

To: California Regional Water Quality Control Board, Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, California



Re: Answer to Administrative Civil Liability Complaint No. R3-2005-0137

Being a person named in the complaint as an "individual land owner".

DEAR HONORABLE BOARD MEMBERS,

My name is Steven Paige. I am a home owner in Los Osos California in the septic prohibition zone required by State Water Quality Control Board under Resolution No. 83-13, November 1, 1988. I purchased my property in October of 2003.

I am 58 year old single senior citizen raising a nine year old child on a limited income. I have clear title to my property but have an income level that qualifies me for the school lunch program at Baywood Elementary. Not unlike many other seniors in our community. Under this program I am eligible for free lunches for my daughter as are 33 percent of the families on the prohibition zone. To qualify for this program I have to give proof that my income is below federally designated 'poverty level' as a single parent.

In CRWQCB resolution No. R3-2002-0117 Attachment- Basin Plan Amendments Page 8; the board indicates that the Los Osos community Sewer is listed with other plans for action to improve the water quality of the Estero Bay watershed and Bay. The State funding for the Los Osos community sewer is dependent on the community waste treatment being included as part of the remedy for Morro Bay Estuary Water quality improvement.

In your letter of October 6, 2005 to Los Osos Community Service District board you mention your intention to fine me directly for the use of my septic system. I quote: "**We also intend to begin enforcement proceedings against individual dischargers; that is individual property owners**". My septic system which was built to county standards and subject to CRWQCB management in 1987.

I feel the CRWQCB prohibition for septic discharge against my property and threat of fines is discriminatory and unlawful. Other property owners and water users in the 260 square mile Estuary watershed are allowed to impact the watershed and basin with only voluntary compliance and unprofessional surveillance.

The CRWQCB is denying me the right to due process by incriminating me without specific evidence related to my property. I would be denied my right to due process and discriminated against if the Water Board followed through with its fine against me or the Los Osos CSD. **Linkage of levies against my property to Morro Estuary basin**

improvements by the CRWQCB comes at a price. Bifurcation of the benefits special to my property vs. general benefits has not been determined. Proposition 218 requires that it be determined before an assessment to be levied.

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TAX LEVY DISCRIMINATION BY PROXIMITY AND VALUE

The CRWQCB has discriminated against me by arbitrarily deciding to approve septic systems on properties with the same or less ground water separation in the Estero Bay watershed. Because of the linkage to Bay water quality as a basis for the required prohibition and fines for septic system use, I feel can claim that the CRWQCB has treated inequitably property owners within the 264 square mile watershed. All human impacts are culpable and many are non-point sources that do not allow empirical evaluation of the polluters as your own basin plan claims.

For example, under order No. 00-12 , March 31, 2000 the Bayview Heights and Martin tracts in Los Osos were exempted from the prohibition. All the conditions that justify the exemption exist on my property except proximity that I have no control over. I would love to buy a house on a one acre lot but I can't afford it. In fact the CSD itself in the recent past suggested that ground water separation be a criteria for sewer hookup in the prohibition zone. The board denied the request.

All septic users within the watershed are subject rulings of the CRWQCB. I assume unitary tax law requires that all watershed property owners be assessed equitably if Bay Water quality is coupled to Levies and prohibitions and ordinances. I claim that any financial encumbrance or use restriction against my property with linkage to Bay Water quality improvements represents a non-unitary taxation of my property subject to appeal when other identical property improvements are exempt within the watershed or basin.

The CSWQCB itself recognizes the equitable and unitary restriction of septic users in its proposed new law that ties all septic users to basin plan criteria. (See attachment of proposed state septic regulations approved draft). Yet this proposed fine offers me no remedy to improve nitrate levels on my individual property or prove they don't exist before the penalty is imposed as in the proposed new septic requirements?

TAX LEVY DISCRIMINATION BY LAND USE

Non unitary tax levies and prohibitions based on land use singles out residential users relative all other watershed land use issues. Other property uses which impact the Estuary and watershed are allowed to damage the estuary and water basin without similar property burdens and fines or restrictive ordinances.

