

From: "John Ricker" <ENV012@co.santa-cruz.ca.us>
To: "Sorrel Marks" <Smarks@waterboards.ca.gov>
Date: 4/6/2008 10:35:02 PM
Subject: RE: Basin Plan amendment & waiver for onsite systems

Sorrel, attached are my comments on the proposal. John

John Ricker
 Water Resources Division Director
 Santa Cruz County Environmental Health Services
 (831) 454-2750

-----Original Message-----

From: Sorrel Marks [mailto:Smarks@waterboards.ca.gov]
 Sent: Thursday, February 28, 2008 1:34 PM
 To: David Athey; wfrace@atascadero.org; KnasterA@co.monterey.ca.us;
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 paul.jenzen@sbcphd.org; Rick.Merrifield@sbcphd.org; erickson@stamplaw.us
 Subject: Basin Plan amendment & waiver for onsite systems

Hello All: Attached please find a letter notifying interested parties that the staff reports for proposed amendments to the Basin Plan criteria for onsite wastewater systems and proposed waiver of waste discharge requirements for discharges from onsite wastewater systems are available for review. The documents are attached or available online at the following link: <http://www.waterboards.ca.gov/centralcoast/>

If you prefer hard copy, please give me a call at 805/549-3695 and I will be happy to send you one. Also, if you know of others interested in this issue, please pass along this message.

Thank you for your time and effort contributed to developing these proposals. Please submit your comments and recommendations by April 7, 2008. If comments provided in our recent discussions of the preliminary draft documents are not reflected in these drafts, please include them in your formal response to this public comment draft. Technical support for recommended changes will assist development of technically sound revisions, so please include such reference information with your comments. If you have any questions, please give me a call or email. Many thanks. Sorrel Marks

CC: <russell@russellgross.com>, <chris.rummel@comcast.net>, <realrose@norcalbroker.com>, "Troy Boone" <ENV065@co.santa-cruz.ca.us>, "Bob Kennedy (E-mail)" <Bob.Kennedy@co.santa-cruz.ca.us>, "Brian Blease (E-mail)" <ENV053@co.santa-cruz.ca.us>, "Chris Berry (E-mail)" <CBerry@ci.santa-cruz.ca.us>, "Darlene Oertle" <ENV107@co.santa-cruz.ca.us>, "Datta Khalsa (E-mail)" <datta@mainstrealtors.com>, "David Roberts" <ENV070@co.santa-cruz.ca.us>, "Doug Pearson (E-mail)" <ENV044@co.santa-cruz.ca.us>, "Howard Kolb (E-mail)" <HKolb@rb3.swrcb.ca.gov>, "Howard Liebenberg (E-mail)" <TheEarthSmith@msn.com>, "Jeff Nolan (E-mail)" <jeff@nolanzinn.com>, "Ken Mabie (E-mail)" <kmabie@aol.com>, "Pat Gill (E-mail)" <thegills@cruzio.com>, "Peter Haase (E-mail)" <phaase@fallcreekengineering.com>, "Rafael Sanchez (E-mail)" <ENV048@co.santa-cruz.ca.us>, "Rich Wilson (E-mail)" <ENV047@co.santa-cruz.ca.us>, "Ruben Sanchez (E-mail)" <ENV028@co.santa-

Item No. 10 Attachment 3
 May 9, 2008 Meeting
 Waiver of WDRs for Onsite
 Wastewater System Discharges
 (Resolution No. R3-2008-0006)

Comments on proposed amendment of requirements for Onsite sewage disposal systems in the Central Coast Region – Submitted by John Ricker, Water Resources Division Director, Santa Cruz County Environmental Health Services

Resolution 2008-0006

P.4, no. 2: MOU's will commit local agencies to adoption of criteria contained in statewide regulations developed pursuant to AB 885. However, these criteria are unknown and could be unreasonable. We cannot agree to adopt them this unless there is an option to review the criteria for reasonableness and applicability. Suggest using language similar to that in the staff report for Resolution 2008-0005: if and when statewide criteria are adopted, the MOU's will be reviewed to determine if they need to be modified. (1)

pp-4-5, No. 3. Conditions of waiver: Are all systems not under a wastewater management program going to have to submit a ROWD and pay a fee? Seems like unnecessary effort and cost. However, Santa Cruz County has an onsite wastewater management program and it would appear systems in the county are exempt. (2)

Proposed amendments to Basin Plan Chapter 4

p.2.

- Why does application area exclude the top foot? This runs contrary to encouraging shallow disposal trenches in the biologically active topsoil.
- What is the distinction between alternative and engineered systems? Maybe for simplicity use just one term
- The definition of new onsite system includes upgrades for increased flow. We grappled with this issue before and determined to allow upgrades of existing systems using repair criteria. This is a more fair approach to allowing somebody the ability to add a bedroom if their site can meet repair criteria but not new system standards.
- Defining onsite disposal area to include the surrounding 100 ft could be problematic, particularly if 200% of that area must be preserved with no other uses. But it's not clear where that comes into play

p. 3: The definition of watercourse is overly broad and should specify a duration of flow. Otherwise a 100 ft setback could refer to all roadside ditches that only carry stormwater. We require a 25 ft setback from any drainageway that does not run for more than 1 week after rainfall.

p.5, Similar to the comment on page 2, land use changes should be allowed if locally established repair criteria can be met.

Rec. 3 Maintenance by local maintenance districts is probably not practical, but local districts can include programs to require maintenance.

p.6: It's unclear how a wastewater management plan would project demand and determine best ways to meet demand. Seems better to just establish site criteria specific to any watersheds or basins of concern.

Onsite wastewater management districts can fund administration of programs for maintenance without actually performing the maintenance themselves. This may be more realistic, given the constraints of Prop 218.

p. 7, no. 8: This requires that at least 3 percolation tests shall be conducted at the depth of the bottom of the trench. We currently require 3, but at least one is 5-10 ft below the trench to confirm adequate subsurface permeability in soils below the trench.

No. 9. Required set back from a slope over 30% and calculation of setback for any slope over 20% seems unnecessarily restrictive. We require setback from slope over 67% and no restrictions on slopes less than 30%. We have never seen surfacing effluent as a result of slope. What are geologic conditions that permit surfacing? An arbitrary 100 ft setback seems excessive. Setback should depend on the height of the cut. That saves the step of having to make horizontal cross-sections. We currently require 4X the height up to 25 ft or up to 50 feet if there are fractures or an impermeable layer present (geologic conditions that permit surfacing?).

p.8, no. 11, The change will require a 20 ft separation to groundwater for soils that perc 1-4 mpi whether or not a well is located within 250 ft. Why? What is the required separation to groundwater with enhanced treatment?

No. 12, Why is a certified professional required for slopes over 20%? Seems like up to 30% should be ok. What is the limit with professional design? How is that determined? What is a certified professional?

No. 13. We completely disagree with the restriction on second units on parcels less than two acres. Systems serving duplexes or multiple units are allowed without regard to parcel size. Secondary units are not defacto subdivisions, with the restrictions we have in place. We allow second units on parcels less than 2 acres provided they share a common system and they can meet new system criteria.

p. 9, no. 6, There is a new requirement that tanks be watertight. We concur with this.

No. 7, The flow rate is not specified for a one or two bedroom house. We allow reduced design flow for houses smaller than 3 bedrooms as some sites cannot accommodate a larger system that has a design flow of 375 gpd.

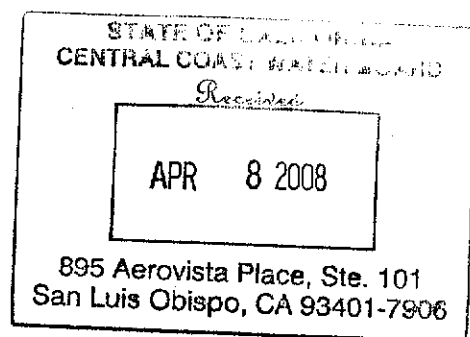
p. 11, no. 13. All dispersal systems shall be hydraulically tested after installation and before covering. This is new.

No. 4, Requiring septic tanks to be pumped every 5 years may be excessive. 7-10 years can be ok. How will this be required?

p. 12, no. 6, Suggest requiring local jurisdictions to maintain records of pumping and septage disposal. It's not hard.



April 7, 2008



President
Chuck Cesena

Vice-President
Julie Tacker

Director
Lisa Schicker
Steve Senet
Joe Sparks

General Manager
John B. Schempf

Utilities Manager
George J. Milanés

Fire Chief
Matt Jenkins

Regional Water Quality Control Board
c/o Ms. Sorrel Marks
895 Aerovista Drive, Suite 101
San Luis Obispo, Ca 93402

By mail and electronic delivery

RE: Comments on Triennial Review Process of Basin Plan and the Proposed Basin Plan Amendments, including Onsite Wastewater Management Systems

Dear Honorable Board Members:

Please accept this letter and attachments as our formal comment and testimony, to be included in the record for the May 9, 2008 hearing regarding the Triennial Review of the Basin Plan. Specific comments to the newly proposed onsite regulations for wastewater management (as part of the Triennial Review) are included, in response to the recently noticed hearing found on your website on February 22, 2008.



Although, our Los Osos Community Services District (LOCSD) never received any official noticing of this hearing from the Regional Water Quality Control Board (RWQCB), the proposed Basin Plan Revisions for onsite systems were found and reviewed from your website by our board and staff and the website version was used as the basis for our comments.

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In general, the LOCSD remains proactive and supportive of all amendments and updates to the Basin Plan that provide for clean water, amendments that are fair and equitable and based in current research and science, as well as being based on current environmental policy regarding air quality, energy usage and environmental justice. We continue to remain supportive of onsite wastewater management because of the benefits to clean water and we were always curious as to why RWQCB Resolution 83-12, made with the County was never fully implemented a long time ago, long before the LOCSD had ever been formed (LOCSD was formed in 1998).

Historically, the LOCSD has prepared two Draft Onsite Wastewater Management Ordinances (with our Wastewater Committees) and we also adopted several resolutions which include numerous attempts to improve water quality in Los Osos and a voluntary Interim Clean Water Compliance Plan to do our part to support onsite wastewater management in Los Osos.

Also, in 2005, just after the recall election, we worked closely with Assemblyman Blakeslee and the SWRCB staff on negotiations to move the sewer away from the center of our town. Prior to the ACL hearings in December, we also affirmed our commitment to onsite wastewater management in a series of negotiated offers sent to the SWRCB.

In April 2007, President Chuck Cesena sent you a letter, requesting to be part of the Triennial Review process and listed several items of concern to the Los Osos Groundwater basin and our constituents, but our concerns do not appear to be addressed in the current draft.

Here is a brief summary of our major concerns with the proposed triennial review items:

Basin Plan Triennial Review in general:

a) Triennial review does not address anything except onsite management and is lacking in other important areas. For instance, it does not provide the necessary updates and clarification of 83-12 and 83-13 as these are old and outdated documents. Amending and/or rescinding these Resolutions are needed now. They must be based in current science and knowledge about the Los Osos groundwater basin as numerous studies and reports have been published on the Basin since these Resolutions were adopted. These new studies provide updated information regarding depth to groundwater, nitrate levels and modeling, affects of agriculture and new technology and laws.

Ambiguity and outdated information has been costly for the state and the citizens and needs to be cleared up as soon as possible. This should be the first and foremost priority of the Basin Plan Triennial Review.

b) The Triennial review and proposed changes are also lacking in addressing any of the more serious and wider ranging pollution problems in the 303(d) streams such as those in the Chorro Valley – the effects and amounts of these pollutant loads far exceed those of the onsite system issue which is already being addressed by the AB 885 process.

In light of the serious nitrate problems just now being discovered in Morro Bay (a community with a sewer, but nitrates 2-3 times higher than most areas in Los Osos) we believe that addressing these issues first may be more cost effective for RWQCB to pursue, since these are issues that have greater potential to effect water quality in the overall basin.

Summarized Comments on the proposed onsite wastewater management regulations:

a) These basin plan amendments for onsite appear to be the same as those found in "AB885", but are instead incorporated into our basin plan triennial review – this seems like the wrong process – if 885 isn't possible, why will this be a better approach? The AB 885 process was designed to address the above onsite issues and we recognize that the proposed updates to the Basin Plan as an equivalent regulatory process selectively instituted only within this Region.

b) There is no CEQA analysis, yet this is a project and a full CEQA analysis is required, especially with regards to AB32, energy, air quality and environmental justice. If 885 required an EIR and full CEQA review, then this process would also trigger that same level of CEQA; (2)

c) The proposed resolution violates Article XIIB of the California constitution which requires that "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increases level of service". The proposed resolution is unconstitutional as it mandates a higher level of services, regulation, monitoring and enforcement of septic maintenance without providing any funds to implement same. Unfunded mandates are problematic for small agencies such as community service districts – how is this program paid for and who pays? There is currently no funding to implement such a program. A Cost-benefit analysis including the issue of unfunded mandates needs to be included;

d) Enforcement placed in the homeowner's Title report – we object to this onerous Provision – please check with your legal review;

e) It is unclear in the document as to who is the actual "management agency" – please clarify;

f) RWQCB becomes another layer of review, perhaps repetitive to existing processes and a very expensive without any way to pay for it; (3)

g) There appears to be conflicts with the Porter Cologne Act and water code section 13360 regarding the RWQCB' role of oversight, without the ability or authority to specify methods or location of compliance;

- h) There is no evaluation of actual costs, or how these regulations fit into local Government 218 process;
- i) The noticing process is too short, no noticing to individual septic tank owners, who will be affected in major way (lack of due process issues). Issues of this importance require, at a minimum, notification by letter or postcard to each permitted onsite system owner;
- j) There is not enough time between the release of the proposed amendments and the due date for comments – extend the comment period;
- k) It is unknown as to how these proposed amendments affect the current CDO and ACL processes and pending lawsuits in Los Osos, document must clarify this issue;
- l) Regulations are onerous to individual property owners in and out of current Los Osos prohibition zone;
- m) No economic analysis of costs, no justification for what is deemed “reasonable costs”;
- n) No science was used, and no justification as to why updated science was not used – but current science and modeling studies must be included. The State Water Resources Control Board (SWRCB) and EPA both state that “Technically sound regulatory policy is based on assumptions supported by science”; the amendments must be revised to reflect current science and research;
- o) Where is inclusion and evaluation of new and additional “green solutions” that are more cost effective affordable?
- p) The proposed amendments seem to overlap with land use authority of SLO County - and steps beyond the scope of water protection to land planning.

