property owners who have lots less than 2.5 acres. OWTS risk associated with lot size is dependent on site specific geology, hydrology, geography, type of OWTS, and cumulative impacts of existing OWTS in an area.

Delete this requirement, use 1 acre for lots with public water, 2 acres for lots with a water supply well and grandfather all existing lots up to the date of adoption of this policy by the SWRCB.

Section 8 Minimum OWTS Design and Construction Standards

1. 8.1.6 Delete this requirement, not substantiated in the draft policy. Published research supporting these separation distances are not referenced in this policy.
2. 8.1.7 Delete this requirement, not substantiated in the draft policy. Published research supporting maximum 4 square feet of infiltrative area per linear foot of trench is not referenced in this policy.
3. Table 2 Delete this requirement, not substantiated in the draft policy. Published research supporting the application rates depicted in Table 2 are not referenced in this policy.
4. 8.1.8 Delete this requirement. There is published scientific research that concludes dispersal systems deeper than 10 feet provide adequate protection of water quality and the public health. What were the criteria used when determining the maximum allowed depth (pathogen reduction, nitrification, etc)? Please cite published scientific data showing that soils deeper than 10 feet below ground surface are not capable of bio attenuation to a degree that is as protective of water quality as a shallower disposal field.
6. 8.2.3 Delete this requirement. Requiring access risers on tanks that are less than 18 inches below grade is not a reasonable request as risers are an additional cost for homeowners, they pose serious entrapment hazards when not maintained, and tanks less than 18 inches below grade are not difficult for a pump truck operator or septic contractor to expose for service. This request is unjustified.

Section 9 Local Agency Management Program for Minimum OWTS Standards

1. 9.1.2 Provide an explicit legal definition for “High Quality waters.”
2. 9.1.3 Provide an explicit legal definition of “standard” for shallow soils closer to ground surface.
3. 9.1.4 Provide an explicit legal definition for “high domestic well usage.”
4. 9.1.7 Provide an explicit legal definition for “poorly drained soils;” are specific depths identified? Please clarify.

5. 9.1.8 Clarify how vulnerability to surface water from OWTS is determined.
6. 9.1.10 Clarify how “high density” is determined.
7. 9.2 Is “maximum OWTS sizing” volume of wastewater? Please clarify.

8. 9.2.1 The “monitoring, maintenance” language in this section adds an unfeasible requirement on local agencies. There would be an added time and cost to the local agency (eventually passed to the homeowner) for the administration of “monitoring, maintenance”. However the benefit of such administration is not sufficient to justify the cost from our “boots on the ground” experience. We advocate “monitoring, maintenance” should be removed from this section. Adequate oversight of OWTS can be accomplished by the local agency through the review of repair and installation applications and on-sight inspections for repairs and installations. This will provide substantive conformance to the LAMP. The number of applications and inspections for repairs and installations could be included in the required reports to the RWQCB to demonstrate local management of OWTS. We also advocate the language “including procedures to ensure that replacements or repairs to failing systems are done under permit from the local governing jurisdiction” be changed. “Procedures to ensure” places an unfair burden on local agencies, to be responsible for unknown, illegal repairs. While these may be very rare in a well-run OWTS program, this language presents a liability for local agencies. We believe the language should be changed to “including procedures for the review and inspection of OWTS repairs and installations”. Sacramento County, as many local agencies in California receives and responds to complaints of potential OWTS failures. SCEMD responds to all complaints to determine if there is substantive evidence of surfacing sewage or OWTS failure. When substantive evidence is observed/obtained, SCEMD follows up with the responsible party to obtain compliance. Any associated repair or replacement of OWTS requires SCEMD review of an application to repair or replace and SCEMD inspections. This process is feasible and economical; it also protects water quality and public health. The number of complaints that result in observable failures and the number of those that result in permits and inspections could be included in reports to the RWQCB.

9. 9.2.3 OWTS are commonplace. It is incumbent on property buyers to perform some due diligence before purchasing a property. The knowledge of the existence, location, operation and maintenance of OWTS should be the responsibility of property owners and buyers. There is a time and expense cost for local agencies to perform the education described in the draft policy. The cost of implementing this is not commensurate with potential benefits. This section should be removed from the Policy or modified to only apply to OWTS determined to be alternative systems by the local agency. An alternative system should not include a standard gravity flow or pressure dosed system. If this section is not removed we advocate the language be changed to read: “Education program/method to inform buyers of the existence, operation and maintenance of alternative design OWTS (not to include a standard gravity flow or pressure dosed system). The education program/method shall also include procedures to ensure that alternative onsite system owners are provided an informational maintenance document written by the system designer or installer.”