In SWQCB resolution 2003-0060 attachment 2, R3-2002-0117 is a graph describing the land use and mitigation for water quality problems. (Attachment) Having some sources of pollution comply voluntary while other sources of pollution are fined, levied and restricted is discriminatory.

The CRWQCB identifies in its basin planning that siltation is the foremost threat to the estuary. Yet there is no order of law prohibiting overgrazing on ranchlands within the watershed and there is no order of law limiting the agricultural practice of exposing soils in farming practices? Again wealthy landowners are treated differently than myself. The CRWQCB has estimated that 70,000 tons of sedimentation per year comes into the Bay mostly from human land use impacts. Yet there are no ranchland or farming restrictive ordinances?

Nitrate fertilizers are allowed to be used indiscriminately adjacent to the creeks for the establishment of row crops within the watershed and the impacts are 'voluntarily' measured and acted upon. Row crop agriculture is booming in the Los Osos valley and there is no regulatory mitigation of impacts on the watershed by the CRWQAB. All agricultural and ranchland nitrate and TMDL management is voluntary.

Within the watershed CRWQCB testing finds the creek test points for TMDL out of compliance 2 to 5 times more than the Bay testing locations yet nothing is done to alleviate cattle and farming surface water nitrate and bacteria impacts. Cattle grazing is by your boards estimation the third most important contributor to Bay and watershed pollution for TMDL.

DENIAL OF MY RIGHT TO DUE PROCESS COMINGLING USERS EVIDENCE

Since the prohibition of Nov. 1 1988, the CRWQCB's management of the water basin has caused the nitrate level of the averaged wells in the prohibition zone to be beyond state standards. The approval of the private sewer system at the Sea Pines Resort and residential community after creating the prohibition has caused through human error, the nitrate level in wells adjacent to the complex to be four times higher than the surrounding prohibition area.

By allowing these well figures to be included in the prohibition zone averaging you are denying me my right to due process. If the project had been denied, the figures would not exist. If the Sea Pines adjacent well figure is removed from the average the prohibition zone nitrate level is within state standards. Applying more stringent standards without a vote of Los Osos Residence may be in conflict with Proposition 218 that clarified Proposition 13. The proposition clarifies reasonable property assessments.

DENIAL OF MY RIGHT TO DUE PROCESS
EVIDENTARY SUBMISSIONS

Septic systems in the Bayview Heights and Marian tracts are allowed under Order NO. 00-12 methods by which they can prove continually that their septic systems comply and how to correct failures without penalties. Same can be said for the new state septic standards co-drafted by the CSWQCB.

By levying fines against the CSD and myself (by naming me in your compliant), you are denying me the same rights to show my system is in compliance or can be corrected at a minimal cost to me. When I purchased my house my system was inspected. No fault was found with it then. By assuming it is failing, you are denying me my individual right as each and every homeowner in Los Osos has, the right to show that each home owner is in compliance with State nitrate groundwater Standards or can make the necessary corrections at a reasonable expence. I believe you have no penalty claim against my property and have contacted the Taxpayers Rights Advocates Office, in Sacramento to request a hearing locally.

DENIAL OF MY RIGHT TO DUE PROCESS
BIFURCATION OF PARKLAND IMPROVEMENT COSTS

In Kerrigan and Melanie Mahan, John Lauffer and Steve Stevens Vs. the City of Morro Bay San Luis Obispo Superior Court Judge Douglas Hilton decided in a ruling that homeowners expenses for adjacent parkland improvements should be bifurcated with respect to beneficial use. Presently I am operating an on site sewage disposal system that uses no energy, and has a private infrastructure requiring about 150 dollars a year on average to maintain. I will receive no direct benefit from the construction of the most expensive sewer system in California history. Given my income level the cost is prohibitive as are your fines.

