

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

STAFF REPORT FOR REGULAR MEETING OF JULY 9, 2004

Prepared on June 18, 2004

ITEM: 19

**SUBJECT: Consideration of Enforcement Alternatives for Baywood Park/Los Osos,
San Luis Obispo County**

SUMMARY

During its May 14, 2004 meeting, the Regional Board directed staff to prepare an evaluation of possible alternatives for enforcing the 21-year old discharge prohibition in Baywood Park/Los Osos. The following is a summary of possible enforcement alternatives, non-enforcement options and alternative funding options including recommendations regarding actions the Regional Board should consider. In evaluating each alternative, the goal of resolving water quality impacts caused by septic system discharges in Los Osos remains the primary consideration.

BACKGROUND

In 1983, the Regional Board adopted Resolution No. 83-13, which amends the Water Quality Control Plan, Central Coast Basin (Basin Plan) and prohibits, effective November 1, 1988, discharges of waste from individual and community sewage systems within portions of the Baywood Park/Los Osos area of San Luis Obispo County (Basin Plan prohibition area).

After many years of delay, the San Luis Obispo County Board of Supervisors voted unanimously to proceed with a community wastewater project for Los Osos in October 1995. The Regional Board reviewed the proposed project and found it acceptable as a means of resolving water quality problems in the community. The County then proceeded with design plans and completion of the environmental review and permitting process. The community-wide sewer system was (in 1997) on schedule to begin construction in 1997. However, the California Coastal Commission required more studies on different occasions which prevented the project from proceeding to construction.

In November 1998, Los Osos voted to form a Community Services District (CSD) to replace San Luis Obispo County as the governing body for community services. The Los Osos CSD chose not to proceed with the County's wastewater project, began anew the process for project development, and developed a revised project for wastewater collection, treatment and disposal.

Through a lengthy multi-year process of alternatives evaluation and public meetings, the Los Osos CSD developed a technically, environmentally and financially sound community wastewater project. In 2000, the Regional Board issued Time Schedule Order No. 00-131, which specifies the following compliance dates for completion of vital project components:

| | |
|--|---------------------------|
| Draft EIR | 12/15/00 (done) |
| Final EIR | 04/01/01 (done) |
| Assessment District or comparable means of financing project | 07/29/01 (done) |
| Complete design plans County Use and Coastal Development permits | 07/15/02 (done) |
| Commence construction | 07/15/02 (partially done) |
| Complete construction | 09/06/02 |
| Report on compliance | 08/30/04 quarterly |

Los Osos CSD completed and certified an Environmental Impact Report (EIR) for the community wastewater project in March 2001. In June 2001, voters formed an assessment district (with 85% voter approval) to finance those portions of the project not funded by State Revolving Fund loan. In 2003, a County Use/Coastal Development Permit was unanimously approved by San Luis Obispo County Planning Commission and unanimously upheld on appeal to the County Board of

Supervisors. Construction design plans were completed in February 2004. By Spring 2004, the project was poised to proceed with construction: the CSD had advertised for construction bidders, reviewed bidder qualification documents and received bids for construction of the community wastewater project. However, on April 15, 2004, the Coastal Commission agreed to hear the appeal of the Coastal Development Permit, took over permit authority from the County, and postponed permit hearing on the project (Attachment 1).

The Coastal Commission's action on April 15, 2004, and resulting delay caused the loss of County Block grant funding assistance for low-income property owners in Los Osos and jeopardized the State Revolving Fund loan for project construction (loss of the SRF loan would add an estimated \$30 million to project costs). Los Osos CSD, with assistance from the Regional Board, State Board and Cal/EPA, continue to pursue avenues to resolve issues cited by the Coastal Commission (Attachments 2, 3 and 4). And, in a June 4, 2004 letter, the Coastal Commission has (conditionally) agreed to schedule the Los Osos project for its August agenda (included with Attachment 3). However, in the meantime construction and project costs increase, and water quality in and around Los Osos continues to be degraded by septic system discharges.

With this background in mind, the following is a discussion of various actions aimed at resolving the water quality problems in Los Osos, which the Regional Board should consider.

ENFORCEMENT ALTERNATIVES

Options against Los Osos CSD

Enforce Section 13308 Time Schedule Order – The Regional Board could enforce Time Schedule Order No. 00-131 based on Section 13308 of the Water Code. The Time Schedule Order contains a date-specific compliance schedule and a dollar amount, which would be assessed for each day Los Osos CSD fails to meet the schedule. Time Schedule Order No. 00-131 issued to Los Osos CSD specifies \$10,000 for each day of violation. Based upon the schedule specified in Order No. 00-131, the project is in excess of two years behind schedule. Accordingly, the enforcement of the Time Schedule Order may include penalties of over \$7,300,000.