Due to the short turn-around time between receiving the proposed changes and the deadline, the LOCSD Board wishes to reserve its rights to comment further on this complex matter. Also included with this letter are the detailed comments received from each individual Board member and all comments received by the general public during the public hearing held at an LOCSD meeting on April 3, 2008 to add into the record. Some of the comments are questions and we would very much appreciate a written response to those issues, too.

Please also include all additional attachments into the record – they demonstrate our agencies continued commitment to clean water, in a manner that is affordable and as fair as possible to all of our constituents.

Thank you - we will see you on May 9th and would like to request time to speak and make a short presentation on behalf of the LOCSD at the hearing.

Most respectfully,



Chuck Cesena
President
Los Osos Community Services District Board

cc:

SLO County Planning
SLO County Public Works
SLO County Air Pollution Control District
SLO County Board of Supervisors
SLO County Planning Commission
SLO County Water Resource Advisory Committee
Assemblyman Sam Blakeslee
State Senator Abel Maldonado
State Water Resource Control Board

Attachments:

1. Original Letter from LOCSD Board President Chuck Cesena to RWQCB requesting that LOCSD assist with Triennial Review Process – sent April 2007
2. Comments and Questions from LOCSD Board Members and Minutes from April 3, 2008 LOCSD Board Meeting: Public Comments from the Public (Karen Vega, LOCSD Secretary)
3. California Constitution Article 13B Government Spending Limitation
4. Copy of packet regarding historical interpretation of 83-12 and 83-13 between RWQCB and SLO County – to include Triennial Review.
5. Relevant LOCSD Resolutions:

2005-45 AFFIRMING ITS COMMITMENT TO PROCEED WITH THE
 CONSTRUCTION OF A WASTEWATER COLLECTION AND
 TREATMENT SYSTEM FOR THE LOS OSOS COMMUNITY

2006-03 REQUESTING ASSEMBLYMAN SAM BLAKESLEE TO
INTRODUCE LEGISLATION IN THE 2006 SESSION ENABLING
THE LOS OSOS COMMUNITY SERVICES DISTRICT TO
IMPLEMENT AN ON-SITE SEPTIC SYSTEM MANAGEMENT
PROGRAM

2006 - 27 Oct 5, 2006 - Resolution to Adopt Voluntary Compliance Program
for septic tank inspections and pumping - CLEAN WATER
INTERIM WATER COMPLIANCE PLAN -

6. LOCSD Draft Wastewater Management Ordinances: both versions from
Board/LOCSD Wastewater Committees, which have been reviewed by RWQCB.

References

1. Yates report – Los Osos Groundwater Nitrate Modeling Report, 2004
commissioned by LOCSD and RWQCB: 885 comments on SWRCB site:
<http://www.swrcb.ca.gov/ab885/docs/scopingreport.pdf>

2. SWRCB website – Onsite Sewage Treatment in California and the
Progression Toward Statewide Standards June 2004 - California Wastewater
Training and Research Center at California State University, Chico Research
Foundation: <http://www.ndwrcdp.org/userfiles/ACFoc1vrb.pdf>

ATTACHMENT 2

6 pages

LOCSD Board –
Individual Comments and Questions – April 4, 2008

Board Member 1.

Hold public meetings in each affected County – need better public noticing to individuals with onsite systems, more time to review everything.

This appears to be an end-run around “885”, and 885 required CEQA, this document must also conduct a CEQA analysis and cannot be exempt.

Enforcement now proposed as part of title report- this is onerous and is it allowable?

Land use and groundwater basin impacts should be analyzed under CEQA and coordinated with SLO County.

Energy, Environmental Justice and comparison to other green systems also need to be analyzed,

Better cost data required – cost-benefit analysis needed.

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Board Member 2.

I am no expert, but common sense would say, the amendments proposed will trigger CEQA. The sheer volume of septic systems that will be required to be managed within the region will have an environmental and economic impact on the residents.

San Martin, San Lorenzo Valley, Carmel Valley, Carmel Highlands, Prunedale, El Toro, Shandon, Templeton, Santa Margarita, Garden Farms, Los Osos, Baywood Park, Arroyo Grande, Nipomo, Upper Santa Ynez Valley, Los Olivos and Ballard equates to tens of thousands of septic systems that would need service at 5 year increments, what are the impacts to waste water treatment plants that handle septage...there are few and the material is concentrated, consequently special attention must be paid to treat all the waste. The mere trucking of such material will impact air quality (similar concerns were raised in the initial Los Osos 45 CDO hearings by the APCD).

The impacts to local government are unclear; if a management district were to be formed in each community wouldn't LAFCO have to give each entity the authority to perform such service? There will be fees associated with the bureaucratic processes necessary to test, monitor, and report for each district. These fees will need homeowner approval through the 218 special assessment process, voters may in fact decline the service by voting “no” in the district formation/fee schedule approval.

Economic impacts are unclear, residents will have to pay for the management services and increase pumping regime.

7. Can you clarify who maintains responsibility for onsite design, permitting and wastewater onsite management plans?
8. What science and research was used to come up with the new design criteria? Can you please cite the sources of this info?
9. Can you please elaborate on how you made determination that the costs of implementing these regulations is "reasonable" as stated in several places in the document - how did you determine what is reasonable and can you be more specific about the actual costs?
10. Can you please incorporate the csd letter from President Chuck Cesena, received last year requesting basin plan amendments into the record?
11. How are the current Los Osos CDO's addressed in the amendments?
12. Are you planning any other basin plan amendments besides onsite? The Triennial review is every 3 years and there are other topics that also are timely.
13. How are you addressing the new findings on large pipe collection systems that leak pollutants into the groundwater?
14. How are you addressing the new findings on endocrine disruptors into the amendments?
15. Where is environmental justice evaluation: with state and fed money, this a requirement.
16. Has LAFCO been notified to comment on the onsite wastewater authority?
17. How do new amendments affect properties inside prohibition zone that were previously exempt ,but are smaller than one acre?
18. How have you and County coordinated on prep of these amendments? (1)
19. You mention San Lorenzo and their approved onsite management plan - can you publish their plan for use by other communities?

Comments

1. Public comment time too short for such complex issue - please stop process, step back a step and re-do. More public outreach to the four counties affected. (1)
2. Individual septic tank owners have not been adequately noticed – public notification and increase time before hearing - all due process issues. (1)
3. I support external scientific review – which this process does not have. Who made the finding that is was not required - this resolution does not identify anyone in particular.

- 4.. Suggest public workshops
5. LOCSD did not receive formal noticing in the mail, as is required
6. Economic considerations needs more evaluation - no justification as to what is considered "reasonable"
7. Resolution – there is a typo on number 8. "exiting" should be existing i think
8. Page 4 "Prohibition" listed on the title of property too onerous – OAL should review this.
9. Page9 Attach. A- dual fields in all cases? How much of a cost increase? Costs are needed to evaluate
10. Page12 Attach A- salts - how to regulate pre-existing systems?
11. Los Osos Prohibition zone needs to be revised, amended, updated, clarified. as part of basin plan amendments- our board as supported this since 2005 - it is outdated and not based in current science and modeling studies performed by scientific and geologic experts.
12. These new regs may constitute regulatory taking of private property is some cases.
13. Don't see any actual science and/or measurable goals to justify the amendments being made - please cite.
14. There is no cost analysis, environmental justice findings, or requirements to produce quantified results.
15. No costs have been developed based on anticipated results. The potential for "criminalization of onsite discharges is real!
16. The proposed resolutions appear to unlawfully allow fees to be assessed by the RWQCB's "delegated authority" without a 218 vote, or approvals, and the owners of affected properties have not been notified of these changes. – seems like a redundancy of regulation and expense.

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Board Member 5

Seems to be circumvention of 885 process, which required CEQA

Short processing time, no public noticing to LOCSD

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Unfunded mandate

83-13 needs updating and clarifying – include MOU agreement between SLO County and RWQCB that clarifies that 83-13 discharges pertained only to new building, not existing – put this in as attachment to this letter.

Let's suggest that they approach our Basin Plan as Region One has proposed, Chapter by Chapter, in a workshop type format:

http://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/editorial_amendment.shtml

Chapter 4, Section VIII.D.2.g, ONSITE WASTEWATER SYSTEM PROHIBITION

AREAS: Paragraph 3 of this section, which pertains to the Los Osos/Baywood Park area, currently refers only to “the Prohibition Boundary Map included as Attachment A of Resolution No. 83-13,” and does not specifically cite the actual Resolution No. 83-13 as the origin and basis of the discharge prohibition.

Chapter 4, Section VIII.D.1.a: DISCLOSURE AND COMPLIANCE OF EXISTING

ONSITE WASTEWATER SYSTEMS prescribes that “Prospective property buyers should be informed of any enforcement action affecting parcels or houses they wish to buy.” While this notification practice is prudent and advisable, specifically adding reference to the Resolution 83-13, and including the complete Resolution No. 83-13 in Appendix A-30 would provide adequate and consistent information that would be needed, not only by prospective buyers, but also by realtors, brokers, attorneys, appraisers, and financial institutions.

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Comments RE Basin Plan Review – Public Hearing and Public Comment -
LOCSD Meeting 4-3-08
Meeting minutes taken by Karen Vega, Official LOCSD Secretary

Tom Murphy and Patrick Sparks want the following added to the Basin Plan:
Clean Water Act – Title 33, Chapter 26, Subchapter V, Section 1370. State Authority
Clean Water Act – Title 33, Chapter 26, Subchapter III, Section 1316

Ann Norment wants RWQCB to clarify the authority and responsibility of the County and Districts regarding on-site management and water conservation issues. Regarding proposed Resolution R3-2008-0005, Attachment A “Implementation Plan” page 4, she has concerns regarding language that “local agencies should ensure the terms of the enforcement action are entered into the county record for each affected parcel. When a prospective buyer conducts a title search, terms of the prohibition would appear in the preliminary title report.” She also expressed concern regarding Environmental Checklist Item 7B being given the designation of “no impact”.

Bruce Payne encouraged everyone to send comments to the RWQCB by the deadline.

Alon Perlman stated that these proposed Basin Plan changes were an effort to respond to the fact that AB885 was not finalized, and therefore there is a general uncertainty regarding the future of development in the area.

Martha Goldin wants clarification of which entity is responsible for on-site management – County or local agencies. She wants the RWQCB to stop this process until all affected property owners are properly noticed and informed using language everyone can understand. She also recommended adoption of Nipomo CSD comments.

Gwynne Taylor stated there had been insufficient notice regarding proposed changes to Basin Plan regulations. She also stated that these proposals were an attempt to circumvent AB885. (1)

Al Barrow agreed that the proposed revisions were an “end run” on AB885, and suggested that the Board speak with Todd Thompson at the State Water Board, who is an expert on AB885. He wants the RWQCB to delay this hearing.

David Duggan stated that the RWQCB would most likely not agree to a delay. He recommended that the Board appoint a committee to track important topics being addressed at other agencies.

Director Senet stated that these proposed changes seemed to be focused on tightening the regulations on newly constructed on-site systems. He wants to know if the provisions of 83-13 will still be in force, or will they be superceded by the new regulations.

Director Sparks wants clarification of onsite management authority and responsibility by County and local agencies, rescinding of 83-13 and replacing it with a community-wide waiver.

CITIZENS FOR CLEAN WATER

PROHIBITION ZONE LEGAL DEFENSE FUND

DEDICATED TO CLEAN WATER, REGULATORY COMPLIANCE
AND PROTECTION OF PROPERTY RIGHTS

CCW-PZLDF
PO BOX 6095
LOS OSOS CA 9341

April 7, 2008

CCRWQCB
895 Aerovista Pl. Suite 101
San Luis Obispo, Ca 93401

RE: General Comments CCRWQCB–Basin Plan Triennial Review Projects;
Amending the Water Quality Control Plan; Revising the Onsite Wastewater System Criteria-
Basin Plan Chapters 4 and 5 (onsite sections only); and the Rescission of Resolution R3-83-12.

Dear Chairman Young and Honorable Board Members:

Citizens for Clean Water is a watershed wide group of concerned professionals and private citizens. We are submitting these written comments, and respectively requesting detailed information and documents, and well as written responses and copies of other comments and questions. We are also requesting your staff's list of all system regulators and interested parties along with their contact information. Please also provide all documents related to the amendment process, the scoping meetings, and discussions in addition to other requests within this document.

The line by line analysis of the changes to the Basin Plan is not complete at this time. However, we plan to submit additional written testimony prior to, and at the May 9, 2008 hearing.

Lack of Notice: The Public and Stakeholder Process have been inadequate. Although *Citizens for Clean Water* generally supports update the Basin Plan for onsite treatments systems, the Central Coast Regional Water Quality Control Board must comply with all public process requirements, and is not allowed to deprive the citizens of information and review, and thereby abuse its regulatory powers.

