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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

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.

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

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.

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.

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? (3)

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? (2)

The resolutions and amendments are unfunded state mandates that violate California Constitution XIIIB. The resolutions improperly require and mandate that local agencies (1)

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.

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? (3)

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. (4)

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. (2)

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? (2)

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

associated with implementing the resolutions and basin plan amendments. We submit these are unfunded state mandates violative of Article XIIIB 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. (1)

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? (5) (6)

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. (7) (8)

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 (1)

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. (8) (9)

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. (10)

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 (11)

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. (12) (13)

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? (1)

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? NA

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. NA

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. NA

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

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. NA

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 Osos Community Services District, and Keith Wimer. (2)

Very truly yours,

Sullivan & Associates
A Law Corporation

Shaunna Sullivan

SLS:jn
cc: Harold J. Biaggini
Ruth B. Sullivan