However, Order No. 00-131 states that the Regional Board reserves the jurisdiction to extend the time for compliance if Los Osos CSD cannot comply due to circumstances beyond its reasonable control. Project delays have been caused by litigation (all resolved in favor of the project) and Coastal Commission granting

of a de novo hearing based upon project opponents' appeal of the Coastal Development Permit.

Pros: The benefit of enforcing the Time Schedule Order depends upon the ability to utilize the penalties for resolving water quality problems in Los Osos. For example, if penalties collected could be used to implement the community wastewater project in a timely manner, then such action would be consistent with the Regional Board's goals for water quality protection.

Cons: Los Osos CSD has gone to great lengths to address each and every question and objection raised by project opponents. Los Osos CSD has rigorously and successfully responded to each appeal of discretionary approval and each court challenge. Project delays, and noncompliance with the Time Schedule Order, are clearly beyond Los Osos CSD's ability to control. Assessment of penalties under Order No. 00-131 would result in bankrupting the CSD and the responsibility for the community wastewater project would likely revert to San Luis Obispo County. Such action is not likely to result in resolution of water quality problems in Los Osos in a timely manner.

Administrative Civil Liabilities – A Complaint for Administrative Civil Liabilities (ACL) could be issued by the Executive Officer based on discharges in violation of Time Schedule Order No. 00-131, Waste Discharge Requirements, Cease and Desist Orders, or the Basin Plan prohibition. The difference between a separate ACL order and the Time Schedule Order is that a separate ACL order has somewhat more flexibility in amounts of the penalties.

Pros and Cons: Same as addressed in the 'Enforce Section 13308 Time Schedule Order' section above, with the exception that penalties for individual dischargers (that is, not the CSD itself) would not have an economic effect on the CSD.

Revise Time Schedule Order No. 00-131 – As described above, the Regional Board adopted Time Schedule Order No. 00-131 for discharges from facilities owned by Los Osos CSD (Fire Dept., Water Dept. and two multi-unit residential septic systems). The Time Schedule Order includes a date-specific compliance schedule and provides a basis for further enforcement actions. The Regional Board could revise Time Schedule Order No. 00-131 to reflect the current implementation schedule. However, due to delays being outside the CSD's ability to control, a current implementation schedule is unknown.

Pros: Revision of the compliance schedule specified in Order No. 00-131 would eliminate current noncompliance by Los Osos CSD.

Cons: There appears to be little benefit of revising the compliance schedule, other than simply accommodating project delays. Current delays are caused by the fact that the Coastal Commission took over permitting authority for the project (from San Luis Obispo County) and the permit approval timeframe is unknown. Therefore, we do not know what a reasonable compliance schedule is, and will not know until Coastal Commission approval.

Cease Pumping Shallow Ground Water – At several low-lying areas in Los Osos, the CSD collects shallow ground water (at or near ground surface) and discharges it to Morro Bay via the storm drain system. The dewatering systems were installed by the County in 1996, prior to formation of the CSD, and prevent surfacing ground water/septic tank effluent from flooding surrounding homes and streets. At the time of installation, the systems were expected to be a short-term temporary measure, which would not be needed after construction of the wastewater project (then scheduled for 1997). However, with each project delay, surfacing ground water and sewage from flooded systems continues to be carried into Morro Bay. The discharge requires (but does not have) NPDES Permit authorization. The Regional Board does have authority to issue an Order requiring the CSD to cease discharging from these shallow drain systems to the Bay and/or apply for a permit.

Pros: If the discharges are stopped, shallow ground water (which has inundated septic systems) would not be pumped directly to the Bay. Much of the same water would flow by gravity to the bay through the storm drain system after flooding surrounding homes and streets, so the water quality change might not be significant. However, the more visible (and problematic for residents) surface flooding and drainage would likely help clarify public understanding of the magnitude of water quality problems in Los Osos.

Cons: If pumping of the drainage systems ceased, plumbing fixtures would cease to function and nearby residences, commercial buildings, yards and streets would become inundated with surfacing ground water. The standing water (with its sewage component) would likely increase public health threats and may result in litigation against the CSD and/or Regional Board from impacted property owners. . If the Regional Board issued a permit for these discharges, the discharge would very likely exceed permit limits. Individual treatment systems for these discharges would be very expensive (and subject to coastal zone permitting). Such treatment systems would likely be temporary,

since the most realistic, practical long-term solution is the CSD's proposed wastewater management system (in conjunction with ground water management).

