

State Water Resources Control Board

October 25, 2011

The Honorable Katcho Achadjian
California State Assembly
State Capitol, Room 2016
Sacramento, CA 95814

Dear Assembly Member Achadjian:

CLEAN WATER STATE REVOLVING FUND ASSISTANCE – LOS OSOS

Thank you for contacting the State Water Resources Control Board (State Water Board) about concerns raised by one of your constituents pertaining to the State Water Board's loan to the Los Osos Community Services District (LOCSD) from the Clean Water State Revolving Fund (CWSRF) for the partial financing of the wastewater treatment plant project at Los Osos. I've provided below a response to the two key questions that you asked the State Water Board to address on this issue, as well as some background information on the CWSRF loan that the State Water Board made to the LOCSD. The CWSRF loan to the LOCSD was provided in strict accordance with statute and established CWSRF lending policy that can be found on the Board's website via this link:

http://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2009/031709_12_finalcwsrfpolicy_exhibit%20c_with%20cover.pdf

It is important to note that the State Water Board continues to work with the County of San Luis Obispo (who assumed this project after the LOCSD's bankruptcy) towards the completion of a wastewater treatment project in order to address the significant water quality issues in Los Osos.

1) Why did the State Water Board's Division of Financial Assistance (DFA) approve CWSRF monies for a project at the Tri-W site, given the issues that were later identified with building a facility at that site?

Under the CWSFF process, the local wastewater treatment agency that is requesting CWSFF funding is responsible for planning, design and construction of the wastewater treatment facility, including selecting the appropriate site. The State Water Board role is

that of the lender, and although DFA staff may ask technical questions regarding a project location as part of the financing application review process, it is ultimately the local agency's responsibility to determine the most appropriate site for building the wastewater treatment facility. Generally, the State Water Board, as the lender, does not become involved in the siting of a facility, unless there are questions about a project proponent's legal access to the land, or if a project is egregiously flawed from the start (see F. 5 on page 29 of the CWSRF Policy). In the case of Los Osos, the LOCSD was the entity responsible for selecting the site for the proposed wastewater treatment facility. Our files indicate that the LOCSD considered at least eight sites for the facility, and that it evaluated these sites according to cost, ability to meet regulatory requirements, difficulty in acquiring the site, odor and visual impacts, environmental and cultural impacts, and public opposition. Each individual site had strengths and weaknesses in terms of suitability, and the eventual choice of the Tri-W site, while not perfect, apparently was the best option in the judgment of LOCSD at the time, and was not an unreasonable choice. The LOCSD had legal access and the site was not known at the time to be egregiously flawed, thus, its site selection would not have precluded this project from CWSRF funding eligibility.

2) Why was CWSRF funding used on "decorative items," such as picnic areas, amphitheater, and community gardens, for the Tri-W project when the CWSRF policy seems to prevent use of funds in this manner?

The State Water Board approved \$6.5 million in CWSRF loans to the LOCSD for planning and design of the wastewater treatment facility. Most of these funds were used for the initial planning, environmental consultation, and design efforts in preparation for the construction of the complete facility. It is possible that the LOCSD could have included some planning and design of park facilities associated with the wastewater treatment facility, as part of their overall planning and design activities for the wastewater treatment facility. If this was the case, it would have been a minor part of the much larger planning and design of the facility.

It should be noted that although no CWSRF funds were used for the "construction" of any park facilities, the CWSRF Policy does expressly authorize the use CWSRF funds for mitigation measures that are mandated by state and/or federal agencies as an eligible construction project cost (G 1.(e) on page 29 of the CWSRF Policy). The LOCSD's Coastal Development Permit A-3-SLO-03-113, which was adopted by the California Coastal Commission on August 11, 2004, requires the LOCSD to include construction of park like features as mandated mitigation efforts for the wastewater treatment project (see Page 88 at: www.coastal.ca.gov/sc/W11b-8-2004.pdf). Therefore, if the State Water Board had awarded monies to the LOCSD for the construction of the wastewater treatment plant, the construction of park facilities would have been an eligible cost.

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Background on Los Osos

Impaired water quality has been documented in the Los Osos groundwater basin for more than 30 years. San Luis Obispo County started to design a wastewater collection and treatment project in the 1990's. The County's efforts stopped in 1999 when LOCSD was established and took responsibility for wastewater collection, treatment, and disposal in the community of Los Osos. LOCSD began construction of a wastewater collection and treatment Project in June 2005. In October 2005, the LOCSD stopped the project and subsequently filed bankruptcy. Of the \$6.5 million in CWSRF funds provided to LOCSD for planning and design, the State Water Board has recovered almost \$350,000 as part of a legal settlement between the State Water Board and LOCSD. The remainder of the \$6.5 million has been refinanced as part of the new CWSRF loan to San Luis Obispo County whom has now taken over this project. Thus, the State Water Board will still recoup the monies it had previously loaned to the LOCSD.

If you have any further questions on this matter, please feel free to contact me at [REDACTED] or Robert Egel, Legislative Director, at [REDACTED]

Sincerely,


Thomas Howard
Executive Director

cc: Mr. Gareth Elliott
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cc: (Continuation page.)

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