Affected Parties are the Property Owners: Even if the minimum legal requirements are met, the lack of notification to the actual property owners affected by the Regional Board's proposed regulations denies the public the opportunity to challenge the RWQCB actions. The Public Notice provided by staff was only to a very select group of agencies and groups that are no more than delegated "third parties" to administer the private onsite system requirements. *Citizens for Clean Water* is on the list for notices, yet received none. Other individuals under the proposed amendment will not be eligible for waivers, and are directly affected, yet were not noticed.

Lack of Adequate Time for Written Response: The actual affected parties on private property that inadvertently learned of the RWQCB actions are now faced with the lack of adequate time to respond, inadequate specificity in reports and resolutions, an absence of defined outcomes, no cost analysis, vague language throughout, and possibly very onerous consequences that require critical information and a legitimate public process for participation.

Staff Says it needs to Eliminate Vague Language: There have been global complaints of abbreviated staff reports that are presented without proper references or links to important information or statutes. Many statements appear to be the opinions of staff and the use of "fuzzy" explanations and assertions abound without being anchored in facts. Just one example of the lack of definitions and vague statements can be seen in the Staff report statement justifying the need for the Triennial Review 'project'. Staff states the number of onsite systems "exceed 100,000" and the number that is designed properly and performing adequately as "many". The public should know if the RWQCB staff has this information and, if so, the RWQCB should supply it to the public.

- What is the accurate number of septic systems the RWQCB is seeking to regulate?
- What is the accurate number of systems that are failing?
- What are the affected water bodies, and the onsite systems responsible?
- What is the accurate number of wells and their locations that are impacted by pathogens from onsite sources?

(Other detailed comments and questions concerning vague language are in Attachment A that reviews the individual staff documents and amendments to be submitted.)

Pending Litigation: *Citizens for Clean Water* formally objects to the proposed amended Basin Plan in that it seeks to strengthen enforcement powers in order to apply the enforcement tactics against individual property owners throughout the region that were used against Los Osos homeowners. These actions are currently being challenged in Superior Court (CV 070472 *Citizens for Clean Water-PZLDF vs. Central Coast Regional Water Quality Control Board*)

Expanded Authority without Oversight or Accountability: The regional water board seeks to expand its discretionary power in every resolution. While making claims that the current WQCP is confusing because it is left open for conflicting interpretations, the language remains unclear, and the consequences undefined. The attitude that it can be "figured out later" is unacceptable and contradicts the stated intent and justification given for the hasty update. The likelihood that RWQCB revisions to onsite will be especially onerous to individual property owners throughout the entire region requires facts and specificity.

Ca Water Code 13263 does not mention 'onsite' or authorize regulation of waste discharge "including discharges from Onsite systems" as stated in the RWQCB staff report. *Citizens for Clean Water* do not deny that the RWQCB has such authority, but that this code is misquoted.

Ca Water Code 13263. (a) The regional board, after any necessary hearing, shall prescribe requirements as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge, except discharges into a community sewer system, with relation to the conditions existing in the disposal area or receiving waters upon, or into which, the discharge is made or proposed. The requirements shall implement any relevant water quality control plans that have been adopted, and shall take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of **Section 13241**. (See below)

(b) A regional board, in prescribing requirements, need not authorize the utilization of the full waste assimilation capacities of the receiving waters.

(c) The requirements may contain a time schedule, subject to revision in the discretion of the board.

(d) The regional board may prescribe requirements although no discharge report has been filed.

(e) Upon application by any affected person, or on its own motion, the regional board may review and revise requirements. All requirements shall be reviewed periodically.

(f) The regional board shall notify in writing the person making

or proposing the discharge or the change therein of the discharge requirements to be met. After receipt of the notice, the person so notified shall provide adequate means to meet the requirements.

(g) No discharge of waste into the waters of the state, whether or not the discharge is made pursuant to waste discharge requirements, shall create a vested right to continue the discharge. All discharges of waste into waters of the state are privileges, not rights.

(h) The regional board may incorporate the requirements prescribed pursuant to this section into a master recycling permit for either a supplier or distributor, or both, of recycled water.

(i) The state board or a regional board may prescribe general waste discharge requirements for a category of discharges if the state board or that regional board finds or determines that all of the following criteria apply to the discharges in that category:

(1) The discharges are produced by the same or similar operations.

(2) The discharges involve the same or similar types of waste.

(3) The discharges require the same or similar treatment standards.

(4) The discharges are more appropriately regulated under general discharge requirements than individual discharge requirements.

(j) The state board, after any necessary hearing, may prescribe waste discharge requirements in accordance with this section.

The reference in Ca Water Code 13263 indicates that "reasonable protection of beneficial uses" and factors to be considered.

Ca Water Code 13241. Each regional board shall establish such water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance; however, it is recognized that it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses. Factors to be considered by a regional board in establishing water quality objectives shall include, but not necessarily be limited to, all of the following:

(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.

Exceed Water Code Authority and Affects Land Planning: The entire multi-county region will find the proposed amendments will provide the regional water board's with powers to act as the final authority on land planning. There are many unintended consequences, including incentives for high growth and unsustainable development in rural areas, and discouragement for affordable housing. In areas that contain the best soils, or valuable riparian zones, development may be incentivized. Further, urbanization, and growth for high end housing through energy intensive centralized treatment is promoted.

- What is the justification for requiring a 5 unit parcel development that now will be required to have a community system with permits, monitoring, and reporting burdens?
- Explain why granny units are no longer allowed without adding another acre to the property footprint for onsite?

- How will this affect the affordable housing stock and future of housing in the 4 counties affected by the WQCP?

Note the Water Code referenced below:

Ca Water Code 13291.7. Nothing in this chapter shall be construed to limit the land use authority of any city, county, or city and county.

Economic Disparity for Affected Communities: How will the amendments specifically affect the targeted communities of San Martin, San Lorenzo Valley, Carmel Valley, Carmel Highlands, Prunedale, El Toro, Shandon, Templeton, Santa Margarita, Garden Farms, Los Osos, Baywood Park, Arroyo Grande, Nipomo, Upper Santa Ynez Valley, Los Olivos and Ballard? Certainly property owners in targeted communities should have been noticed with an analysis of the costs, benefits and consequences provided to them.

Anti-Property Rights:

The line between private onsite systems as private property, and the public nature of community programs that manage onsite treatment system is blurred. Access to private property and regulation of private treatment systems, with resultant enforcement that can lead to possible criminal liability is unacceptable. The retroactive liability for past pollution levels in adjacent water is incompatible with private property laws. OAL review is needed.

Forecloses on Environmentally Sound Green Solutions:

The amendments add unacceptable liability for properties with onsite treatment systems, and discourage such energy efficient wastewater systems. These systems are compatible with SB 32 goals for greenhouse gas (GHG), emissions, yet the amendments ignore the importance of low or zero carbon footprint treatment systems, such as onsite systems, that are compatible and supportive of EPA guidance for GHG. The full range of environmental impacts created by the amendments needs to be studied, evaluated, and disclosed.

Amendment Process Violates CEQA: The Triennial review and amendments and resolutions represents a project which requires CEQA. RWQCB Staff indicated they are exempt, but, the proposed language changes and resolutions are NOT minor, and the consequences lack scrutiny. The staff reports indicate that staff held a scoping meeting with county representatives pursuant to CEQA.

- Provide the scoping report
- Provide the list of county representatives with whom you met
- Provide documents and notes from the meetings with county representatives

The staff has provided no cost/benefit information or analysis. The environmental review process consists of denying that they have a duty under CEQA to provide information and yet a environmental checklist is included. Staff states that no scientific findings are required, and cavalierly note that enough already has been done and the impacts are minimal.

(A separate response to the checklist will be submitted)

Affordability and Environmental Justice: SWRCB requirements to review affordability and environmental justice are completely ignored. Further, the uncertainty about the financial effects of the proposed amended WQCP to private property as the private systems are subject to a new quasi-public ownership- are not addressed. The issues "inverse condemnation" or "regulatory takings" of private property that may result are not addressed either.

- What assurance can a property owner have in the value or future value of their property, when the onsite system is granted a waiver, only to be later required to have a WDR permit—(all waivers are conditional and no guarantee they will continue)
- How has the RWQCB handled the statutory requirement to evaluate the economic disparity for areas with waivers vs. those with WDR's or Urban vs. Rural economic impacts?

- If the water boards discretionary findings later require a property owner to hook up to a community system, yet one is not available, what are the anticipated outcome, costs, and enforcement issues?

Unfunded Mandates: Proposed Amendment to WQCP institutes mandatory compliance programs that represent an unfunded mandates on already strapped government agencies for yet another costly local program. The proposed resolution violates Article XIII B of the California Constitution which requires that "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government; the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service". The proposed resolution is unconstitutional as it mandates a higher level of services, regulation, monitoring and enforcement of septic maintenance without providing any funds to implement same. (see costs and funding questions raised elsewhere)

There is Insufficient Evidence That the Amendment is needed(as written): Until questions can be answered and statutory requirements met, the adoption hearing is premature. Among these are questions are those raised by the National Onsite Wastewater Association posted on the California Onsite Wastewater association white paper on statewide standards (AB 885)

Please respond to each of them in detail in written responses.

- What is the desired level of risk reduction?
- What are other contributors to the problem?
- What part of the problem is attributable to onsite systems?
- Will the contemplated rules achieve the objective?
- Will the surface and subsurface waters meet the standard of beneficial use after implementation?
- Will the public and private cost be reasonable and politically sustainable? (Costs include money, time and citizen's ability to use their land.)
- Will the regulatory community be able to implement the provisions reasonably - equitably, technically and politically?
- Will the agencies have sufficient resources?
- Will the onsite service provider community be able to implement the rules – sufficient trained personnel with the tools and treatment components necessary to do the job?
- To what extent, if any, do the rules represent a mixed motive, such as rural land use control?

Resulting Fees and Charges are Undefined and Unapproved: The amendments fail to address the requirements of proposition 218, as local agencies will be required to fund onsite programs. The justification by local agencies requires analysis of the services, the cost/benefits or anticipated outcomes, and must be sufficient for such voter approvals. To fail to supply any information it can be assumed the amendments place an unfair burden on the property owners and local agencies without adequate justification for the changes.

Water Quality Benefits are Unknown: There is no reason to anticipate that this amendment will result in any water quality protection or improvements of any kind. There is no scientific data; no studies are referenced, no independent expert review of the amendment, no stakeholder's development process, and no peer review. The costly revisions are simply unfounded and nothing indicates such changes will better protect or improve water quality in any way.

Assumptions must be backed by Science: The Central Coast is largely rural, and onsite impacts and the contribution to pollution by failing Onsite wastewater *treatment* systems is not quantified in any real defensible scientific studies by the RWQCB. The State Water Resources Control Board (SWRCB) and EPA both state that "Technically sound regulatory policy is based on assumptions supported by science"

Onsite represents but a Fraction of the Non Point Source Pollution: *Citizens for Clean Water* believes that greater control of non-point source pollution is long overdue. The control of

point source pollution is well established; however, the continued examples of harmful pollutant loadings from preventable sanitary sewer overflows, storm water contaminants, and agricultural runoff pose the greatest threat. These sources comprise the majority of contamination to the ground water, streams, beaches and bay, is clearly unacceptable. The status of the 303 (d) listing of water bodies is directly impacted by the continued uncontrolled pollution from these non-point sources, and the proposed changes ignore the relationship to onsite waivers and impacts to private properties for pollution from sources other than onsite systems.

Waivers Denied --Impaired Water Bodies: Amended language and new resolutions do not allow waivers if property is proximate to impaired water bodies, (303 (d)) and require burdensome requirements for private properties. The basis for impairment is NOT (in most all cases) due to onsite treatment systems, but from historically major pollutant sources such as sanitary sewer overflows, storm water and agricultural runoff. The retroactive burden to owners of private property with onsite systems (that did not contribute to the historic impairment of the water body) is inconsistent with the law.

Failure in Non-Point Pollution Programs: The RWQCB lack of meeting their program goals for non-point source control and the improvement goals in water quality, now places the burden on private properties with onsite treatment systems. As stated these systems are proportionally insignificant in most areas. Information on each affected property and demonstration that the proposed actions will protect and improve such water bodies needs to be demonstrated. Ignoring pollutant loadings from other sources, while failing to estimate loads from onsite systems, actually places the cart ahead of the water shed horse. Onsite pollution represents but a fraction of the water shed pollution, and it is well known that Water Quality programs designed to protect precious drinking water supplies are compromised. These programs abandoned onsite, and now in historically sewered communities, such as Morro Bay, have Nitrates that are not from onsite systems at all. In Morro Bay, and elsewhere, such nitrate contamination is common, and has actually increased and renders their drinking water wells unfit.

Provide the Proportion of Pollutants from all Sources: The basis for the added expense of RWQCB amendments is said to achieve water quality, however the majority of pollution (well established based on scientific information) is from sources other than onsite septic systems. While the onsite treatment systems need to be addressed, the first step is to properly quantify the extent of the problem to be solved. Onsite treatment systems should have some program for monitoring and reporting performance after construction, however the cost and benefits in placing a huge bureaucratic program in place without any foundation for scientifically defensible process to assure (measurable) beneficial outcomes is specious.

The staff report by the Water Board is silent on the proportional contaminates from onsite systems, and the loadings from other sources, however staff has stated they believe programs concerning onsite systems has been ineffective based on faulty interpretation. It is well established that funding for local programs is the chief constraint. The delegated tasks through various County Memorandums of Understanding (MOU's) building permit criteria, building moratoriums, and planning departments' criteria for onsite have actually worked quite well at assuring minimum standards for onsite systems. The RWQCB has SWRCB's statewide minimum standards and consistency under AB 885, however the RWQCB has moved swiftly to amend, revise and replace its onsite rules. Concern that the lack of proportional pollutant findings presents undue hardship placed on onsite treatment discharges and needs to be addressed in a public forum.