Options against individuals (property owners)

Cease and Desist Orders – In addition to the Cease and Desist Orders issued to Los Osos CSD, Cease and Desist Orders were issued in 1988 and 1989, for approximately 20 community on-site systems (apartment complexes, mobile home parks, etc.) in Los Osos. These Orders remain in effect and provide a basis for further enforcement actions. Existing (and potentially future) Cease and Desist Orders call for timely connection to a community-wide wastewater system. In addition, many of the existing Cease and Desist Orders fix a date (long since passed) to cease discharging to septic systems.

Cease and Desist Orders could also be issued to individual property owners. Such orders would be similar to existing Cease and Desist Orders for community septic systems and require connection to the community-wide system within 60 days after it becomes available and/or prohibit discharge to on-site systems after a specific date. The Executive Officer does not have authority to issue Cease and Desist Orders. The Regional Board may adopt Cease and Desist Orders after a public hearing and approval by the majority of total Regional Board members (five votes).

Pros: Individual Cease and Desist Orders may bring about some opportunity for individual accountability for continued discharges contributing to water quality problems in Los Osos. And, if discharges do cease, water quality problems would be reduced.

Cons: Individuals have very limited means of effectively ceasing discharges until a community sewer system is available. The only feasible means of complying with individual Cease and Desist Orders would be to eliminate on-site discharges by regular (several times per week) hauling of sewage to a treatment facility. Such hauling would entail regularly accessing each septic tank for pumping every few days, and would generate approximately 280 truck trips per day. The availability of an adequate number of septage haulers and receiving sites for such action is also problematic. Another approach would be to reduce the scope of Cease and Desist Orders to prohibit only black water discharge to/from septic tanks. That is, grey water from showers, washers, etc., could still be discharged to septic systems, but higher strength toilet wastes would be prohibited. Residents would be forced (if they didn't violate that Order) to use outhouses, or toilets outside the prohibition area (not very feasible). While outhouses would still have to be pumped, the volume and truck trips would be substantially less than with the "pumping septic tanks"

scenario. However, similar to the problem of availability of enough pumper trucks, there is the problem of availability of enough outhouses. In any case, such action (adopting Cease and Desist Orders) would require drafting approximately 5,000 orders, staff reports and notification letters, holding public hearings on each and responding to inevitable complaints. It should be noted however, that the vast majority of voters in Los Osos have supported the project at every step.

Cleanup and Abatement Orders – Based on discharge in violation of the Basin Plan prohibition, Cleanup and Abatement Orders could be issued by the Executive Officer (without public hearing) or by the Regional Board (after a public hearing). Normally, Cleanup and Abatement Orders include a schedule for cleaning up past discharges and abating threatened discharges. In this case, abatement of threatened discharges could be achieved if a community-wide collection and treatment system is completed. Or, abatement may be achieved by very frequent (at least twice weekly) pump-out of septic tanks so that the contents do not leave the tank and discharge to soil and underlying ground water. Ceasing discharges would mean using the septic tanks as holding tanks as described above. Cleanup and Abatement Orders could be issued to every home, business and government facility that is discharging to an on-site disposal system in the prohibition area (unless discharge is in compliance with a Basin Plan exemption). As noted above, short of pumping all waste from septic tanks, individuals (residents, property owners, businesses, etc.) have very few options for complying with the discharge prohibition. Each Cleanup and Abatement Order would require findings that the discharge in question has caused or threatens to cause pollution or nuisance. The same alternative of abating waste from black water only, as discussed above, also applies here.

Pros: If compliance with Cleanup and Abatement is achieved, discharges of waste would cease, water quality protection would begin, and impacts from past discharges would eventually be eliminated.

Cons: As indicated above, the only immediate means of complying with the discharge prohibition is to prevent discharge of waste from the septic tanks. Pump-out and hauling would generate approximately 280 additional truck trips from Los Osos daily to a sewage disposal site. Essentially, one million gallons per day of sewage would need to be hauled by truck to a disposal site (provided one could be found). Also, approximately 5,000 Cleanup and Abatement Orders would need to be drafted by staff and issued to residents. Following such action, undoubtedly considerable staff resources would be needed to address complaints, compliance and legal challenges. Although the vast majority of property owners and voting residents have supported the Los Osos

CSD's community wastewater project, property owners have been powerless to prevent the delays in the project. Therefore, it is not clear how long such an alternative may remain in place.

Administrative Civil Liabilities – A Complaint for Administrative Civil Liabilities could be issued to owners of homes, businesses and government facilities discharging from on-site disposal systems (except those complying with Basin Plan exemptions). Each party served with a Complaint has the right to hearing before the Board. An Administrative Civil Liabilities order may be adopted by a majority of a quorum of the Board present (if five members present, then three votes are needed). Each Administrative Civil Liability action would require findings that the discharge in question violates the on-site discharge prohibition and is discharging waste to surface water or ground water.

