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A LAW CORPORATION

Shaunna Sullivan / Attorney
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August 25, 2011

State Water Resources Control Board
c/o Jeanine Townsend
Clerk to the Board
1001 I Street
PO Box 100
Sacramento, CA 95812-00

Via Email: commentletters@waterboards.ca.gov

RE: ***Comment Letter - Central Coast Onsite Amendments***

Dear Members of the State the Water Resource Control Board:

The following objections and comments are made on behalf of the Sullivan Family Trust, Ruth B. Sullivan, Shaunna Sullivan, and other members of the Sullivan family regarding the proposed amendments to the Water Quality Control Plan for the Central Coast Basin pursuant to Resolutions R3-2008-0005; R3-2009-0012; and R3-2011-0004. This letter is written on behalf of the foregoing persons as beneficially interested parties and tax payers owning properties in cities and/or in the unincorporated areas of San Luis Obispo county including one or more of the following areas: Templeton, San Miguel, Paso Robles, Shandon, Cayucos, San Luis Obispo, Atascadero and the Los Osos/Baywood Park Prohibition Zone. We claim standing to object to any attempt to adopt or implement these Resolutions to Amend the water basin plan, as proposed, within the unincorporated areas of San Luis Obispo county or any city specified above.

In both my individual and representative capacity, I have attended and submitted written or oral comments during the hearings on May 9, 2008, March 19, 2009 and May 5, 2011. I also attended one of the RWQCB Implementation workshops here in San Luis Obispo.

Although there are apparently no hearing dates set for this matter to come before the State Water Resources Control Board, I submit these comments to meet the seemingly arbitrary deadline of 12:00 noon on Thursday, August 25, 2011 published as the last date for comments to be submitted. Although I previously submitted timely written comments, many of those comments were ignored, or the staff response were inadequate. Moreover, some comments could not have been raised in the allotted three minutes for public comment as the

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basis for the comment arose after inaccurate or misleading statements made by staff to the board after public comment had closed.

Wait for AB 885 statewide regulations. We request that the State Water Resource Control Board not adopt these basin plan amendments until the statewide plan required under AB 885 has been fully vetted and subjected to environmental review and public comment. As reflected on your own website, the mandated statewide policy for onsite wastewater treatment options (OWTS)

> "policy is in the very early stages of development as part of the California Environmental Quality Act scoping process....The proposed draft policy is scheduled for release in September, 2011...Statewide standards for OWTS are required by law and will enable local communities to better respond to any serious public health or environmental risk due to pollution from faulty OWTS...A proposed draft policy will be released to the public later this year. State Water Board staff will hold a series of public meetings to gather scientific information and comments from the public on the proposed draft policy."(http://www.waterboards.ca.gov/water_issues/programs/owts/faqs.shtml)

These resolutions, that apply to the Central Coast region only, are improper and violative of AB 885 in that they "jump the gun" and bypass the environmental review and public vetting mandated by AB 885. Please do not adopt these resolutions, as drafted. A statewide plan needs to be promulgated first before separate communities are subjected to piece meal rules and regulations.

The requirements of CEQA have not been met. These resolutions have been adopted by the RWQCB in violation of the California Environmental Quality Act hereinafter "(CEQA)". Title 23 CCR 3779 requires written response to environmental points raised in written comments. It also requires for those oral comments made at a board meeting, the board is to orally respond to environmental points raised and responses are to be recorded. Our comments related to RWQCB's failure to comply with CEQA have been ignored or inaccurately restated with non-responsive comments. 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 AB 885 has to pass environmental review, why don't these amendments?

Moreover, why were these amendments presented in such a piecemeal fashion. Resolution R3-2008-0005 adopted on May 9, 2008 that revised the basin plan criteria was noticed as merely an "update" to "clarify vague language and strengthen the recommendations to requirements" in response to expressed concerns regarding lack of environmental justice, the board was inaccurately advised that "statewide regulations, in draft form without any anticipated adoption date, are expected to be coordinated with basin planning efforts and will not conflict with the proposed amendment. The staff also boldly claimed that these amendments that apply only to the Central Coast region is consistent with environmental justice policies as it will broadly and equally protect water quality for all." (May 9, 2008 minutes)

We submit these regulations are not mere inconsequential updates. The criteria resolution in 2008 states that the number of individual, residential and small community onsite wastewater systems in the Central Coast region exceeds 100,000. Yet, the notice was inadequate to advise the over 100,000 property owners that their existing septic tanks and future land use regulations would be subjected to stringent RWQCB mandates of monitoring enforcement and a wide variety of regulations overriding local control. If adopted by the State Water Regional Control Board, this resolution 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 these amendments, which will impact more than 100,000 homes will not have a significant effect on the environment to warrant environmental review? Alternatively, if there is no significant effect on the environment as a result of these proposed changes, why are they proposed? The RWQCB in adopting resolution RS-2008-005 failed to address how the unfunded costs associated with implementing the resolution and basin plan amendment would be addressed. Instead, implementation was subsequently addressed after the criteria was established. We submit that these unfunded state mandates violate of Article XIII (B) of the California Constitution.