The cost of decommissioning my septic system, and maintaining an off site system at my expense has the proposed dual purpose described by your board of improving groundwater nitrate levels, and Estuary Parkland water quality improvements commingled with the basin plan objectives. The cost of the Estero Bay Parkland water quality improvements should not be borne by a few property owners who share the parkland with all State residences or limited to one user source of basin pollution. If Basin plan improvements are not bifurcated by the court by user impact and by beneficial use, they are inequitable.

DENIAL OF MY RIGHT TO DUE PROCESS
LEVY, FINES, ASSESSMENTS ARE IN CONFLIT WITH PROPOSITION 218

Under proposition 218 your fine represents a special tax on my property. The fine falls into the category of "any levy" as in the proposition wording:

ARTICLE XIII C Section 1-(e) "Fee" or "charge" means any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property related service.

The "CRWQCB" fits the definition of " regional governmental entity" described in the proposition.

ARTICLE XIII D Section 1-

(b) "Local government" means any county, city, city and county, including a charter city or county, any special district, or any other local or regional governmental entity.

Then under the proposition your fine is an increase in my sewer assessment subject to my vote and other provisions of this ordinance. So in essence, I would have to vote for my own fine for a special tax on my property in this case a fine which fits the category of "any levy".

(a) Any assessment imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, sewers, water, flood control, drainage systems or vector control. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4.

(d) No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote. A special tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved.

Proposition 218 restricts property-related fees, which are fees imposed "as an incident of property ownership." This is a new term and there is no consensus on what constitutes a "property-related fee." Proposition 218 refers to most fees commonly collected on monthly bills to property owners, such as water delivery, garbage service, sewer service, and storm water management. The fine is not a service related fee. Wetland improvement levees are not incident to my property ownership and are therefore in conflict with Prop. 218. In commingling the Los Osos sewer with Estuary Parkland improvements the CRWQCB is imposing non incident assessments on my property in conflict with proposition 218.

Further the CRWQCB has not done its homework. Your order is lacking the calculation requirement of prop 218 The Calculation Requirement is one of Proposition 218's Most Significant Changes in state law.

Local governments (Your board fits this category, as per the description above.) must recalculate all existing assessments that do not qualify for the exempt list. My review indicates that in many cases, Proposition 218's provisions regarding the calculation of

assessments will result in local governments lowering the amount they collect in assessments from property owners, or eliminating the assessment. I identify the specific calculation provisions below.

First: Determine If a Project or Service Provides Special Benefits. The local government must determine whether property owners would receive a "special benefit" from the project or service to be financed by the assessment. Proposition 218 defines a special benefit as a particular benefit to land and buildings, not a general benefit to the public or a general increase in property values. If a project or service would not provide such a special benefit, Proposition 218 states that it may not be financed by an assessment. Our review indicates that local governments will find it difficult to demonstrate that some existing assessments for ambulance, library, police, business improvement, and other services satisfy this tightened definition of special benefit. As a consequence, some existing assessments may need to be eliminated.

Second: Estimate the Amount of Special Benefit. Local government must use a professional engineer's report to estimate the amount of special benefit landowners would receive from the project or service, as well as the amount of "general benefit." This step is needed because Proposition 218 allows local government to recoup from assessments only the proportionate share of cost to provide the special benefit. That is, if special benefits represent 50 percent of total benefits, local government may use assessments to recoup half the project or service's costs. Local governments must use other revenues to pay for any remaining costs. This limitation on the use of assessments represents a major change from the law prior to Proposition 218, when local governments could recoup from assessments the costs of providing both general and special benefits.

Third: Set Assessment Charges Proportionally. Finally, the local government must set individual assessment charges so that no property owner pays more than his or her proportional share of the total cost. This may require the local government to set assessment rates on a parcel-by-parcel basis. Properties owned by schools and other governmental agencies--previously exempt from some assessment charges--now must pay assessments.

As I see it, your "fine" or "charge" does not comply with state law. Further, the original vote for sewer studies funding approved by the residence in the prohibition zone only covers approval for the costs described in the wording of the vote. No other assessments above these costs have been approved by a two thirds vote yet as required by proposition 218?. Majority vote does not qualify a sewer assessment because it is a "special tax" as described in the Proposition. I believe that there are many existing irregularities in the Los Osos Sewer project and Proposition 218, including fraud and conspiracy to fraud. I am at this time, preparing a request that the San Luis Obispo Grand Jury investigate previous activities of the Los Osos CSD.