The effectiveness of implementing programs to control non-point pollution must be quantified and resources expended proportionally. The obvious budget issues and "water quality" urgency requires selection of programs that provide "more bang for the buck". If it is really about water quality the need to step up the Storm water and agricultural runoff pollution prevention programs promise to have the greatest impacts on protection and improvement to water quality in streams and beaches.

- Please provide a list of non-point source programs
- Provide status on non-point programs and enforcement actions

- Provide the proportional pollution for each source of non-point pollution, and the specific watershed areas affected, and the specific relationship to onsite impacts.
- Provide models of nonpoint source water shed loadings from all sources
- What are the anticipated reduction in the loadings from onsite to impaired water bodies?

Conditional Waivers and Inherent Uncertainty: *Citizens for Clean Water* agrees that reviewing established minimum standards for onsite systems is an important part of proper water shed management. According to the *Onsite Treatment in California and Progression Toward Statewide Standards*, (Cal State Chico Research Center, June 2004), provides a history of the water boards local approach to onsite systems. "Generally, the regional boards delegate direct regulatory authority for individual onsite sewage treatment systems to local agencies. Delegation is through a waiver process, which waives the requirement for WDRs for onsite systems."

- How do the proposed resolutions and amendments to the basin plan, which change the current status to "mandatory programs" affect delegation through waivers? ①
- What is the exact number of onsite systems, zones or areas that will not be eligible for waivers? (such as any property with onsite systems adjacent to a 303(d) listed water body) ②
- What permit fees and charges will the local agency pay to the RWQCB for their program review and approvals? ③
- What is the risk for fines, enforcement, establishment of prohibition zones, and added cost to homeowners for WDR and monitoring under the proposed changes? ④
- When is the property owner to learn of the status of their property and costs associated with the amendments?
- Why hasn't an EIR for your triennial project been prepared?
- How does the WQCP (Basin Plan) amendments and resolutions differ or deviate from Waivers within AB 885-the statewide plan? ⑤

Triennial Review Process: The Staff report references Water Quality Control Plan, Triennial Review backlogged projects the basis for the current urgency and action now. A review of the Central Coast Regional Water Quality Control Board's (RWQCB) Water Quality Control Plan, Triennial Review Priority List, Dec. 7, 2001, and attachment "A" proposed and final issues lists indicated the proposed "projects" to update the WQCP (basin plan) and is dependent on the **AB 885** process by the SWRCB. The RWQCB reports defer efforts, request funding, and state that the RWQCB is dependent on the State timetable for AB 885 Onsite standards.

Compare WQCP with AB 885: *Citizens for Clean Water* objects to the RWQCB preemptive revisions without a side by side comparison, for the public to view, of the proposed statewide standards established by AB 885. With the efforts by the SWRCB well underway, consistency and analysis is a key concern, and an EIR process required to provide guidance for local agencies, such as the RWQCB, and information for the public.

How does Water Code 13291 (a) differs from (AB 885)? And which is being used in formulating the amendments and triennial review process? AB 885 requires: The adoption of statewide standards or regulations for existing, construction, and performance of onsite sewage disposal systems by the State Water Resources Control Board by January 1, 2004. The standards to apply to any onsite sewage disposal system that:

- is constructed or replaced on or after July 1, 2004 (or six months after the adoption date of the regulations, whichever is sooner)
- is subject to a major repair
- pools or discharges to the surface of the ground
- in the judgment of the Regional Water Quality Control Board or the authorized agency has the reasonable potential to cause a violation of water quality objectives, to impair present or future beneficial uses of water, to cause pollution, nuisance, or contamination of waters of the state.

- The provision of financial assistance to assist private property owners with existing systems whose cost of compliance with these regulations exceeds one-half of one percent of the value of their property.

Amendments are Fiscally Irresponsible: To promulgate regulatory requirements, and consequences, without full knowledge of what, why, and how they will be implemented has high likelihood of wasting taxpayer monies, and fails to hold public agencies, such as the RWQCB accountable. A stepped approach to revisions preserves resources and targets the problems, and provides measurable results.

- What is the estimated cost for program compliance?
- How many of the affected property owners will be eligible for financial assistance?
- Will the RWQCB make financial assistance available through requests to the SWRCB?
- Is funding currently available for this purpose?
- How much funding is available for assistance?
- How much funding is the RWQCBN receiving for development of onsite standards in region 3?

Evaluate and Disclose Property Owners Costs NOW: Quoting from the AB 885 scoping report: *"Compliance costs versus the environmental benefit should be evaluated; a cost/benefit analysis is needed on a regional basis, not just from a statewide perspective".*

- The regulations do not address the legislative intent of AB 885 with respect to assisting private property owners with funding assistance.
- Quantify the increased costs for homeowners
- Quantify the increased costs for agencies
- The 303(d) provisions will force people with existing systems from their homes. In many cases there is no suitable area to install systems that meet the dispersal system area requirements, even with supplemental treatment (e.g., Malibu, Russian River).

13291.5. It is the intent of the Legislature to assist private property owners with existing systems who incur costs as a result of the implementation of the regulations established under this section by encouraging the state board to make loans under Chapter 6.5 (commencing with Section 13475) to local agencies to assist private property owners whose cost of compliance with these regulations exceeds one-half of one percent of the current assessed value of the property on which the onsite sewage system is located.

- Has affordability been considered and an analysis conducted?
- How many private property owners are eligible for assistance, and how will be assisted?

Unintended Consequences: Los Osos is a real world example of unintended consequences, and excessive regulatory costs that resulted from the misunderstood and unchallenged water board resolutions 83-12 and 83-13. That 83-13 was developed, seeking to purposely ignore resolution 83-12, it sacrificed opportunities for onsite management altogether. This was in violation of Ca Water Code, but "strongly encouraged" by the RWQCB. Resolution 83-13 sought funding for a centralized treatment plant, replacing onsite, and resulted in degradation to water quality. Further, 83-13 blatantly violated SWRCB resolution 68-16 (Antidegradation) with SWRCB approval of the provision of 1150 additional housing units and established a prohibition zone. Further discussion of 83-13 is probably not helpful, but suffice it to say that the often dire and costly unintended consequences of resolutions and amendments must be acknowledged.

Efforts for Voluntary Compliance: The justification for the resolutions and amendments is to make voluntary programs that have not been instituted now mandatory. Los Osos records (over the last 5 years) show that unlike the government predecessor, San Luis Obispo County, Los Osos was one of the best recent examples of a community development of onsite management plans instituted on a voluntary basis.

The record also show that in 2004-08 the LOCS D worked toward offering work-plans and assistance in updating and strengthen the onsite regulations in Los Osos voluntarily, and in lieu of the adverse punishment.(ACL fines the CDO's and settlement CAO's). These sincere efforts, based on RWQCB report and proposed actions to amend the basin plan would result in actual water quality protection and improvements, but were repeatedly rejected.

Santa Cruz County successfully avoided a building moratorium and punitive enforcement through the use of onsite management in 1986. Funding and adoption of the wastewater plan in 1994 certainly differs from the Los Osos example of "regulations gone wrong." Unfortunately, all efforts from the community's property owners and the Los Osos Community Services District to work cooperatively with Water Board Staff have been thwarted to date. We are hopeful this can change in the near future. However, the amendments and resolutions will not assist in providing a fair and consistent program for Los Osos, and the prohibition zone with all its failures will remain. Please explain:

- How will Conditional Waivers Affect Los Osos:
- Will waivers be applied in Los Osos outside the probation zone?
- Under what circumstances will waivers be applied inside the prohibition zone?
- What is the cost for the WDR, monitoring, and reports?
- What is the estimated program costs estimated for the local agency?
- Is the Co or the LOCS D to administer the mandatory program?

Conclusions:

Citizens for Clean Water opposes this segmented and shotgun approach to water shed protection. As stated, the timing of the amendments and resolutions with the pending lawsuit (CV 070472) makes such amendments to WQCP suspect. It is the existing Basin Plan resolutions that have been used to justify imposition of harsh individual enforcement, and violated constitutional protections, yet these are now being replaced. There is no reason for private property owners to believe that they will be treated differently than Los Osos, under the proposed amendments. The changes to replace and strengthen resolution 83-12 appear to be no more than subterfuge for the ill-founded Los Osos enforcement at best, or added power over others in the region without adequate justification. I ask the board to question the staff motives. Based upon the lack of statutorily required application of criteria for assessing economic impacts, environmental justice, current science, hard facts and sound analysis requires a process restart at a minimum.

The central coast is largely rural and onsite treatment systems and their contribution to pollution from failing systems are simply unknown at this time. The local programs are expected to supply such data for the RWQCB. However, it is well known that onsite contributes a very small percentage of the total non point source pollutant loadings, and proportional responsibility poses an unfair burden on private property owners.

Management programs to assist in quantifying impacts are an estimable effort, but other elements of the amendments are premature to impose on property owners without first providing impact information to affected parties.

Recommendations:

Citizens for Clean Water recommends that the staff develop a stakeholders program that is convened to reviews current policies, criteria, and implementation plans. Current voluntary efforts should be reviewed and further action encouraged. Funding should be sought by the RWQCB to provide the assistance to local agencies and private property owners, as this is the major reason for inaction by local agencies.

The intent is increase the knowledge and understanding of impacts from onsite treatment systems, to improve protection of water quality based on this information, yet the amendments contain unintended consequences, and lack any third party review. By postponing adoption of the

amended basin plan and resolutions, and using the staff's efforts to date to bring together the true stakeholders, (property owners with septic systems) in a working group forum will provide a fully vetted process, with necessary changes, based on fully defined program goals.

It is disingenuous to imply onsite systems causes widespread pollution, or that this effort is urgent, or to propose that onsite owners shoulder the largest portion of the costly burden of non point source programs and water shed monitoring through their local agencies. If local agencies are to assume the entire burden for non-point source pollution monitoring and control, the SWRCB must provide comprehensive programs that assess costs fairly and programs that cross jurisdictions, and provide the necessary funding as well.

Only through a truly public process (properly noticed and informed public participants) will a credible water shed protection program emerge. By proceeding in a thoughtful and deliberative approach, with provisions for regional oversight and accountability can prevent wasteful expenditures, and abuses of the public process.

Referenced Documents

1. EPA Handbook for Managing Onsite and Clusterd Wastewater Treatment Systems, NO 832-B-05-001 December 2005
2. Voluntary National Guidelines for Management of Onsite and Clustered (Decentralized) wastewater Treatment Systems, March 2003
3. Onsite Sewage Treatment In California and the Progression Toward Statewide Standards, Chico Research Foundation, June 2004
4. National Decentralized Water Resources Capacity Development Project, Lombardo Associates, Aug 2004
5. Proposed regulations to add to CCR Title 27, Division 2, subdivision 1 Chapter 7. Onsite WWTS Article 1. Definitions -22900
6. WQCP Triennial Review Priority List, Dec. 7, 2001 and attachment A proposed and final issues lists
7. AB885 Status discussion <http://www.swrcb.ca.gov/ab885/index.html>
8. AB 885 CEQA
9. AB 885 project Scoping report, and Summary of Comments SWRCB Onsite Wastewater Treatment Systems Regulations, Oct. 2005
10. Chico Onsite Management Plan
11. NOWRA White Paper on the Ca Onsite Rules under AB 885, May 5, 2004
12. LOCSO Septic Management Plan, July 2003-2006
13. LOCSO Voluntary Onsite Program 2004
14. LOCSO Onsite SMMP resolutions, LOCSO onsite work plan in lieu of enforcement, Oct. 2006
15. LOCSO WWAC Onsite Management plan draft

Web sites:

<http://www.waterboards.ca.gov/centralcoast/index.htm>
<http://www.waterboards.ca.gov/centralcoast/Permits/Index.htm>
<http://www.ndwrcdp.org>

Other Suggested References:

Arenovski, A. L. and F. C. Shephard. 1996. *A Massachusetts Guide to Needs Assessment and Evaluation of Decentralized Wastewater Treatment Alternatives*. Marine Studies Consortium & Waquoit Bay National Estuarine Research Reserve.
Bounds, T. R. 2001. "Management of Decentralized and Onsite Wastewater Systems," *Proceeding of the Ninth National Symposium on Individual and Small Community Sewage Systems*. ASAE.

California Conference of Directors of Environmental Health (CCDEH). 1992. *Model Onsite Sewage Disposal Code*. CCDEH Technical Advisory Committee, Sacramento, CA.

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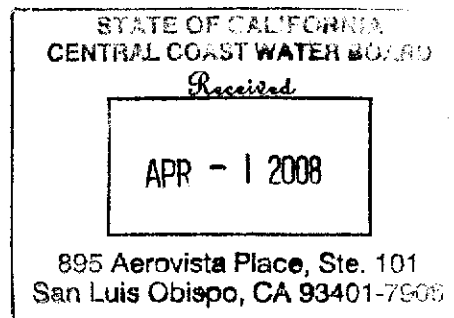
California State Water Resources Control Board. 1980. *Guidelines for the Design, Installation, and Operation of Mound Sewage Disposal Systems*. State Water Resources Control Board, Sacramento, CA.

California State Water Resources Control Board. 1980. *Guidelines for the Design, Installation, and Operation of Evapotranspiration Systems*. State Water Resources Control Board, Sacramento, CA.

California State Water Resources Control Board. 1994. *Report Of The Technical Advisory Committee For Onsite Sewage Disposal Systems, November 1994*. State Water Resources Control Board, Sacramento, CA.

Regional Water quality Control Board
 Central Coast Region
 895 Aerovista Place, Suite 101
 San Luis Obispo, CA 93402

Chairman Young & Board &
 Staff



Re: **Public Comment** on R-3-2008-0005 & 0006 Onsite Wastewater Systems Basin Plan Amendment

Dear Sirs:

The proposed revision to the Basin Plan criteria and waiver for onsite systems appears to include citizens living in Shandon, Tempelton, Santa Margarita, Arroyo Grande, Nipomo as well as Los Osos. To my knowledge, these citizens have *no clue* this Resolution is under consideration, even though *they and their property will be directly affected by its laws*.