The "clarifying and strengthening" language of the 2008 resolution primarily changed "should" to "shall" and gave more discretionary, interpretive enforcement and regulatory power to the Water Board and 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.

For example, what basis exists to require a community system or residential wastewater treatment system to serve 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? Are these rules and regulations applicable to existing onsite systems approved and/or installed prior to May 9, 2008. To my comments and objections to the inadequate notice to residents of the Central Coast who would be affected by the resolution staff claimed "the proposed waiver will authorize new onsite systems, therefore, it is not clear why existing septic owners would need individual notification of the proposed action." This is dishonest as the regulations clearly will affect existing septic tanks. The 2008 resolution will authorize a waiver only if public entities enter into MOU's (then unavailable to the public or public agencies for review). The resolution states that MOU's the RWQCB imposes will require public entities to comply with unfunded mandates to monitor, regulate, and enforce regulations on existing septic systems and on onsite systems. Obviously, existing septic and onsite systems will be impacted by this resolution.

The resolution states alternative systems are prohibited unless consistent with a locally implemented onsite wastewater plan approved by the Central Coast Water Board executive officer. The resolution further states,

> "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."

We object to transfer such unbridled discretionary powers to the executive officer or the Water Board. No one person nor one board should be allowed to have such unaccountable powers that affect so many people. Furthermore, if the resolution is adopted by your board it requires all public entities with septic tanks within their jurisdiction to enter into whatever MOU is acceptable to the water board to monitor, regulate and enforce actions against septic tank owners. This constitutes a very expensive unfunded mandate. Furthermore, it improperly authorizes the Water Board to exercise land use powers that improperly attempt to supersede local land use policies and legislation. Moreover, the resolution states: "for the purpose of this prohibition, secondary units are considered "de

facto" lot splits and shall not be constructed on lots less than two acres in size". This land use decision to disallow granny units violate state laws that encourage such units. This affects communities such as Atascadero and families that have or desire to have caretaker or granny units.

In addition to the foregoing CEQA violations, we incorporate by reference the CEQA violations set forth in the May 9, 2008 letter to the RWQCB, attached hereto as Exhibit "A". These specific CEQA violations which have not been adequately addressed by staff.

During the hearing on resolution R3-2009-0012 on March 19, 2009 addressing implementation only, members of the public were prohibited from addressing any aspect of the criteria adopted in the prior resolution. I submit that RWQCB improperly attempted to create piece meal phases to adopt amendments without allowing both criteria and implementation to be addressed in the same resolution. Even worse, at the hearing on May 5, 2011 members of the public were again refused the opportunity to address the criteria and were severely limited on what comments could be made regarding those amendments. Staff and the board indicated that they did not want to revisit basin plan amendments even though the May, 2011 hearing was held to review revisions necessary to further clarify the amendments the staff reports specifically stated

> "This agenda item proposes revisions to the amendments adopted by the Central Coast Water Board on May 9, 2008 and March 20, 2009 and is not intended to include reconsideration of the entire section proposed revisions are identified by underlining (additions) and strike-out (deletions). Updating the basin plan requirements for onsite systems completes a triennial review list priority task which has been backlogged for many years."

We submit that it is necessary to revisit the basin plan amendment positions as to criteria and implementation as those major issues cannot be segregated out from any public comment. Incorporated by reference and attached hereto as Exhibit "B" is a copy of my correspondence dated April 7, 2008 addressing concerns regarding the criteria resolution. May 9, 2009 letter attached as Exhibit "A" addresses CEQA violations.

In addition to attempting an "end run" around AB 885, we submit that through these resolutions the RWQCB is attempting to force unfunded mandates upon the cities, counties

and districts of Region 9 to force those communities to perform the monitoring and to enforce the criteria and land use regulations the RWQCB imposes by these regulations. We submit this attempt to seize from local entities the power to control land use and to force upon local entities additional duties to meet whatever requirements the RWQCB imposes and to enforce same is improper. This piece meal attempt at regulation violates environmental justice, CEQA and due process. We also submit these regulations violate Water Code Section 13246 as this phased process has been ongoing since May of 2008 and therefore violates the time limitations set forth in Water Code Section 13246 which provides "the State Board shall act upon any water quality control plan not later than 60 days from the date the Regional Board submitted the plan to the state board, or 90 days from the date of re-submission of the plan." Moreover, pursuant to Section 13245, "upon re-submission of these resolutions the state board may either approve or after a public hearing in the affected region, revise and approve such plan." Therefore, we request that the State Water Resource Control Water wait for the outcome of AB 885 and not approve these regulations. We also request your board provide for public hearings in all affected regions before revising and approving these or other amendments.

Respectfully Submitted,

Sullivan & Associates
A Law Corporation

Shaunna Sullivan

SLS:bj
Encls.

SULLIVAN ASSOCIATES
A LAW CORPORATION

Shaunna Sullivan / Principal
Emily Mouton / Associate
Erika DiSanto / Paralegal

April 7, 2008

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.