**DENIAL OF MY RIGHT TO DUE PROCESS
AFFORDABILITY AND LOW INCOME IMPACTS**

Los Osos, for a costal community, has a larger share of Low Income residence as evidenced by the Title 1 funding for Baywood Elementary and its large demographic of senior citizens. I am a person in that grouping.

By not performing an analysis of the impact on low income housing prior to censure and fines, not to mention the cost of improvements, the CRWQCB has skewed the Local Costal Plan. and SLO County Land Use Ordinance ad hoc, and makes any Planning evaluation of low income housing in Los Osos erroneous. This is a direct infringement on my right to due process caused by the CRWQCB as it impacts a class of people which I am part of with no discussion of mitigation or inclusion in the LCP or LUO. The Levy makes a mockery of carefully thought out land use planning.

Tax Relief for Seniors and Disabled Persons California Revenue & Tax Code Section 69.5 Persons over 55 years of age and those severely and permanently disabled save on property taxes by taking advantage of Revenue and Tax Code Section 69.5. It allows seniors and disabled persons to transfer their current assessment to their next property and preclude a jump in property taxes. The CRWQCB's enjoinder against underprivileged and fixed income senior homeowners in the prohibition zone is in direct conflict with the intent of state law governing property taxation of the underprivileged, infirm and aged.

Further the prohibition of Granny Quarters in the Order 00-12., Martin and Bayview heights exemption, is in direct conflict with State Law because it discriminates against seniors without analysis or offset to accommodate much like the now proposed levy does. This action shows that the CRWQCB has for an extended period of time discriminated against Seniors and the economically disadvantaged.

In my estimation, the Los Osos prohibition is not a sewer issue, it is a property rights and property assessment issue aggravated by past management of the watershed by the CRWQCB over the last forty years. Many of the property and assessment issues remain un-judged at this time. Los Osos inherited its problems from a historic flawed water policy. I feel I should be held harmless for past basin mismanagement. Had the CRWQCB not allowed my house to be built, I wouldn't be here. I would have bought a house somewhere else.

And now, the basin management plan ignores the impacts of energy consumption in endorsement of the present sewer scheme contrary to State goals and unknown future energy prices. Energy consumption should be a key factor in any plan to mitigate nitrates. This project is doomed to failure because of this omission.

The CRWQCB ignores equability among users and landowners, ignores the positive impact of water conservation, water shed management offsets, and on site improvements.

in favor of a highly technical and energy intensive infrastructure that will eventually bankrupt Los Osos and fail its proposed goals. Ten years out when that happens, will you attempt to fine us again like Sea Pines?

Finally I feel the CRWQCB links itself to this flawed sewer plan that was doomed to failure in a scramble to micromanage one small portion of failing and inequitable watershed management plan that has existed for years. Your proposed fine is *your* endorsement of a plan that is inequitable to basin users and blind to obvious impacts. When the legal curtain is pulled back on property rights, low income impacts, basin plan flaws, Proposition 218, energy consumption and questionable actions by the last CSD, where will the CRWQCB end up? *Porter-Cologne is not a carte blanche to discriminate against low income homeowners like myself as you are doing now. That is why we the people, passed proposition 218. Los Osos is the perfect storm for sorting out Proposition 218.*

So, I respectfully request that you not impose any levy against myself or the Los Osos CSD. With the questionable legal issues mentioned above, I feel it best we work together to create basin plan improvements that are equitable and functional in the legal environment of proposition 218 and are energy efficient. I would vote for that.

The above constitutes my answer to the complaint filed by California Water Quality Control Board Central Coast Region, ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R3-2005-0137 *and* I wish to make further public comment at hearing as I am mentioned as an "individual property owner" in the complaint. Please notify me when that hearing will take place and schedule time for me.

Yours Truly,



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