10. 9.3.1-9.3.7 Many local agencies have observed indications of heavy workloads for RWQCB staff. Add to the policy: “Costs for RWQCB review of LAMPs required by this policy will not be borne by local agencies.”
11. 9.3.2 Section 117400 of the CA H&SC states that a local agency “may” require submission of pump truck records. The maintenance and reporting of pump truck records will increase labor and cost to a local agency. The number of pump records would be over 7,000 documents per year for Sacramento County. Any time expended in collecting and reformatting this data to a format preferred by the State is an unnecessary expense. The cost-benefit of any time expended by the local agency in tracking and maintaining pump out records is not warranted. Furthermore, pump out records are not a reliable tool in detecting OWTS failure and can lead to many “false positives” that drain local resources. The identification of potentially failing OWTS is often through receipt of public complaint and subsequent follow up by the local agency. See the comments for 9.2.1 for more detail regarding the SCEMD process of complaint follow up. This method of OWTS failure has proven to be feasible, reliable and cost efficient for SCEMD and many other local agencies. This section should be removed from the Policy and left to the discretion of the local regulatory agencies to determine if pump-out records should be submitted.
12. 9.3.8-9.3.9 As written, the water quality monitoring and assessment is too burdensome for Sacramento County. There is a cost for the implementation and maintenance of this monitoring/assessment program, which will result in new or increased fees for residents with OWTS. The current economic environment is not suitable for increases in government fees. In addition, the requirements as written require monitoring or reporting that is excessive and or too costly when weighed against any perceived benefit. We advocate the removal of “local surface water” from the policy language. If drinking water sampling is occurring and there is no substantive nitrate or pathogen contamination, surface water sampling is an unnecessary and costly event. We advocate that the language be changed from “...groundwater and local surface water quality on a regional and localized basis across the entire jurisdictional area...” to “...drinking water quality in the jurisdictional area of the local agency...”. Also for the section that reads “...but may include other constituents deemed appropriate for assessing the impacts of OWTS on water quality...” add “as determined by the local agency.”
- Small water system sampling data (tested for coliform and nitrates) should be sufficient to demonstrate that drinking water is monitored and assessed. Small water system sampling should be added as an example of existing data that may be used by the local agency to fulfill this requirement. Also, small water quality data for small water systems in Sacramento County is supplied to the California Department of Public Health (CDPH) by testing companies and other parties. This information should be shared amongst State Agencies rather than requiring a local agency or other parties the added cost of reporting this information to multiple State Agencies. We also advocate that the last sentence in section 9.3.9 be deleted (requirement for EDF and CEDEN data format). Additional collection and format requirements add costs to local agencies. Finally, water quality monitoring, assessment and reporting should be on a less frequent basis. We advocate that the language in the policy be changed to require a report every five years. This will provide effective feedback

that water quality is being monitored for impacts meanwhile minimizing the cost impact on local agencies and residents.

13. 9.4.4 Provide an explicit legal definition for “surface impoundment.”

9.4.8 Delete this provision. Local agencies protect public health and water quality for existing facilities such as these. These facilities should be addressed in the LAMP. An increase in regulation and oversight will increase fees. The result will most likely be an increase in illegal discharges to both the ground and surface waters.

14. 9.4.9 As per Tier 2, an “advanced/alternative system” is any OWTS that provides wastewater treatment to an extent that it’s as protective of public health and groundwater as a Tier 1 system.

Please specify the level of wastewater treatment expected by the State Water Board or Regional Water Board prior to dispersal two feet above groundwater.

What level of treatment is protective of public health and groundwater prior to dispersal two feet above groundwater?

What type of treatment will be required and to what degree must the advanced/alternative OWTS be capable of treating the wastewater prior to dispersal below ground surface?

Will credit be given for the soils aerobic and filtration capacity? If so, what treatment reduction will be allowed?

15. 9.4.10.1-2 These prohibitions should be deleted. 100’ has been used in Sacramento County for decades with no demonstrable contamination to drinking water. The grout seal depth on the well is a factor that is not included in this prohibition. The vertical distance from the well to the effluent dispersal system should be part of the calculation. If an existing system cannot meet these setbacks what options are left for the existing homeowner? See comments on sections 7.5.5 & 7.5.6.

16. 9.4.10.2-5 Delete these setbacks. These requirements are not scientifically or legally substantiated in the draft policy.