Pros: Waste dischargers would take financial responsibility for the water quality impacts caused by their discharges.

Cons: Issuing orders for Administrative Civil Liabilities would consume considerable Regional Board resources with little (if any) resulting water quality improvements. It should also be noted that property owners began repaying bonds for the community sewer last fall. And, since \$19 million in bonds were sold and funds spent on project development, property owners will continue to repay those bonds regardless of progress or timing of the wastewater project.

Use of ACLs Funds:

Several of the options listed above could result in monetary penalties being collected (from the Los Osos CSD, residents, businesses, etc.). Standard policy is for such penalties to be deposited into the State Cleanup and Abatement Fund. However, if such funds are available for supplemental environmental projects, the following projects should be considered.

- Mitigation required under the Habitat Conservation Plan for secondary impacts from in-fill projects, or
- Funding assistance for low-income residents in making connections to the sewer.

Pros: Based upon increased requirements for habitat conservation, future lot development carries a cost burden disproportionate with the impacts associated with each individual lot. Vacant lot owners have carried the cost burden associated with 16 years of project delays and inability to use their property. In other words, the water quality impacts have been caused by the existing development, but a disproportionate cost is to be borne

by undeveloped parcels. Also, since much of Los Osos is "built out," most of the original habitat has been destroyed by the same people who are currently discharging illegally. Using monies collected from existing discharges in violation of the Basin Plan, to offset habitat conservation costs would to some degree balance the inequity between those creating and those mitigating for such impacts. It should also be noted that existing dischargers are currently saving over \$110 per month in deferred sewer use fees. The 1983 prohibition had an effective date of 1988, yet those using their septic tanks illegally since then have paid no sewer use fees for the intervening 16 years (at the current estimate of \$110 per month, that amounts to \$21,120 in economic benefit for discharging illegally).

Cons: Similar to those described in the 'Cease and Desist Orders' section (staff time, public hearings, still need entity to construct project, etc.)

NON-ENFORCEMENT OPTIONS

U.S. EPA Involvement – The Regional Board could request U.S. EPA involvement, including having the community of Los Osos designated a Superfund Site. The National Estuary status of Morro Bay and inclusion of the Los Osos CSD wastewater project in the Morro Bay Comprehensive Conservation and Management Plan (designed to protect and restore the estuary) may provide appropriate linkage to support a more proactive federal role in resolving water quality problems in Los Osos.

Pros: Designated Superfund projects must comply with applicable state and federal laws and include resource agency consultation. However, they do not require the standard permit process provided they substantially comply with laws and regulations. This may facilitate project implementation in a more timely manner.

Cons: Due to federal budget priorities and superfund resources, the likelihood of superfund designation and federal management is uncertain.

Federal or State Agency takeover of the Wastewater Project – The Regional Board could request another federal or state agency to take over responsibility for Project Management and Construction. This option should not in any way indicate staff doubts the Los Osos CSD's dedication to project completion. On the contrary, staff believes that Los Osos CSD has gone above and beyond standard practices in addressing potential project impacts and public concern. However, the fact remains that the Los Osos CSD has been unable to date to obtain Coastal Commission approval for project implementation. The California Department of Water

Resources or the U. S. Army Corps of Engineers may be appropriate agencies to take over the wastewater project.

Pros: Such action would only be of benefit if the new agency can proceed without Coastal Commission approval or can develop an interagency agreement with the Coastal Commission in advance of project takeover and if the agency could proceed without any permit subject to a legal challenge that could further delay the project.

Cons: Adding an additional agency into project negotiations and project management would likely add to project costs and delays. Furthermore, staff is not currently aware of an agency both willing and able to proceed with project implementation.

Rescind Resolution No. 83-13 – Resolution No. 83-13, adopted by the Regional Board in 1983, formed the on-site discharge prohibition area. Since 1988 (when the prohibition was implemented), no new or expanded development has been allowed unless the Regional Board grants exemption. There remain approximately 600 vacant lots within the discharge prohibition area (about 5,000 are developed). Lot owners are unable to build homes on these lots due to the prohibition of on-site disposal of wastewater specified in Resolution No. 83-13.

One of the most significant issues of project opposition (by some community members as well as environmental regulatory and resource agencies) is the perception that building a sewer system will induce growth within the community. Therefore, the on-site discharge prohibition of Resolution No. 83-13 has been used in conjunction with project opposition as a tool to prevent growth. Currently, the most significant issue identified by the Coastal Commission as basis for reviewing the County's permit is completion of a Habitat Conservation Plan for secondary impacts of the project. This means that the Los Osos CSD must develop a Habitat Conservation Plan to mitigate for any habitat loss due to development of lots that will be developable once sewer service is available. Development of a Habitat Conservation Plan requires extensive coordination with San Luis Obispo County (local permitting authority) as well as U.S. Fish and Wildlife Service, California Department of Fish and Game, and the Coastal Commission. Accordingly, progress has been extremely slow and none of these other resource agencies appear motivated to facilitate the plan. The Los Osos CSD has drafted a Habitat Conservation Plan. The wastewater project (as permitted by the County) prohibits new development from hooking up to the system until the Habitat Conservation Plan is complete, therefore preventing secondary impacts from occurring.