While this revision has been quietly circulating among various *governmental agencies*, to my knowledge, no individual citizens whose property will be affected by this has even received so much as a postcard of any hearings, or town hall informational meetings as to just what this proposal entails, or ways to access the revision or when and how to properly submit public input. ①

(This public media silence is especially puzzling considering the skillful and close way the RWQCB has always worked with the *Tribune* to get their "facts" and point of view out. In this case, there's been dead silence in the media. Why?)

That's another reason that what I see going on here is another "Stealth Resolution," one that quietly skates by on fulfilling the technical letter of the law while missing its spirit entirely. Public comment is supposed to actually include the PUBLIC, not just a quick, cursory run by a few governmental agencies and some buried public notices. A brief informal quizzing of members of the Los Osos "public" -- a "public" that is far more informed about all things "onsite" than anyone living in Shandon, for example, -- tells me that folks living outside the PZ out here who will also be directly impacted by this resolution, *don't know anything about it at all*.

Therefore, I have to protest this process and request that you hold off on voting on this draft until you can set up a procedure to at least send out postcards to all "the public" that will be impacted by this (i.e. all the septic tank permit holders throughout the county) so they actually are given an opportunity to get informed and make their public comments. After all, it's their property and their lives that will be impacted the most. ②

Apparently, you folks learned nothing from your costly Los Osos fiasco. *An informed, educated "public" is your ally, not your enemy*, to be skirted around with stealth proposals. Yes, a lot of public comment is silly and wastes time, but a lot is -- again -- actually valuable and can often prevent costly blunders later down the line. And spending time on the front end of public policy always saves a whole lot of time -- and lawsuits -- on the back end.

Sincerely,

Ann Calhoun
1698 16th St.
Los Osos, CA 93402

<http://www.calhounscannon.blogspot.com>
<http://www.newsmission.blogspot.com>

From: Anne Norment <mex2011@yahoo.com>
To: Roger Briggs <rbriggs@waterboards.ca.gov>, <smarks@waterboards.ca.gov>
Date: 4/4/2008 5:53:40 PM
Subject: Basin Plan Amendments R3-2008-0005 and -0006-- please confirm email received

Dear Mr. Briggs and Ms. Marks,

Please consider the following comments regarding proposed Basin Plan Amendment R3-2008-0005, R3-2008-0006 and associated attachments. I understand that these comments will be considered by staff in drafting the proposed amendment that would be presented to the RWQCB in San Luis Obispo on May 9, 2008 as they have been received by the April 7 deadline for written comments. Please confirm that you have received this email.

I appreciate your work to amend the basin plan, adding clarifying language as well as encouraging the implementation of onsite wastewater management plans. Please consider the following as constructive input for R3-2008-0005.

1) Adoption of onsite plans will have a significant impact on large numbers of citizens in the central coast area. Although notices were posted in the newspaper, this is inadequate for such an important and complex document- many people, myself included, do not receive the local paper, getting news online. I strongly encourage you to delay finalizing your draft until citizens are more widely noticed so as to allow proper opportunity for public comment. I have not had time to fully digest changes proposed in your draft document but need to get these to you by the April 7 deadline. A lay synopsis of implications of these proposed changes for individual citizens should also be drafted, noticed and made available. I do not understand the implications of many of your proposed changes.

2) I very much appreciate that you have included language emphasizing the role of on site wastewater districts in water conservation. This is of particular importance in Los Osos, which as you know has a level III water severity shortage with little coordinated government action to encourage substantive water conservation measures. I applaud recommendations in section VIII.D.2.F, especially the use of metering and water use costs to encourage conservation. I would like to see language to encourage water conservation strengthened.

3) It is unclear which government entity (county, community services districts etc.) is responsible for development of the onsite wastewater management plans. Perhaps this has contributed to delay in implementing such plans thus far. I encourage you to add further clarification to insure timely implementation. It would be optimal for this to occur at the County level to achieve more consistency within a region, and allow for greater staff resources to be dedicated to implement such important programs, including emphasis on water conservation. Time/budget resources of the Los Osos CSD are particularly tight. Since SLO County is presently responsible for developing the wastewater project in Los Osos, it seems logical to have the county take on this responsibility as well. This would also add consistency with R3-2008-0006 in that county government would serve as the local permitting agency.

4) The evaluation of environmental impacts check list needs to be adjusted as follows: The amendment has potentially significant impact on 8b- potential to substantially deplete groundwater supplies or interfere with groundwater recharge. Septic tanks allow for groundwater recharge in Los Osos. This has clearly been stated by SLO county staff as a consideration for recharge plans with the LOWWP. Septic maintenance plans will affect tank pumping, in some cases resulting in construction of new leach fields etc. and in this way will impact local recharge. This amendment may also significantly impact 12b displacement of housing, 12c, displacement of people should repairs be mandated for a given system.

5) I encourage amendment of section VIII.D.2.g.3 onsite wastewater system prohibition areas to delete the section regarding the Prohibition Zone boundary in Los Osos. Areas of discharge prohibition in Los Osos/Baywood Park should be based on updated scientific information. This is of particular significance given the recent understanding that the town of Morro Bay has 3X higher nitrate levels in groundwater likely due to leakage of raw sewage from sewer pipes. I realize this is a controversial request, but important given swift movement of SLO county to develop the LOWWP. It would be best to develop a system that is based on updated information, not the outdated prohibition zone boundary, which also creates environmental justice issues.

6) Please adjust language regarding prohibited discharge in VIII.D.2.g. It does not make sense to prohibit discharge of clean water, if this were the effluent of onsite system or community disposal systems

that could achieve very high purification standards. This may clarify matters for the LOWWP, as groundwater recharge by treated effluent must be part of the project.

7) Consider adding language to clarify goals for onsite wastewater management plans in wastewater system prohibition areas while wastewater systems are in development.

For R3-20058-0006

- 1) Comments above on noticing of citizens with a lay explanation of this document apply.
- 2) Points 7 and 22 appear to be identical.
- 3) If possible, include language so that agencies receiving MOUs are the same agencies that would implement waste water management plans as per -0005 above.

①
②
③

If you have questions/comments please do not hesitate to contact me. I would also appreciate your input if you believe I have misread the document. If you plan to integrate some of my comments, this would also be helpful. I plan to attend the May 9 hearing.

Sincerely,
Anne Norment
mex2011@yahoo.com
805-534-9485

You rock. That's why Blockbuster's offering you one month of Blockbuster Total Access, No Cost.

To: RWQCB
From: CDO #R3-2006-1041
Re: Public Comment regarding Proposed Amendment R3-2008-0005 to the Basin Plan criteria for onsite wastewater systems and Proposed Amendment R3-2008-0006 to the Basin Plan criteria for onsite wastewater system discharges
Date: April 6, 2008

This document constitutes our public comment for the above-noted proposed amendments to the Basin Plan.

Because the agenda for the meeting to be held on May 9, 2008, does not appear on the web site, we are unable to direct our comments to an agenda item number but trust that you are able to discern the items we refer to by the description above.

Given that the general public has had minimal notice of the proposed changes to the Basin Plan referenced above, we respectfully request that the RWQCB consider postponing the discussion and decision until the public receives adequate notice to allow for effective comment. We understand that, in addition to the notice on the RWQCB web site, a single announcement regarding the amendments was buried in the local county newspaper in early March. Such notice is hardly fair warning for the significant number of citizens who may be affected by the proposed changes. It is impossible to know how many or how few citizens have seen either notice. It is unclear how many of those who know about the proposed amendments have access to the documents. (1)

Giving the board the benefit of the doubt that a notice may have appeared more than once in the county newspaper, the fact remains that Chairman Young at the CDO hearing on April 28, 2006, admonished the defendants that a newspaper is not a reliable resource. The water board needs to hold itself to its own standard in working with the public and providing notice. These proposed amendments have so many possible significant outcomes for such a wide range of individuals countywide that the RWQCB ought to rely less on chance and more on direct contact with county residents who could be affected by the proposed actions. (1)

As members of the Prohibition Zone group randomly chosen for individual enforcement in 2006, we have a particular interest in seeing that others do not face the same experience unawares. We are especially concerned about those who are elderly, disabled, ill, incompetent, or otherwise defenseless. These citizens are least likely to know about and have access to RWQCB notices and least able to examine and comprehend the documents. The RWQCB has an obligation to help and not harm citizens who may face individual enforcement actions through these proposed Basin Plan amendments. (1)

Chairman Young said on April 28, 2006, that due process involves two things: notice and the opportunity to be heard. Individual enforcement against private citizens could be an outcome of these Basin Plan amendments should the board enact them. The RWQCB has an ethical obligation, therefore, to provide adequate notice and reasonable access to unambiguous documents to allow interested parties to air suggestions and objections.

Many who have read the documents related to the proposed amendments have found them confusing and open to interpretation at best. If the RWQCB and its staff are truly interested in public input and in providing a fair and open process, their primary objective ought to be an informed public.

Respect and cooperation do not derive from furtive manipulation of the letter of the law and clever camouflaging of consequences in documents too difficult for the average citizen to comprehend. In failing to provide fair notification and clarity in the documentation staff risks alienating yet another group by creating the impression that they have more regard for power and control than for the public they serve.

From our own years of serving the public we are well aware of the benefits of open communication. When people feel included and heard, collaboration is possible. When they feel left out of the process, thwarted, abused, duped, coerced, belittled, dismissed, or demeaned, they respond with resentment, indignation, anger, and legal action. The RWQCB's most recent efforts, rather than fostering cooperation through mutual respect, seem to lay the groundwork and encourage the conditions for more conflict and still more unnecessary expense to taxpayers, such as the legal actions in which it is currently engaged with regard to the random enforcement in the Los Osos Prohibition Zone.

We respectfully submit that the Chairman withhold these proposed amendments from any RWQCB meeting agenda until the public has had sufficient notice of RWQCB actions and has received adequate explanations of the meaning and ramifications of these proposed amendments. Individuals will then be informed and more likely to participate in public comment. As participation is the cornerstone of a democracy, public agencies that adhere to policies and practices that encourage participation model democracy at its best.

SULLIVAN & ASSOCIATES
A Law Corporation
2238 Bayview Heights Drive, Ste C
Los Osos, California 93402
Telephone (805) 528-3355
Facsimile (805) 528-3364

FAX TRANSMITTAL MEMORANDUM

TO: Regional Water Quality Control Board

FACSIMILE: 805-543-0397

FROM: Shaunna Sullivan

RE: Resolution Nos. R3-2008-0005, R3-2008-0006, R3-2008-0010

ATTACHED/COMMENTS: Please see attached letter regarding objections to the Basin Plan.

TOTAL NO. OF PAGES: 9

DATE: April 7, 2008

TIME: 9:06 pm

- Original will not follow.
- Original will follow via regular mail or

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If you do not receive any or all of the pages,
please call Jen at (805) 528-3355.



April 7, 2008

*Shaunna Sullivan / Principal
Emily Mouton / Associate
Erka DiSanto / Paralegal*

Members of the Board
Regional Water Quality Control Board
c/o Sorrell Marks
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

*Via Facsimile: (805) 543-0397
and U.S. Mail*

RE: Resolution Nos. R3-2008-0005, R3-2008-0006 and R3-2008-0010

Dear Ms. Marks:

This objection is made on behalf of Harold J. Biaggini, Ruth B. Sullivan and Shaunna Sullivan, to the proposed amendments to the Water Quality Control Plan, Central Coast Basin (Resolution R3-2008-0005) and the Board's attempts to condition waiver of waste discharge requirements on various agencies' and individuals' compliance with unfunded mandates set forth in the proposed basin plan amendments (Resolution No. R3-2008-0006) and vague, discretionary language in R3-2008-0010 with regard to waiver of waste discharge permits. This letter is written on behalf of these persons, individually and as beneficially interested parties and taxpayers owning properties in San Luis Obispo County, including one or more of the following areas: Morro Bay, Los Osos/Baywood Park Prohibition Zone, Templeton, San Miguel, Paso Robles, Shandon, Cayucos, Atascadero and unincorporated areas in San Luis Obispo County. These parties claim a beneficial interest with standing to object to any attempt to implement these resolutions and amendments within the unincorporated areas of San Luis Obispo County or any area specified above. ①

The proposed resolution states that the Central Coast Water Board's general waiver for discharges from onsite wastewater systems expired on June 30, 2004, and that the agency has been "too backlogged" to address onsite systems until now. Notice of the proposals became available to the public less than one month ago providing less than one month to respond to today's arbitrary deadline. The Resolution also states that the number of individual residential and small community onsite wastewater systems in the Central Coast Region exceeds 100,000, yet this Board seeks to quickly adopt resolutions without providing sufficient notice to the entities who are subjected to mandates to comply under these resolutions or any notice to the over 100,000 property owners who will be subjected to the ②

Regional Water Quality Control Board
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subjective rules and regulations the Regional Board so quickly plans to adopt. To our knowledge, there was no notice in the local newspapers and the only reason the few parties that are cognizant of these Resolutions know of their existence is because some of us routinely monitor the Regional Board's website to see what actions the Regional Board next intends to take against individuals in Los Osos.