17. 9.5 Delete these setbacks. See comment above and comments for 7.6.2-7.6.4.

SACRAMENTO COUNTY BOARD OF SUPERVISOR'S POSITION STATEMENT ON
PROPOSED STATE WATER RESOURCES CONTROL BOARD (SWRCB) POLICY ON
ONSITE SEWAGE TREATMENT SYSTEMS (OWTS)

WHEREAS, in 2000, the California State Legislature passed Assembly Bill 885 (AB 885) requiring the California State Water Resources Control Board (SWRCB), to adopt a statewide standard or regulations for the permitting and operation of onsite waste water treatment systems (OWTS); and

WHEREAS, in 2008, SWRCB released draft regulations for public comment. The regulations were withdrawn by SWRCB because of public concerns about onerous unsubstantiated requirements with high economic impact within the document; and

WHEREAS, on September 30, 2011, the SWRCB released a new draft onsite sewage treatment systems (OWTS) policy in a second attempt to satisfy AB 885 requirements; the 45 day comment period will end November 14, 2011; and

WHEREAS, the SWRCB has scheduled four public workshops scheduled in San Luis Obispo, Redding, Santa Rosa and Riverside and there is no public workshop scheduled in the Greater Central Valley which has many OWTS ; and

WHEREAS, the Board of Supervisors of Sacramento County requested in a letter dated October 12, 2011, to the Chairman of SWRCB Board to hold an additional workshop in Sacramento County; and

WHEREAS, the Board of Supervisors of Sacramento County recognize that individual onsite OWTS, if properly designed, installed, and operated, are a viable option for the sewage treatment and disposal needs of residents, visitors, and businesses in those locations where connection to a community sewer system is not feasible; and

WHEREAS, there are approximately 20,000 OWTS in Sacramento County; the vast majority of these will be unable to comply with the low risk tier standards of the SWRCB draft policy when a repair, modification or a new installation is needed because of geological conditions or lot sizes within Sacramento County; and

WHEREAS, an OWTS Local Area Management Plan (LAMP) will have to be submitted and approved by the Central Valley Regional Water Quality Control Board (CVRWQCB); and

WHEREAS, the requirements of the LAMP are unfunded, extensive and not well defined and, depending on the approval requirements of the LAMP by the CVRWQCB, local OWTS fees may have to be established or raised in order to implement and maintain these reporting requirements; and

WHEREAS, the CVRWQCB could impose fees to Sacramento County since the draft policy contains no mechanism to fund their review of the LAMP; and

WHEREAS, there is a lack of an economic impact analysis for the draft OWTS policy describing the costs of the unfunded mandated requirements; and

NOW, THEREFORE, BE IT RESOLVED AND ORDERED, that the Board of Supervisors of Sacramento County, State of California, finds and objects to the following requirements of this draft OWTS policy by the SWRCB:

- That the majority of the OWTS systems in Sacramento County would be placed in a more stringent high risk tier when a repair or new installation is required and could result in additional costs to the property owner.
- That the requirements of the LAMP are not well defined and could, depending on the requirements imposed by the CVRWQCB, result in additional costs passed to the OWTS property owner to pay for unfunded mandated reporting.
- The CVRWQCB could impose fees to Sacramento County since the draft policy contains no mechanism to fund their review of the LAMP, and these fees would most likely be passed onto the residents operating OWTS.
- There is no economic impact analysis of this draft policy describing costs of these unfunded mandated requirements.

Sacramento County Board Of Supervisor's Position Statement On Proposed State Water Resources Control Board (SWRCB) Policy On Onsite Sewage Treatment Systems (OWTS)
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On a motion by Supervisor Yee, seconded by Supervisor Nottoli, the foregoing Resolution was passed and adopted by the Board of Supervisors of the County of Sacramento this 8th day of November, 2011, by the following vote, to wit:

AYES: Supervisors, Nottoli, Peters, Serna, Yee, MacGlashan
NOES: Supervisors, None
ABSENT: Supervisors, None
ABSTAIN: Supervisors, None



Roberta MacGlashan

Chair of the Board of Supervisors
of Sacramento County, California

In accordance with Section 21100 of the Government Code of the State of California a copy of the document has been delivered to the Chairman of the Board of Supervisors, County Sacramento on 11/5/11

V. Roberts
Deputy Clerk, Board of Supervisors

ATTEST:

Cyndi Lee
Clerk, Board of Supervisors

FILED
BOARD OF SUPERVISORS

NOV 08 2011

BY Cyndi Lee
CLERK OF THE BOARD