Pros: Water quality impairment is caused by existing discharges in Los Osos. Resolution of existing water

quality problems (a community sewer system) may be more readily approved by the Coastal Commission if Resolution No. 83-13 were not being used as a means of prohibiting growth in Los Osos. In short, the Regional Board resolution may be used to undermine efforts to resolve the larger water quality problem (i.e., roughly 10% of potential loading and therefore 10% of the total wastewater related problems are being prevented by the prohibition, but 90% of the problem is being prolonged by the prohibition, if this argument is valid).

Cons: Resolution No. 83-13 prohibits new discharges of waste to on-site systems since such discharges would contribute to water quality impairment. Rescinding the resolution would essentially allow development (at least from the Regional Board perspective) of those 600 lots within the prohibition area. In time, wastewater discharged from those additional homes would contribute to water quality impairment. Also, Resolution No. 83-13 provides the basis for most of the enforcement actions (existing and future) in Los Osos. Therefore, if Resolution No. 83-13 were rescinded, such action would eliminate the legal basis cited in existing Cease and Desist Orders. At this time, staff is not clear whether such action would also undermine funding opportunities for project implementation.

General WDR for On-site Disposal within Prohibition Zone – Some water quality improvements may be gained by development of General Waste Discharge Requirements that regulate on-site disposal within the prohibition area. For example, residents with septic systems and seepage pits might be required to pump their septic system at a very frequent rate to minimize the effect their effluent discharge has on ground water. This option is similar to that described in the ‘Cleanup and Abatement Orders’ section above. Staff could utilize and modify existing General WDRs for On-site Systems developed at other Regional Boards (the Los Angeles Regional Board is currently considering such a General WDRs).

For clarity, use of the phrase “failing septic systems” in the case of Los Osos refers to the fact that septic systems cannot function in the manner intended. Standard septic systems function as follows. Sewage solids are retained in the septic tank for periodic removal by pumping and hauling to a disposal site. The liquid portion of the sewage flows into the soil (via horizontal leachfield or vertical pit) and depends upon microorganisms, filtering and dilution within the soil column for treatment prior to entering ground water. In Los Osos, the small lot size, density of septic systems, shallow ground water, and sandy soils prevent the septic systems from effectively treating the sewage. Accordingly, the septic systems are failing to adequately or effectively treat the waste. In Los

Osos, the septic system failure cannot be “repaired” simply by pumping (maintaining) the tanks, since the tanks are operating as designed (they are retaining solids). It is the liquid portion of the sewage discharged through leachfields, which are degrading water quality in Los Osos.

Pros: General WDRs requiring frequent pumping of tanks would have benefits similar to those described in the ‘Cleanup and Abatement Order’ and ‘Rescind Resolution No. 83-13’ sections above.

Cons: Similar to those described in the ‘Cease and Desist Order’ section above.

Require Alternative Waste Disposal Units – The Regional Board could (through General Waste Discharge Requirements, Cleanup and Abatement Orders, or Cease and Desist Orders) require use of alternative waste disposal units. Advanced treatment units (for improved effluent quality), portable toilets and/or composting toilets (for reduced discharges, as discussed in previous section regarding prohibiting black water discharges) could be required. Such units could be required for existing discharges using Cleanup and Abatement or Cease and Desist Orders, or for new discharges using General Waste Discharge Requirements.

Pros: For those existing discharges where such alternatives are implemented, water quality improvement will occur. If General Waste Discharge Requirements are adopted by the Regional Board which authorize development of vacant lots, then this method may also provide benefits similar to those described under the ‘Rescinding Resolution No. 83-13’ section above.

Cons: Widespread implementation of this alternative would result in more costly waste treatment and less effective water quality protection than that offered by the community sewer. However, it remains one of the few alternatives, which can result in water quality improvement and is not subject to Coastal Commission approval. The previous discussion about the questionable availability of this huge number of outhouses would also apply to availability of other types of alternative treatment methods.

ADDITIONAL FUNDING SOURCES

To date, the Los Osos CSD has been successful in obtaining several grants and loans supporting project development. Recent project delays have resulted in loss of grant funding for low-income assistance and jeopardize the State Revolving Fund (SRF) loan. However, there remain opportunities for funding assistance, if the project proceeds within the next few

months. Those funding opportunities include, but are not limited to, the following sources.