These are very important resolutions which will affect a number of people who have received no notice of amendments affecting the use of their septic tanks, swimming pools, spas, planned granny units and development rights which are about to be adopted by an agency that is not accountable to the voters and taxpayers of the impacted areas. The Regional Board's action is reminiscent of the action the Board took 25 years ago in enacting Resolutions 83-12 and 83-13 which are now interpreted by the Regional Board as prohibiting any use of any existing septic tanks within the Los Osos Baywood Park Prohibition Zone. Just as those Los Osos individual residents who are now targeted for enforcement of Resolution 83-13 are faced with the Board's claims that it is too late to object to Resolution 83-13, we object to this attempt of the Regional Board to adopt yet more rules and regulations without notice or inadequate notice to those who will be impacted. ②

We are opposed to any more laws or regulations adopted by the Regional Board that give them unbridled discretion to regulate, enforce or fine residents or entities that utilize onsite systems or community wastewater systems. Resolution R3-2008-0006 purports to authorize the Water Board to regulate discharges even when the discharge qualifies for waiver enrollment. Furthermore, paragraph 8 of Resolution R3-2008-0006 (repeated in paragraph 23) of the Resolution provides, "The Central Coast Water Board may terminate a waiver at any time and require the discharger to obtain waste discharge requirements to terminate the discharge". This provides too much power to one entity that is accountable to no one. ①

We also object to R3-2008-0006, paragraph 12, which requires Memorandums of Understanding ("MOUs") be entered into between the Board and local permitting agencies (counties and cities) without review of the proposed MOUs. Once the Resolution is adopted requiring agencies to enter into MOUs with the Regional Board, the local agencies will have little ability to negotiate or structure MOUs that are not merely mandated boilerplate required by the Regional Board. Again reminiscent of the past, MOUs have been adopted for Los Osos between the County and the Regional Board that bear no resemblance to the current interpretation of Resolution 83-13 by the Regional Board. Surely, the Regional Board should proffer a proposed MOU before mandating all entities are required to enter into such an MOU with them. We request that staff immediately provide a copy of the proposed MOU ③

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staff expects to exact from each county agency or city subject to your mandates. We object to paragraph nos. 12, 13 and 14 of Resolution R3-2008-0006. (4)

Have all the affected public agencies in Monterey, Santa Cruz, San Luis Obispo, Santa Barbara, Santa Clara, San Benito, San Mateo and Ventura counties been notified and approved the CEQA report? Although the staff states that formal approval by local jurisdictions is not required for this waiver policy, have all of these counties been notified and provided a copy of the proposed amendment? Have any agencies received any proposed MOUs? Is there a model MOU that can be provided?

We also object to Resolution R3-2008-0006, paragraphs 16 and 17, and Resolution R3-2008-0005, paragraph 7, as the Water Board has been known to mandate discharges that are unattainable and inconsistent and to target individuals at random and indiscriminately. The RWQCB standards are just too subjective and more often than not, based on inadequate science. On an aside, given the voluminous nature of the documents pertaining to these resolutions, we suggest the Board edit the resolution so that those redundant and repeated provisions such as paragraphs 8 and 23, paragraphs 6 and 21, paragraphs 7 and 22 are not repeated in R3-2008-0006. (4) (5)

We object to R3-2008-0006, paragraphs 24 and 25, and R3-2008-0005, paragraph 8, as requirements of CEQA have not been met. This proposal will have a significant impact on the environment and citizens of the affected areas and no categorical exemption applies to avoid CEQA review. What leads staff to believe that this amendment, which will impact more than 100,000 homes, will not have a significant affect on the environment to warrant environmental review? Alternatively, if there is no significant affect on the environment as a result of these proposed changes, why are they proposed? (4)

With regard to R3-2008-0006, paragraph 26, and R3-2008-0005, paragraph 5, notice is inadequate and all interested parties have not been provided notice as required under C.C.R. Title 14, 15072. Please provide any evidence that publication occurred in any newspaper of general circulation with regard to this proposed resolution. Have there been any direct mailings to the owners and occupants of property as required under Section 15072(3)? Have any notices been posted with the County Clerk as required under Section 15072(d)? If staff can attempt to send 4500 notices of violation to property owners in Los Osos, why can't they send notices to all 100,000+ property owners here? (4)

The resolutions and amendments are unfunded state mandates that violate California Constitution XIII B. The resolutions improperly require and mandate that local agencies

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adhere to MOUs and comply with RWQCB mandates to, amongst other things, provide an onsite management program without providing funds to do so. Paragraph 6 of R3-2008-0006 is inaccurate. (A)

We object to any attempt to circumvent environmental review in attempting to pass these regulations. This is an end run arising from agency inability to meet environmental review to implement Assembly Bill 885. Statewide regulations should not be replaced by piecemeal actions such as this. Also, if Assembly Bill 885 has to pass environmental review, why don't these amendments?

The notice and description of the "proposed project" and its location are inadequate for both Resolutions. The notice does not define the Central Coast Basin nor indicate that anyone living within the Central Coast Basin, or owning individual onsite system for a septic tank, swimming pool or spa or subdividable private property within the basin plan area will be impacted by the resolution. Furthermore, the resolution fails to state that the MOUs and waivers will be conditioned upon compliance with the amendments to the proposed basin plan under Resolution R3-2008-0005. (B)

It is interesting to note that Resolution R3-2008-0005 begins with a reference to the adoption of Resolution 83-12 in 1983. Resolution 83-12 was adopted as a result of the State Board's rejection of its predecessor amendment previously referred to as Resolution 82-09 adopted in December 1982. The State Board found that the amendment adopted in 1982 failed to meet the public review procedures that were necessary to comply with State and Federal regulations, and determined that due process could best be served by returning Resolution 82-09 to the Regional Board for additional public input and response to comments, adopting 83-12 in its stead. Apparently history repeats itself with this hastily drafted resolution and basin plan amendments.

With regard to R3-2008-0005, paragraph 4, why did this just come up in December 2007? The Water Board staff improperly proposed amending the basin plan without additional external scientific review of the proposed revisions. With regard to paragraph 5 of R3-2008-0005, we submit that interested persons have not been provided notice. Have you provided notice to each of the 100,000 homeowners with septic tanks or community systems? Have you contacted each and every person with a swimming pool or spa that might need to be drained? What newspapers show any advertisements or public notice? And why doesn't the public notice state who and what the amendments affect?

With regard to paragraph 6 of R3-2008-0005, obviously there are unfunded costs

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associated with implementing the resolutions and basin plan amendments. We submit these are unfunded state mandates violative of Article XIII B of the California Constitution. With regard to paragraph 7, how is the regulatory oversight going to be paid for? The "clarifying and strengthening" language appears to be primarily changing "should" to "shall" and giving more discretionary interpretative, enforcement, and regulatory power to the Water Board or its executive officer. This does not clarify or provide any objective standard, but rather provides carte blanche authority to the Regional Board to create, interpret, and enforce rules and regulations without any objective statewide standard. We suggest that contrary to the statement in paragraph 11 of R3-2008-0005, the resolution should not become effective until after approval of the Basin Plan amendments, if any.

With regard to the amendments to Chapter 4, we have the following comments. In regards to Attachment A, page 1, what basis do you have to require a community system or residential wastewater treatment system serving more than five units or more than five parcels? How will this work with rural subdivisions with more than five parcels that are not clustered? On page 2 of Attachment A, are these new rules and regulations applicable to "existing onsite systems" approved and/or installed prior to May 9, 2008? What if the system is constructed or approved between May 9, 2008 and State Water Resources Control Board and OAL approval? Are those considered existing? With regard to the definition of "new onsite system" the same date problem mentioned above applies. Also, if one adds a bedroom which could conceivably increase wastewater generation, does this system now constitute a new onsite system? Why was page 3, Section VIII.D.1 entitled "Corrective Action for Existing Systems" deleted? Are all existing onsite systems subject to these new rules and incapable of being repaired to comply?

With regard to page 3 of Attachment A, why does "watercourse" now include man-made channels? With regard to pages 3 through 4, what funding is available for these state mandated inspections, education programs, testing, monitoring, verification, and enforcement that will be required of local governing bodies? On page 4, we object to any additional recording affecting title and/or title reports as proposed. Additionally, why is the RWQCB taking on land use decisions requiring restrictions on future use of an area as a condition of land division or building permit approval, CC&Rs, or set aside areas? Such mandates are ultra vires and beyond the jurisdiction and empowerment of the Regional Board. Land use decisions belong with local bodies, not a state agency such as the RWQCB.

With regard to page 5 of Attachment A, this is again another unfunded state mandate requiring wastewater management plans for urbanizing high density areas served by onsite

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wastewater systems. Also, shouldn't such areas be defined? On paragraph 9 of page 5, the following prohibition "alternative systems are prohibited unless consistent with a locally implemented onsite wastewater management plan approved by the Central Coast Water Board Executive Officer" is too broad, subjective, arbitrary, unreviewable, and places entirely too much discretion on the Water Board. On page 6, again, where are the funds to pay for the onsite wastewater system maintenance district?

In regards to pages 7 and 8 of Attachment A, the Water Board is treading into land use decisions in requiring CC&Rs, final maps, and recorded documents, which the Regional Board has no right to be involved in mandating. We submit that the following language in Paragraph 13 on page 8 should be deleted: "Prohibitions. For new land divisions (including lot splits) served by onsite systems, lot sizes less than one acre are prohibited unless authorized under an onsite management plan approved by the Central Coast Water Board Executive officer. For the purpose of this prohibition, secondary units are considered "defacto" lot splits and shall not be constructed on lots less than two acres in size." This land use decision to disallow granny units violates state laws that encourage such units.

Paragraphs 17, 18, 19, and 20 of page 8 of Attachment A, provide no objective standards. Prohibitions apply where nebulous and vague "site conditions cause detrimental impacts to water quality" or where "it constitutes a public health hazard". Furthermore, the proposed prohibitions prohibit any onsite discharges on parcels sizes less than one acre. These prohibitions are so vague, they lead to the problem that citizens of Los Osos face. For example, if the onsite discharge is prohibited on a parcel less than one acre, does this apply to existing onsite systems or future onsite systems? Will the impact of this prohibition render all septic tanks on one acre or less illegal? The Regional Board has issued cease and desist orders to property owners in Los Osos mandating that if a community system is not installed, the homeowners must install an approved onsite system. Yet these amendment prohibit any onsite system on a parcel less than one acre. Furthermore, while ordering under cease and desist orders and cleanup and abatement orders that an approved onsite system be installed as an alternate to a community system, if one is not approved by the voters and installed by the arbitrary deadline of January 1, 2011, that these provisions would render that Water Board order as mandating an illegal system. We request that the Regional Board not be given such broad powers, with such vague directives.

On page 9 of Attachment A, paragraph 6, by deleting "nearly 100 percent of" settleable solids, does this mean that staff requires 100 percent removal of settleable solids? In regards to page 10, paragraph 19, why is the Regional Board mandating that community

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wastewater treatment and disposal facilities shall be operated by a public agency? We object to the requirement on page 10, paragraph 24, that "onsite wastewater systems are prohibited in any subdivision unless the subdivider clearly demonstrates the installation, operation and maintenance of the onsite system will be properly functional and in compliance with all Basin Plan criteria." If the Basin Plan prohibits onsite systems on one acre, then paragraph 24 would prohibit any subdivider from installing an onsite system even where he meets all criteria because it would not be "in compliance with all Basin Plan criteria". In regards to Section VIII.D.2.c, the approval of any alternative or engineered systems is entirely within the discretion of the Water Board Executive Officer. This is too subjective and overreaching.

On pages 11 and 12 of Attachment A, sections VIII.D.2.e and VIII.D.2.f, with regard to onsite system maintenance, again, there is an unfunded state mandate. Who is responsible for enforcement or fining, monitoring, inspecting, and record keeping?

In regards to page 12, section VIII.D.2.g, paragraph 3, we object to the attempt to reinforce Resolution 83-13 by including paragraph 3, which provides "Discharges from individual and community sewage disposal systems are prohibited, effective November 1, 1988, in the Los Osos/Baywood Park area depicted in the Prohibition Boundary Map included as Attachment A of Resolution No. 83-13, which can be found in Appendix A-30." Since a water quality objective is to recharge the basin, why is no recharge of the basin being allowed by this prohibition of any individual or community sewage disposal system in the Los Osos area? Why is Los Osos prohibited from any community sewage disposal system? Why is it singled out?

We hereby incorporate by reference the arguments presented in *Prohibition Zone Legal Defense Fund, et. al. v. Regional Water Quality Control Board*, Superior Court Case No. CV 070472 and the underlying appeals, which show the numerous deficiencies to the adoption and interpretation of Resolution 83-13. Until the case is final, there should be no attempt to re-adopt Resolution 83-13 via this amendment.

In Chapter 5, provisions such as "in any questionable situation, engineer-designed systems will be required" and "Regional Board policy to support local jurisdictions in their efforts to prohibit subdivisions using onsite wastewater disposal, unless water quality protection is demonstrated by the implementation of specified onsite system criteria" are too vague and an improper attempt by the Regional Board to usurp land use decisions.

With regard to R3-2008-0010, we object to the requirement on page 9 of Attachment

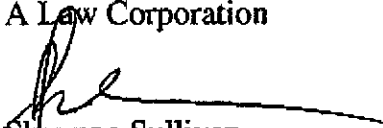
Regional Water Quality Control Board
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A that a waste discharge permit be required to drain a pool that has "chlorine, bromine, or total dissolved solids concentrations that could impact groundwater quality" as it is simply too vague. Certainly, draining of a pool should not require a WDR.

It is requested that this matter not be determined on May 9, 2008, and that it be continued until proper notice has been afforded all affected parties, proposed model MOUs are available and approved by local entities, and all proposals are subjected to environmental review. We request that this letter be included in the administrative record. Given the short time to respond, all of our objections have not been set forth herein. We reserve the right to add additional objections. We hereby incorporate by reference objections and comments of other interested parties, including but not limited to those made by Citizens for Clean Water, Los Oscs Community Services District, and Keith Wimer.

