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Dr. Eric Wu, Chief of Groundwater Permitting Unit
Calif. Regional Water Quality Control Board, LA Region
320 W. 4th St, Suite 200
LA, CA 90013

Re: MOU between the City of Malibu and the RWQCB

Dr. Wu:

I attended the latest Malibu City Council meeting (6/27/11) where they passed the MOU between the Water Boards and the City and today I attended a stakeholder's meeting at the City Hall to try to figure out what and why the Water Boards have not only banned septic systems in the "butterfly" area drawn in the Civic Center area of Malibu proposed septic ban map, but also have come up with a moratorium on issuing new septic system permits for the areas in phases 1 and 2 for any new development. As my sister and I inherited our father's property in the Malibu Colony (shown as phase 2 on this map), we are illegally being denied the full use of our property which consequently lowers market value for no just cause or process as explained below.

State water code section 13280, which the Water Boards are governed by, allows the use of septic systems where water quality can be attained. As the USGS study has and is showing, there is essentially zero bacteria from any of the septic systems in the area leeching into the ground water system that ultimately migrates to the Malibu Lagoon. Since the new modern septic systems produce essentially clean water and can also be designed to remove the problematic nutrients that have been cited as exacerbating the problems in the Lagoon, there is absolutely no violation of State water code 13280 that has been shown by evidence. And evidence has to be shown for the Water Boards to affect such a ban. Therefore the ban is totally illegal. Further, code 13280 reads "a determination that discharge of waste from existing or new individual disposal systems or from community collection and disposal systems which utilize subsurface disposal should not be permitted shall be supported by substantial evidence in the record that discharge of waste from such disposal systems will result in violation of water quality objectives, will impair present or future beneficial uses of water, will cause pollution, nuisance, or contamination, or will

unreasonably degrade the quality of any waters of the state." So with this in mind, where is the evidence that the current old style OSDS being used at our property 23452 Malibu Colony Rd, Malibu, CA 90265 is causing any degradation to the water quality? If so, then why didn't we receive a notice of violation and be allowed to make repairs as the Water Board is required to do? Why are we being held in a moratorium if we wanted to upgrade the system to develop our property without proper notice? The Water Board has proceeded without due legal procedure and is illegal.

The Water Boards lack direct condemnation or eminent domain authority. A moratorium and or a ban without a sewer to hook up coupled with no evidence, notice, or ability to make repairs if needed stacks up to exactly that.

I learned at the Stakeholder's meeting today that Mark Gold of Heal the Bay has huge sway with the Water Boards. Without presenting any evidence whatsoever, Mark points to a map and says that he wants this part of Malibu or that part of Malibu hooked up to a central sewer. And then the Water Board just goes along with it! How can this happen when so much is at stake? This is a profound violation of due process. The USGS study shows there is no connection to the high bacteria levels in the Lagoon with the septic systems. It is time for the Water Board to act responsibly and free the properties it has essentially condemned with its illegal actions based on inaccurate evidence. This is similar to a person incarcerated for a crime but eventually is exonerated by modern DNA evidence. It is time for the judge to free that person from jail.

A law suit recently filed states: "The ban is arbitrary, capricious, unreasonable, overbroad and confiscatory. It is an exercise of authority in excess of and without jurisdiction, is a usurpation of power, authority and jurisdiction, is without any factual support, and is invalid as a matter of law and therefore null and void." Once again agencies that we pay for with public funds violate the law. The only venue for the aggrieved citizens is the courts and the ensuing writs of mandate. I can only pray that the courts rule against you. I have read the brief and I feel the case against you is very strong.

I understand that 2 of the 3 major commercial centers in the Civic Center of Malibu have already upgraded to new modern systems that even filter out the nutrients. The water that enters the ground water table from these systems is absolutely clean. The 3rd center is appropriately being cited by the Water Board for various violations that will force them to install a new modern system. This is the job the Water Board should be doing: issue violation notices and insure the corrections get done. Not illegally stepping out of its authority and banning all OSDS's because Mark Gold said so.

The real elephant in the room is that modern OSDP's are actually far superior to a centralized sewer system. This is because the modern systems don't sludge up like the older aerobic systems of yore. Today they produce clean effluent. The problems with septic systems are limited to a single residence or commercial property. A centralized sewer is a potential horror of enormous scale with raw sewage dumping into our Lagoon and ocean in the event of an earthquake, massive infrastructure power failure, pump failure, or just leaking sewer pipes.

Additionally, there is the unknown cost of construction for a sewer system. In this rough economy, how much is each residence going to need to cough up under the assessment district? And what is the ongoing monthly fee going to be and how much will it rise in the future? Will this drive some of the lower income older residents out of their houses?

To finalize, it is past time for the Water Boards to follow the law and stay within their duties as defined under the law. On a personal basis, the Water Board's illegal and unfounded actions are costing my sister and me millions of dollars. The Water Board should, at a minimum, allow existing properties in all phases on the butterfly map to be developed with modern septic systems.

Sincerely,

Steve Littlejohn

Toni Littlejohn