- SWRCB's Cleanup and Abatement Account
- Future Settlement Agreements (including PG&E Diablo Canyon)
- Mitigation from the Duke Energy Morro Bay Power Plant permit
- Future Mandatory Minimum Penalties and Administrative Civil Liabilities
- Proposition 13, 40, 50 Bond Grant Funds
- Federal budget appropriations

Each of these funding sources includes specific timing requirements. Also, it should be noted that failure to proceed with the wastewater project might force the CSD (and thus the community) to repay some of the already awarded grants, including the Proposition 13 grant for acquiring the Broderson site as mitigation for the wastewater project.

COMMENTS

During the Regional Board's May 13 and 14, 2004 public meeting, several individuals provided comments regarding the Los Osos wastewater project. Those comments indicate there remains considerable misinformation regarding the wastewater project, septic systems, and related water quality issues. Following is a summary of such comments, followed by staff responses. The following comments do not all specifically pertain to the alternative Regional Board actions described above.

Lisa Schicker: Ms. Schicker represents a relatively new CSD wastewater project opposition group called Los Osos Technical Task Force (TTF). Ms. Schicker voiced her opposition to the Tri-W site, wants new studies and interim measures such as imposition of septic tank maintenance program similar to that in Santa Cruz County, supports pumping upper aquifer water, and prefers the Andre site for treatment facilities. Ms. Schicker added that she believes the project includes discharge of effluent to Morro Bay. Ms. Schicker also referenced TTF project concerns addressed in a letter to Los Osos CSD. Specific concerns and staff responses are summarized below as well as in a February 3, 2004 letter from Roger Briggs to the Coastal Commission responding to issues of the coastal development permit appeal (included in May 14, 2004 agenda as EO Report Attachment 1). Also, many of these same issues are

addressed in Frequently Asked Questions flyers (including why the Santa Cruz Septic Tank Maintenance Program is not applicable to Los Osos) sent to over 5,000 property owners in 2001 and available on the Regional Board website (Attachment 5).

1. TTF may not consider themselves an "opposition" group, but the TTF states that it believes the community wastewater project will do more harm than good and will result in water quality degradation.

Staff Response: This contention is similar to arguments made by Cal Cities Water Company in its challenge of WDR adopted by this Regional Board. The wastewater project is specifically designed to protect and restore water quality. Contention that collecting, treating and disinfecting sewage prior to discharge in a similar-to-existing manner, will somehow degrade ground water is contrary to basic scientific theory. To date, no scientifically supportable information has been submitted to indicate any other conclusion. The community wastewater project and associated WDR have been upheld by State Board and Superior Court rulings.

2. TTF believes the Andre Site with STEP/STEG treatment method is a preferable project.

Staff Response: The Andre site (along with several others) was evaluated in the project EIR, which concluded that the Tri-W site best met project, community and regulatory goals. Furthermore, the Andre site is extremely limited by title recorded easements and building restrictions by PG&E, which would make its use infeasible. Collection system alternatives, including STEP/STEG (septic tank effluent pumped/septic tank effluent gravity) systems were also evaluated during the project development and EIR process. Due to greater expense, traffic impacts and capacity issues, STEP/STEG systems are typically limited to projects with severe site constraints demanding such alternatives. No cost effective, feasible alternative project has been proposed.

3. TTF believes substantial project changes were not evaluated under CEQA/NEPA and requests a new EIR be developed.

Staff Response: The CSD has made minor project changes since adoption of the EIR, which are addressed in an Addendum to the EIR. Staff is not aware of significant project changes, which would require a new EIR. CEQA calls for preparation of a new EIR only if project changes would cause new significant environmental effects or increase the

severity of previously identified effects. It should be noted that Ms. Schicker did not contest the project EIR.

4. TTF believes the project purpose and goals are no longer valid. Specifically, the TTF references affordability, environmental justice, energy sustainability, and safe basin yield as issues of concern.

Staff Response: Ironically, socio-economic impacts and affordability are issues raised by some project opponents, which have, at every opportunity, pursued actions to delay the project and add to its expense. From its earliest inception (three decades ago) the Los Osos community sewer has received opposition due to costs, and millions of dollars of cost have been added to the project due to litigation and delays. However, economic impacts, affordability and cost-effective alternatives have all been addressed in the EIR, project development and SRF process. Project opponents litigated in federal court regarding environmental justice. Both federal (trial and appellate) courts and state superior court have ruled in favor of the Los Osos CSD project. Regarding safe basin yield, long-range water management planning (summarized in the Water Master Plan for the Los Osos community) depends upon restoring shallow ground water quality for domestic use. The wastewater project is specifically designed to meet that goal. Continued existing practices (drawing supply from deeper zone and discharging via septic systems to shallow zone) will result in increased degradation of the shallow zone by sewage and the deeper zone by seawater intrusion. The contention that the proposed project does not meet energy sustainability goals is inconsistent with the TTF's suggested alternative (STEP/STEG), which consumes considerably more energy transporting and treating waste.