Very truly yours,

Sullivan & Associates
A Law Corporation



Shaunna Sullivan

SLS:jn

cc: Harold J. Biaggini
Ruth B. Sullivan

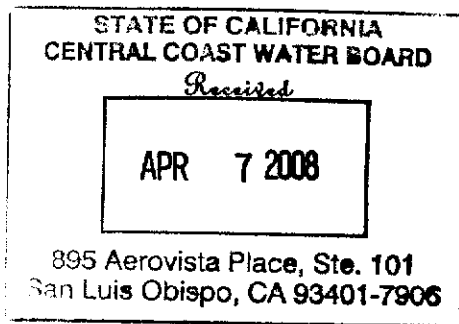
FAX COVER SHEET

TO: CENTRAL COAST WATER BOARD

FROM: GITI K. WHITE

**RE: RESOLUTION R3-2008-0005 AMENDMENT TO BASIN PLAN
CRITERIA FOR ONSITE WASTEWATER SYSTEMS AND
RESOLUTION R3-2008-0006 WAIVER OF WASTE DISCHARGE
REQUIREMENTS FOR ONSITE WASTEWATER SYSTEM
DISCHARGES (SCHEDULED FOR HEARING MAY 9, 2008)**

CONTAINS: COVER SHEET AND 4 PAGES



4/07/08

Attention: Central Coast Water Board

Re: Reject Resolution R3-2008-0005 Amendment to Basin Plan Criteria for Onsite Wastewater Systems and Resolution R3-2008-0006 Waiver of Waste Discharge Requirements for Onsite Wastewater System (Scheduled for Hearing May 9, 2008)

Dear Central Coast Water Board Members and Staff,

I am writing to urge you to deny Resolutions R3-2008-0005 and R3-2008-0006. With all due respect, considering these substantial amendments to the Basin Plan prior to the implementation of regulation of onsite systems pursuant to AB 885 is like putting the cart before the horse.

In order to assure protection of water quality, your Board should thoroughly consider the environmental impacts and potential risks to water quality that could result from the proposed amendments. The Central Coast Water Board Staff Environmental Checklists that accompany the Resolutions fail to identify, disclose, or consider numerous potentially significant impacts that could result from the proposed Amendments to Basin Plan Criteria for Onsite Wastewater Systems. The ongoing environmental review process for AB 885 is likely to shed light upon the significant risks to water quality and the environment that could well result from ill-considered and unnecessary extensions of sewer service and arbitrary overregulation of onsite wastewater systems.

I suggest that your Board deny Resolution R3-2008-0005 and delay amending the Basin Plan in order to benefit from the insights and environmental analysis of the AB 885 process. The complex and controversial issues at hand, and the potential harm to environment that could result from needlessly limiting access to advanced onsite treatment methods (that can cost effectively treat wastewater to higher standards than many local sewer districts) demand sophisticated and detailed scientific analysis.

Unfortunately, the changes to the criteria appear to be knee jerk endorsement of sewers as "the flush and forget it" solution to wastewater treatment. The trouble is that sewers have serious impacts on water quality and arguably threaten water resources with documented releases on a far greater scale than local onsite systems. I encourage Staff to thoroughly consult the *White Paper on the California Onsite Rules under AB 885* (May 2004) prepared by the National Onsite Wastewater Recycling Association for valuable suggestions regarding ways of tailoring regulations to actually result in meaningful protection of water quality.

A number of critical steps are missing from the process that produced Resolutions R3-2008-0005 and R3-2008-0006. As a result, there is an apparent lack of a nexus between the proposed amendments to the criteria for onsite systems and the goal of protecting water quality. Staff has provided little if any basis to support the conclusion that the enhanced regulations it proposes for onsite systems (including proposed prohibitions on the use of onsite wastewater disposal, and alternative systems) will protect water quality. The Staff Report for Resolution R3-2008-0005 actually states "Consequently, water quality and public health impacts resulting from most existing and future discharges from onsite systems remain uncharacterized." (Staff Report at page 3.) This statement begs the question, shouldn't Counties and the Central Coast Water Board assess what if any impacts exist *before* amending the Basin Plan Criteria to increase regulation of onsite wastewater systems? Nor has there been any attempt to describe or quantify any risk posed by existing onsite systems, or to explain why limiting options to enhance onsite treatment would protect water quality. Finally, Staff is proposing to address the regulation of onsite systems in a vacuum ie. without any comparative analysis of the extensive impacts that sewers have been documented to have on water quality and biological resources.

Sewers are growth inducing and therefore will likely result in multiple significant cumulative impacts to biological resources, as well as increased run-off pollution, and conversions of agricultural lands. Despite the fact that increased regulation of onsite systems is anticipated to result in extensions of sewer service (Staff Report for R3-2008-0005 at page 5), none of these impacts are disclosed or analyzed in the Staff's Draft Negative Declarations and Environmental Checklists for Resolutions R3-2008-0005

and R3-2008-0006. Staff casually dismisses the costs associated with the proposed amendments. However, sewer ~~and~~ extensions are not only costly to build, but in the long run aging sewer infrastructure is extremely costly to maintain. Prohibitive costs could delay and prevent maintenance of sewers resulting in environmental impacts; these impacts could be effectively remedied with less expensive onsite solutions. ①

Californian's are becoming increasingly aware of the environmental impacts of sewers with recent reports of enormous spikes in the number of reported sewage spills in Los Angeles, and with growing concerns regarding the contamination of water supplies with medications and hormones from sewers. Studies such as "Paving Our Way to Water Shortages" (co-authored by the NRDC and American Rivers) indicate that sewers also indirectly contribute to pollution by facilitating sprawl that increases impervious surfaces thereby magnifying effects of run-off and stormwater pollution (at pages 5-6). At the same time, this impervious surface reduces groundwater infiltration ie. water supply. Sewers also facilitate greater water use than septic systems. All of these factors should be considered before imposing any enhanced regulations upon onsite systems -especially under circumstances where there are little or no documented impacts associated with these systems. ②

At a time when environmental groups are recommending sewer avoidance as a sustainable method of water quality and environmental resource protection, the Central Coast Water Board should take every opportunity to learn about recent developments and to include the public in its decision-making process. Like keeping recyclables out of landfills, advanced methods of onsite treatment prevent many of the hazards of concentrating household wastewater and industrial wastes in sewers, and can serve as valuable tools for conserving water, as well as protecting water quality and the environment. (A recent case in Georgia involving deaths of dairy cattle and contamination of milk with toxins suggests that government agencies have seriously underestimated the environmental impacts and potential health risks associated with land application of sewage sludge.) Such concerns are valid and should be publicly considered, rather than adopting further restrictions upon onsite systems in a process that utterly disregards the likely environmental impacts of anticipated extensions of sewer service. ③

Members of the public are referring to these Amendments to the Basin

Plan criteria for onsite wastewater systems as "stealth" regulations. The Central Coast Water Board Staff Report concedes that the scoping hearing regarding this controversial subject was held years ago, in 2004. Similarly, a matter of significant concern arising from Santa Barbara County's 2004 Questa Septic Sanitary Survey was the failure to notice and consult with communities that were likely to be impacted by recommendations in the Survey. At the April 6, 2004 hearing regarding the Questa Septic Survey, the Santa Barbara Board of Supervisors declined to incorporate this document into the General Plan, after members of the public raised countywide concerns about its inaccuracies, its reliance on outdated information, notice failures, and the lack of scientific support for its conclusions.

During the last 4 years Californians have become increasingly aware of advances in onsite wastewater treatment technology, and of the substantial environmental risks posed by California's aging sewer infrastructure. Designing a process that encourages public involvement is not just your responsibility, but an opportunity that will assist you in developing regulations that more effectively protect water quality.

For these reasons, I respectfully request that the Board deny Resolutions R3-2008-0005 and R3-2008-0006. At the very least, I strongly encourage your Board and Staff to continue this item to a later date to allow for public comment and for consultation with onsite experts regarding the these amendments at both the County and the regional level.

Thank you for your consideration,



Giti K. White

From: Michael Thomas
To: Rhian Gulassa; Sorrel Marks
Date: 4/7/2008 5:38:20 PM
Subject: Fwd: Response to Resolutions R3 2008-0006 & R3 2008-0006

Ms. Gulassa
I am forwarding your comments to Sorrel Marks.

Thank you,
Michael Thomas

>>> "Rhian Gulassa" <rgulassa@atas.k12.ca.us> 4/7/2008 3:01 PM >>>
Mr. Thomas:

I have tried sending this to Sorrel' e-mail, but is returned as undeliverable. Would you please see that my response is received by today's deadline.

Thank you
Rhian Gulassa

>>> Rhian Gulassa 4/7/2008 2:47 pm >>>
I am very concerned with the Central Coast Regional Water Quality Control Board's proposed resolutions 2008-0005 & 2008-0006. With over 100,000 homes using septic systems, I fear that they will have a profound effect on many lives in the Santa Barbara, San Luis Obispo, and Monterey Counties. Please read my attached comments.

Rhian Gulassa

April 7, 2008

Central Coast Regional Water Quality Control Board
995 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

Re: Resolutions R3 2008-0005 & R3 2008-006

Dear Central Coast Regional Water Quality Control Board Members:

Purpose: The intention of this letter is to show why the CCRWQCB should not be granted additional powers over onsite systems until a system is put in place that will ensure fair treatment of all individuals.

Although onsite system management plans are needed in the Central Coast region, the Resolutions 2008-005 & 2008-0006 proposed by the Central Coast Regional Water Quality Control Board have some serious flaws. They appear to be an attempt to correct the mistakes by the CCRWQCB in Los Osos over the last 25 years with Resolutions 83-12 and 83-13, but they do not correct the individual onsite wastewater system owner from CCRWQCB abuse of power. Until the Waterboards incorporate a set of checks and balances, including oversight by an independent body where individuals can seek immediate arbitration, the CCRWQCB should not be given any addition powers over the rights of individual citizens.

My Experiences with the CCRWQCB

As a homeowner in the Prohibition Zone since 1992 and one of the 45 residents that the CCRWQCB randomly selected for prosecution, I speak from experience. When I bought my home in 1992, I was informed that I was buying in a zone with a BUILDING PROHIBITION. I respected the prohibition; worked hard as a special education teacher in North County, saved up my money for an expected community wastewater system, and hoped that one day I would be able to add an upstairs bedroom to my small home.

In January of 2006, my world was turned upside down when I received a proposed CDO from the CCRWQCB for DISCHARGING ILLEGALLY since 1988, with fines of \$500 to \$5,000 a day if I was unable to connect to a sewer by 2010. This was the beginning of a long series of undemocratic and abusive action by the CCRWQCB against the 45 defendants. (Matt Thompson of the prosecution staff has since informed us, during the January hearing, under oath, that we can be fined retroactively to 1988. This adds up to a total a possible fine of about 40 million dollars levied on my home on the first day of the deadline if a hook up is unavailable. This amount exceeds the value of my home by approximately \$39,600,000.)

Honestly, my first reaction to the proposed CDO was shock that I could be polluting. I naively believed that all environmental agencies entrusted with the protection of our planet must be beyond reproach. I immediately went to the EPA website for AB885 to look for methods of alternative

compliance and decided on a composting toilet, as this alternative was also mentioned in CCRWQCB documents. I e-mailed Matt Thompson, prosecution staff, fully expecting to receive encouragement for this alternative. A week later he replied that the county would not allow composting toilets in Los Osos. When I contacted the county for an explanation, they said that the Waterboard told them to say this. Why would the WB obstruct my efforts to comply? Isn't their mission to protect the waters of California?

The Waterboards have been given divine powers for the purpose of protecting the state waters from wealthy corporate offenders, but using those powers to destroy individual home owners is unconscionable. The CCRWQCB selected 45 homes for a practice persecution. These new resolutions are designed to cover their mistakes and extend their power as they identify their next target.

At this point I was understandably angry. Obviously I could not afford these fines on a teacher's salary and would quickly lose my home. Why did Executive Director, Roger Briggs, single out 1% of the population to stand alone against the power of their agency for circumstances over which his own hand welded an incalculably greater control than me? I felt alone and isolated, branded as an obstructionist and carrying the burden of the community alone. I decided to fight back, not to stop a wastewater system, but prevent this mistreatment from happening to any other individuals.

The History

I, along with other members of this small group, under threat of losing their homes, spent the next four months reviewing 25 years of documents, trying to understand how we got to this state of affairs. Since most defendants had full time employment with bills to pay and families to support, our meetings took place in the evenings and weekends. Many of us did not even live in the area when this saga began, so we had a lot of catching up to do.

We found that the beginning a small number of homes near the bay had failing septic systems due to frequent direct contact with the perched aquifer. The evidence for pollution from septic discharge throughout Los Osos was questionable at best so the CCRWQCB in 1983 came up with two resolutions; 1) 83-12, a research based resolution, called for study of the onsite systems and development of a septic management district, and 2) 83-13, a pollution producing resolution, called for the building of 1150 new homes within the zone (over 30% increase in population), and then in 1988 prohibiting all new discharges until a sewer system was built. The 1150 homes were quickly built, some with septic systems that clearly violated all regulations due to direct contact with the perched aquifer. A septic management district was never established for Los Osos and no attempt was made to determine the integrity of the individual onsite systems. **Who was protecting the water?**

Method of Compliance

Los Osos citizens have to pay for poor decisions made by government officials. The people have twice approved a 218 to pay for a wastewater treatment system, but many are wary of a gravity

system in sand soil, next to a national estuary, with fault lines nearby. The CCRWQCB has consistently pushed for a gravity system as originally planned in 1983, obstructing all alternative STEP systems. The Waterboards are not supposed to dictate method of compliance.