5. The TTF believes that the project was developed prior to completion of all necessary technical studies, and should be delayed until all such studies have been completed.

Staff Response: Over the past three decades, Los Osos has become one of the most studied water quality problems in the state. The Los Osos CSD has utilized this huge body of information to develop a technically, environmentally and economically sound community based project. However, this does not mean that technical studies have ceased. The project includes ongoing monitoring to assure compliance with water quality criteria, mitigation measures, and permit conditions. Information gained from these ongoing studies can be used to evaluate, modify and plan future

waste and water management decisions and actions.

6. The project is not consistent with the California Coastal Act, Local Coastal Plan, and other applicable policies.

Staff Response: Los Osos CSD has successfully defended the wastewater project through each challenge, appeal and litigation concluded to date (and there have been many). San Luis Obispo County issued its certification of consistency with the Local Coastal Plan in April 2004, and no significant project changes have been made since that certification. On the contrary the Coastal Commission staff report prepared for the April 15, 2004 hearing detailed how the project was consistent with the Local Coastal Plan.

7. Ms. Schicker expressed some confusion regarding discharge of effluent or ground water to the bay.

Staff Response: During project construction, ground water will undoubtedly be intercepted by excavation and trenching. Such ground water will be discharged in a variety of methods including (but not limited to) landscape irrigation, dust control, leachfields, Los Osos Creek and Morro Bay. Discharge of construction dewatering is authorized and regulated by the SWRCB's Statewide Construction Storm Water Permit. At some future date, shallow ground water may be harvested as part of basin-wide ground water management. The need for harvesting is not certain, and is based on a worst-case scenario in conservative ground water modeling. Such harvested ground water will be beneficially used and/or disposed according to its quality. If discharge to Los Osos Creek or Morro Bay is planned for harvested ground water, such discharge may be authorized under this Region's Low Threat NPDES Permit, subject to meeting the permit criteria. Even if water is harvested, discharges to surface water may be unnecessary if other uses are available, such as recycling. The quality of shallow ground water if/when harvesting is needed, will be significantly improved because it will no longer be in direct/near contact with septic tank discharges and effluent will have received tertiary treatment. Note that harvesting (if it is ever necessary) is a short-term issue. The long-term goal for shallow ground water is to restore it to a quality appropriate for municipal/domestic use. Harvesting would then be unnecessary since the shallow aquifer would be pumped and sold by water purveyors. Also, as a matter of perspective, shallow ground water currently discharges to Los Osos Creek and Morro Bay through the community storm drainage system. Discharge of effluent from the proposed CSD project to surface waters is expressly prohibited in WDR Order No. R3-2003-0007 regulating wastewater project discharges.

Julie Tacker (Concerned Citizens of Los Osos): Ms. Tacker distributed copies of average nitrate concentrations in ground water graphs and expressed her view that the graphs were disproportionate and thus misleading.

Staff Response: The nitrate concentration graphs were taken from Regional Board staff's power-point presentation, provided to Ms. Tacker at her request. The sources of information depicted include the 1995 report *Assessment of Nitrate Contamination in Ground Water Basins* and data provided by the Los Osos CSD's ongoing ground water monitoring. Colors (shades of pink) are used on the graphs to clearly distinguish increasing nitrate concentrations. The graphs were digitally scanned and slight distortion in the plots provided by the CSD is a limitation of the computer software.

Bruce Payne: Mr. Payne stated his belief that the Cabrillo Estates area of Los Osos was not included in the discharge prohibition area because one of the Regional Board members lived there.

Staff Response: Resolution No. 83-13 was adopted in 1983, at which time no Regional Board members lived in the Cabrillo Estates area of Los Osos. Former Regional Board member George Rathmell lived in Cabrillo Estates, but was not appointed to the Regional Board until 1988 (after the discharge prohibition area was adopted by the Regional Board). The Cabrillo Estates tract (southwest edge of community) was not included in the prohibition area because hydrogeologic information at that time indicated ground water from that area flows westerly and therefore does not contribute to the water quality impairment of the greater basin. The Cabrillo Estates area also has the benefit of significant separation to ground water, and greater area for septic tank effluent, not available in most of the prohibition zone.

Rick Nyznyk (Los Osos vacant property owner): requested that the Regional Board consider rescinding the discharge prohibition (Resolution No. 83-13), which, in his opinion, is contributing to community sewer project delays.

Staff Response: See discussion in the 'Rescind Resolution No. 83-13' section above.

Pam Heatherington (ECOSLO): Ms. Heatherington requested interim measures, such as septic tank maintenance program, be initiated throughout Los Osos to stop damage to Morro Bay Estuary. Ms. Heatherington referred to the community wastewater project as a "sludge factory", "dinosaur facility" and

"mechanical dinosaur" and stated that ECOSLO participated in a Federal Environmental Justice lawsuit attempting to stop the project.

Staff Response: A septic tank maintenance program, such as that described by Ms. Heatherington (solids removal from septic tanks), would do little to improve water quality. Septic tanks typically retain solids, which are periodically pumped and hauled to a disposal site. The liquid portion of the wastewater is the portion, which is discharged to, and impairing water quality in Los Osos. On the other hand, dramatically increasing tank pumping to prevent discharge into the leachfields (and ground water) could improve water quality and is addressed above. As indicated in the 'General WDR' section above, the type of septic system failure in Los Osos is not particularly amenable to improvement through implementation of a septic tank maintenance program. In Los Osos, the septic system failure cannot be "repaired" simply by pumping (maintaining) the tanks, since the tanks are operating as designed (they are retaining solids). It is the liquid portion of the sewage discharged through leachfields, which are degrading water quality in Los Osos. The Los Osos CSD has developed an on-site wastewater management plan as required by WDR. As far as the comments about the proposed facility being a sludge factory and a dinosaur, sludge from the facility will be treated more than the sludge produced by the currently used septic tanks, and as far as treatment technology goes, you can't get much more Jurassic than a septic tank, as currently used by illegal dischargers in Los Osos.

Chuck Cesena (Los Osos Technical Task Force) commented that the Andre site is preferred for the treatment facility location. Mr. Cesena requested more time to study project alternatives.

Staff Response: See response to Lisa Schicker's comments above.

Al Barrow (Citizen's for Affordable & Safe Environment): stated his belief that the community wastewater project will degrade ground water and he advocates for a lagoon treatment facility and STEP collection system. Mr. Barrow also commented that he believes TOC (total organic carbon) and chlorination byproducts in effluent will impact ground water.

Staff Response: See response to Lisa Schicker's comments above. Total Organic Carbon in tertiary treatment plant effluent is likely to have significantly less impact upon ground water than that from existing septic system discharges. Also, it should be noted that the Los Osos CSD project includes disinfection using ultra-violet light rather than chlorine, and the District

extensively evaluated lagoon or ponding systems.

Eric Greening: expressed concern regarding septage disposal during decommissioning of septic tanks.

Staff Response: Septage disposal (during tank decommissioning) will require pumping and hauling the tank contents to an appropriate off-site disposal location. This activity will be one of many cumbersome aspects of retrofitting an existing community with a sewer system. The project will proceed at the pace allowed by proper implementation of this activity, and a great many other construction related tasks (self limiting).

Rebecca Mc Farland (Los Osos resident for two years): supports moving the project to the Andre site and believes that sewage spills will go to the Bay.

Staff Response: As described above, moving the project to the Andre site is not a feasible option. Los Osos CSD has developed a Spill Prevention and Response Plan as part of its compliance with WDR Order No. R3-2004-0007. Currently, inadequately treated waste discharges to the Morro Bay daily/constantly through seeping ground water, surfacing waste, and intercepted shallow ground water mixed with waste. The community wastewater project will significantly improve the collection and adequate treatment of waste, and ability to respond to spills if they occur.

CONCLUSION

Staff will be discussing each of the enforcement and non-enforcement options at the Regional Board's meeting on July 9, 2004, along with advantages and disadvantages of each option. The Regional Board may give staff direction to pursue one of the options described in this staff report, or another approach/option to resolve the decades old water quality issues in Baywood/Los Osos.

RECOMMENDATION

Pending Regional Board Direction at the July 9, 2004 meeting, and outcome of the August 2004 meeting of the Coastal Commission, pursue one of the options contained in this staff report.

ATTACHMENTS

1. May 27, 2004 letter to Bruce Buel, Los Osos CSD, from California Coastal Commission
2. May 12, 2004 letter to Peter Douglas, California Coastal Commission, from Celeste Cantu, SWRCB

3. June 1, 2004 letter to Peter Douglas from Celeste Cantu with attached June 4, 2004 letter from the California Coastal Commission
4. June 8, 2004 letter to Leo Sarmiento, SWRCB, from Los Osos CSD
5. Frequently Asked Questions Fact Sheets Regarding Water Quality Issues in the Los Osos Community, Spring 2002

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