The new resolutions give the CCRWQCB the power to dictate method of compliance for onsite systems. Rather than establish a measurable criteria for compliance, the proposed resolutions give the CCRWQCB complete control over selection of onsite alternative systems, and power to terminate waivers at any time. These resolutions give an agency **-with no checks and balances-** ultimate control over the location and the cost of development. **Of the over 100,000 onsite systems in this district, how many will be out of compliance if these resolutions are passed?** How many new gravity systems is Roger Briggs going to require? How many people will be forced to vacate their homes? (When asked what we were supposed to do if a sewer was not available by the deadline, vacating our homes was an option given to CDO recipients by Matt Thompson, under oath.)

Individuals vs CCRWQCB

It has been over two years since the proposed CDOs first arrived in the mail. We started first day of hearings, shocked that we needed to explain to the CCRWQCB staff and board how a septic system worked, what a vadose zone was, and how many of us had homes with an acceptable vadose zone. After that first day's fiasco, the CCRWQCB called for a do-over, pulled in a new attorney from Sacramento, and Executive Officer, Roger Briggs, the man who has been involved in this saga from early days, was sent away on his boat into international waters.

We, the defendants, tried to regroup, but our numbers started to dwindle. Attrition was due to many factors including failing health and failing marriages, children exhibiting behavior problems, and increased risk to loved ones created when CCRWQCB failed to consistently honor redacted status. Chairman Young actually had the audacity in the December hearing to say that an elderly couple, both in the hospital from the stress created by the CDOs, had lost their right to a hearing by not attending on the scheduled day. He did eventually see the error in his ways, but this was with cameras rolling and the world watching. How can we expect a fair hearing when an individual from Pozo or California Valley truly stands alone? We in Los Osos have had the support of the CSD, a local law firm, and many other citizens in the community, but the individual cost has still been great; thousands of dollars spent in compliance with CDO requirements and individual defense, many days of work missed to attend hearings and meetings, countless hours spent reading documents and preparing my defense, and many, many sleepless nights spent worrying. Who will be looking out for the individuals in the outlying areas of Santa Barbara, San Luis, and Monterey Counties when they alone are called before the Royal Water Court? Will they be required to stand alone? Will they individually have to pay for the years of lawyer costs needed to work through the regional board and the state board before receiving a hearing before an impartial judge?

The CCRWQCB has treated the citizens of Los Osos as pawns to be manipulated in order to meet their desired outcome. For example, early on the lines delineating the PZ fluctuated depending on the power brokers of the day; the lines redrawn to move Cabrillo Estates, an affluent area of town, outside the zone. The CCRWQCB (Roger Briggs 18 years at the helm) was a player, but the

pawns are expected to pay for the consequences.

Now the game has started for the rest of the Tri County region. I have not met any residents in North County (SLO) with onsite wastewater systems that have been notified of these resolutions. They are the stakeholders, the ones who will ultimately pay the associated costs for implementation, compliance, and enforcement. They are the ones who may one day have to stand before the Royal Water Court, alone, with no one to protect them from abuse. Our government "of the people, by the people, and for the people" seems to have forgotten its people. **My goal is not to destroy the agencies that protect our environment, but to make sure that checks and balances are in place to hold the agencies accountable for their decisions and ensure that the people under their jurisdiction are treated fairly.**

Rhian Gulassa
CDO R3-2006-1034

cc Monterey County Supervisors, Santa Barbara County Supervisors, San Luis Obispo County Supervisors

From: Sandy Bean <Sandy@SandyBean.net>
To: <SMarks@waterboards.ca.gov>
Date: 4/7/2008 3:44:08 PM
Subject: Water Quality Control Board's Waiver of WDRFOWS....

Dear Ms. Marks,

I am a member of a newly formed Corporation by the name of F.A.I.R (Fair Allocation of Important Resources). This Corporation represents a large group of Los Osos Vacant Property owners which have hired a well-known legal firm to represent them in their plight as taxed property owners who have been denied use of their property for over 20 years.

I am speaking in my own behalf, and as such, I would like to note:

1. I have not yet read the details behind Resolutions No. R3-2008-0005 and 0006, but intend to prior to the upcoming May meeting.
2. I would like to suggest that provisions be made at this time in your staff's report, to allow new individual wastewater systems that meet all zero discharge requirements, and can accommodate a newly built home without additional use of water.

NOT to do so at this time may be considered a use of governmental regulations to purposely deny taxpayers from the lawful and equitable use of their property. Thank you for your consideration.

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From: "Piper Reilly" <getgreenlo@gmail.com>
To: <smarks@waterboards.ca.gov>
Date: 4/7/2008 4:06:28 PM
Subject: Comments re; Basin Plan Amendment

04/07/08

Piper Reilly

691 Woodland Drive

Los Osos, CA 93402

getgreenlo@gmail.com <getgreenlo@gmail.com>

Sorrel Marks

Central Coast Water Board

895 Aerovista Place, suite 101

San Luis Obispo, CA 93401

Dear Ms. Marks,

This letter is in protest to the lack of notice given for the Revision of the Basin Plan Criteria and Waiver of the Waste Discharge Requirements for On Site Systems. I also assert that the proposed plan triggers CEQA because change in recharge to the basin will greatly effect the flora which will in turn have an impact on the fauna. The sheer volume of communities involved should have triggered CEQA. Here is Los Osos, it was determined that routine pumping of septics would have an adverse effect on air quality. Have all appropriate agencies been notified? From your document it is unclear.

①

②

Because this is a major revision and it affects so many, post cards should have been sent out to all property owner's with onsite systems in the proposed areas. Placing a cloud on all those titles will have an economic effect, which was not discussed in this update. There will also be a cost to whom ever is placed in the position of responsibility for this plans enactment and enforcement. It is unclear in this document as to who this will be and if they have been notified.

As a recipient of a NOV, in the Los Osos prohibition zone, I have been in communication, via e-mail, regarding onsite, with Harvey Packard for the past 5 months. We even had a meeting a few weeks ago and he did not mention one word regarding the proposed changes to the Basin Plan. This, despite the fact that our conversations have centered on the subject of on site systems and, this past fall, I asked Mr. Packard about future updates to the Basin Plan to which he gave me no indication that it would happen. One small advertisement in a paper is insignificant notice on such a substantial proposal which effects so many lives, be it human, plant or animal.

As an individual, I have been actively working towards being the best possible steward of our natural resources and your Board is making that impossible. I do not comprehend how the County of San Luis Obispo can continue to issue permits for new septic systems when we, in Los Osos, face close to \$40,000,000.00 in fines per household. In accordance with new water conservation measures, all new structures must have water saving devices. Where a homeowner is unable to connect to a sewer system, Reclamators should be mandated. Producing, EPA drinking quality water, it eliminates a resource which can be re-used or safely recharged with a root zone application.

If San Luis Obispo County continues with its plan to build a conventional waste water treatment system for Los Osos, then I have the right by California State Water code 13360 Manner of Compliance, to choose any lawful means to take care of my discharge. For your board to continually move the goal post is wrong, especially when it keeps you from actually solving the problem which is improving water quality. To force me to hook up to a County conventional system, which will leak, sets me up to have to pay more fines and that is collusion. There also has been, and continues to be, a great deal of selected enforcement by waterboards both here on the central coast and else where in California.

Attached I have include my most recent e-mail correspondence with Harvey Packard and Rodger Briggs as well as a response letter, written by Attorney Patrick Sparks on my behalf. This is followed by a letter of my support to PZLDF'S efforts and finally, a very recent article regarding the Water Boards arbitrary and capricious nature.

Your proposal for a revision of the Basin Plan has far reaching effects. Please table this until such time when all interested parties have been adequately notified and the CEQA issue can be reexamined. Thank you for your consideration.

Sincerely,

Piper Reilly

ATTACHMENTS:

Recent e-mails to and from Harvey Packard regarding onsite systems,

March 5, 2005

Dear Mr Packard,

I am looking forward to hearing from you in response to my email of 02/19/08 regarding the installation of the Reclamator.

Since receiving the NOV from you a year ago, I have been put under stress, by this process, so severely, that it has caused me, as it has caused others, illness. As stated previously, I wish to rectify this matter. I understand that you are busy, so in case you missed the e-mail I am referring to, I will include it at the bottom of this one.

I did discover that Steve Paige's urine sequestering system was approved by

you this past fall. Logically, there should be no problems with me installing the Reclamator.

Thank you for your attention to resolving the matter of the NOV.

Sincerely,

Piper Reilly

February 9, 2008

Dear Mr Packard,

I am writing you today in regards to the letter you sent me on 03/21/07. It states that based on substantial evidence, our septic harm water quality and public health. It then further states that the County faces significant hurdles in having their proposed waste water treatment plan up and running by 01/11/2011. The County's Auditor has recently also shown doubt regarding this process. These are concerns I share, therefore, in accordance with California Water Law 13360 Manner of Compliance, I may undertake action to eliminate the "discharge" which is the subject of my NOV.

**ARTICLE 6. GENERAL PROVISIONS RELATING
TO ENFORCEMENT AND REVIEW**

§ 13360. Manner of compliance

(a) No waste discharge requirement or other order of a regional board or the state board or decree of a court issued under this division shall specify the design, location, type of construction, or particular manner in which compliance may be had with that requirement, order, or decree, and the person so ordered shall be permitted to comply with the order in any lawful manner.

The recent spill, at the Men's colony, of a brand new Carollo conventional waste water system, is a prime example of what I wrote to you in our e-mail conversations just one month ago. Since the County continues on this path of "Carollo conventional", it is more than fair to say that there will be discharge and I will be fined if I hook up to the County's proposed system.

I would rather install an AES Reclamator in order to comply now. I will be using this, state of the art, NSF certified, low energy appliance, to handle waste at the source. I will be discharging EPA quality drinking water which is a resource and not waste. The Reclamator is monitored via google. Your agency will have full access to check the performance of this system 7 days a week, 24 hours per day.

The State Water Resources Control Board is meeting in Sacramento to explore a set of proposed measures to reduce greenhouse gas emissions from water use in California. This will shape the agency's submittal to the California Air Resources Board for inclusion in the AB 32 Scoping Plan.

Proposals include water recycling at waste water treatment plants and ensuring that water managers implement Best Management. The Reclamator accomplishes that and much more, including 100% recharge of purified water to the aquifer with no danger of liquefaction, a small carbon footprint, a

small price tag and pretreatment at the source as mandated by Federal Code Title 33, Chapter 26, sub chapter I.

Currently, this, highly federally compliant, "water harvest" appliance, is the ultimate drought solution. As an environmentally minded person, and mother of 4, I am pleased to be complying with the full letter of the law and doing my part in maintaining a healthy earth for generations to come.

Sincerely,
Piper Reilly

March 6,2008 Briggs response,

**

March 13,2008 Attorney response to Briggs,

**

Support document of PZLDF,

**

* These support documents will follow in the mail along with all other hard copies. Technical difficulties and the late hour are preventing me from getting them to you sooner. Thank you for your understanding*

**

**

Article on arbitrary and capricious nature of the Water Board from
www.recordnet.com April 7,2008

SACRAMENTO - Agencies charged with protecting California's water quality are inconsistently enforcing the law and levying fines that have not increased since 1984, according to a new staff report.

Environmentalists have long complained that the State Water Resources Control Board and nine other regional boards are not properly safeguarding water quality.

While not as prominent as other government branches, these boards investigate thousands of violations - some in paperwork, others toxic discharges into creeks and streams. The boards take a key role in protecting water bodies such as the Delta.

The report, open for public comment, was requested by Gov. Arnold Schwarzenegger in 2007.

"It's really an attempt by the water boards, in response to a lot of criticism that we've received, to say where we are right now, warts and all, with the idea that we need this information so we can improve," said Reed Sato, who heads the Office of Enforcement for the state board.

Problems identified by the board include:

» Key data on water quality violations are either missing or incomplete, and records vary from region to region, making it difficult to tell where the most serious violations are taking place.

» In the Central Valley, only 43 enforcement and compliance offers are charged with tracking nearly 16,000 permits.

» When violations are found, not all of the perpetrators are penalized. For example, in the Central Valley, 493 violations were reported in 2006-07 under the National Pollutant Discharge Elimination System wastewater program. This includes many permits held by cities and factories. Just 280 of those violations - or 56 percent - were enforced.

» Finally, penalties have not been adjusted for inflation in more than two decades. This could make the law less of a deterrent, the report warns.

"Being caught for violating the law is just kind of the cost of doing business," said Bill Jennings, a Stockton environmentalist who frequently criticizes the water boards. "It's cheaper to continue to pollute than it is to either upgrade equipment or take management measures.

"The bottom line," Jennings said, "is that if (the laws) had been enforced and complied with, these waters wouldn't be polluted now. For 20 years, we haven't vigorously enforced the law."

Under state law, fines cannot exceed \$15,000 for each day a violation takes place or \$20 for each gallon of waste discharged into the environment. Under that cost structure, the penalties seem "really low" in some situations, such as the high-profile Cosco Busan oil spill in San Francisco Bay in the fall, the board's Sato said.

On the other hand, fees could mount into the millions in less than an hour should an illegal spill occur at Stockton's wastewater treatment plant.

The city, after all, discharges about 33 million gallons of treated wastewater every day into the San Joaquin River.

"The fines they do issue in the municipal arena can be appreciable," said Mark Madison, director of the city's Municipal Utilities Department. "Are they a deterrent? Yes, they are. They do not need to make changes to further get our attention."

A staff attorney for Baykeeper, a conservation group that monitors water quality, said she was encouraged by the state's recommendation to keep better track of enforcement.

"I hope action comes from it," Amy Chastain said. "We don't need just another report."

Contact reporter Alex Breitler at (209) 546-8295 or abreitler@recordnet.com.
<<http://www.recordnet.com/blogs>>

CC: "lisa schicker" <lisaschicker@sbcglobal.net>