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

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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.

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?

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?

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

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?

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.

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

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.

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

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

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

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 Osos 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

SULLIVAN ASSOCIATES
A LAW CORPORATION

Shaunna Sullivan / Attorney
Emily Mouton / Attorney
Erika DiSanto / Paralegal

May 9, 2008

Members of the Board
Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

Via Hand Delivery

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

Dear Members of the Board:

I previously submitted comments in opposition to your adoption of the above-mentioned proposed resolutions. The following objections addressing your agency's violations of California Environmental Quality Act (hereinafter "CEQA") to supplement my earlier comments.

Your agency has failed to comply with the requirements of *California Public Resource Code* § 21080.5 and 23 C.C.R. 3775(a) through 3782. While water basin plan amendments can constitute regulatory actions exempt from certain CEQA requirements, Water Board resolutions are not exempt from all CEQA requirements for environmental review and public participation. *City of Arcadia v. State Water Resources Control Board* (2006) 135 Cal.App.4th 1392, 1420. While a certified program may avoid completing the full environmental documents that CEQA would otherwise require, written environmental review documents must still be prepared and reviewed and certain CEQA requirements met. The CEQA violations by your agency in proceeding with these resolutions include, but are not limited to, the following:

(1) These resolutions are not exempt from CEQA as implied under the staff report. As set forth in the *City of Arcadia v. State Water Resources Control Board*, supra, at page 1420, an amendment to a basin plan that does not comport with CEQA can be invalidated when, as here, the Regional Board's environmental checklist is deficient and there is sufficient evidence that the amendments may have a significant effect on the environment necessitating preparation of an EIR or its functional equivalent.

(2) Many of the written responses belatedly produced by staff fail to respond or inadequately respond to the significant environmental points raised by the commentators.

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Responses to all written comments or all comments before action are required under 23 C.C.R. 3379. "An agency seeking certification must adopt regulations requiring that final action on the proposed activity include written responses to significant environmental points raised during the decisionmaking process. (§21080.5, subd. (d)(2)(D))"

(3) The agency has failed to implement guidelines for evaluating the proposed activity consistently with the environmental protection purposes of the regulatory program as required by Public Resources Code § 21080.5, subd. (d)(2)(B).

There has been nothing consistent about what staff is proposing here. Where are the guidelines?

(4) The documents fail to consider alternatives.

> "The documents generated pursuant to the agency's regulatory program must also include alternatives to the proposed project and mitigation measures to minimize significant adverse environmental effects (§ 21080.5, subd. (d)(3)(A)), and be made available for review by other public agencies and the public. (§ 21080.5, subd. (d)(3)(B).)*(Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 127.)

The staff report's alternatives were "incomplete adoption of the proposed amendment" or "take no action". The alternative of waiting for state wide regulation of onsite systems pursuant to Assembly Bill 885 which would meet the requirements of 1, 2 and 3 above, is not even considered as an option. I submit the only alternative is to take no action until you comply with CEQA. There are feasible alternatives and/or feasible mitigation measures that are available which would substantially lessen any significant adverse impact which the proposed regulations may have on the environment. The Board has failed to consider those alternatives and mitigation measures as required pursuant to 23 C.C.R. 3780.

> "In a certified program, an environmental document used as a substitute for an EIR must include '[a]lternatives to the activity and mitigation measures to avoid or reduce any significant or potentially significant effects that the project might have on the environment', and a document used as a substitute negative declaration must include a 'statement that the agency's review of the project showed that the project would not have any significant or potentially significant effects on the environment and therefore no alternatives or mitigation measures are proposed to avoid or reduce any significant effects on

> the environment. This statement shall be supported by a checklist or other documentation to show the possible effects that the agency examined in reaching this conclusion." (Cal. Code Regs, tit. 14, § 15252, subd. (a)(2)(A),(B).) *(City of Arcadia v. State Water Resources Control Board* (2006) 135 Cal.App.4th 1422.)

(5) Similar to the Board's actions in the above-referenced case, your staff environmental documentation denying there are any environmental impacts as a result of these onerous regulations, also fails to meet CEQA requirements. There is no analysis of the reasonably foreseeable environmental impacts of the methods of compliance or analysis of reasonably foreseeable mitigation measures, no analysis of foreseeable alternative means of compliance with the rules or regulations and the cursory checklist provided by staff ignores the temporary and permanent impacts of these regulations and bans on onsite systems and the impacts that will result by RWQCB taking on land-use decisions and adopting regulations without any specified criteria other than discretionary and arbitrary subjective determinations of the Executive Officer. I would rather have the current "subjective interpretation of imprecise language" than the complete unaccountable transfer of unbridled power to the Executive Officer to mandate and dictate all interpretations, rules and enforcement.

(6) The Board has failed to provide adequate public notice before proceeding with adoption of these regulations that can affect so many people. What rule or regulation allows one publication on one day in one newspaper in six of the seven counties affected, as constituting adequate notice? The Notice of Filing required under 23 C.C.R. §§ 3776 and 3777 has not been met. When I and others protested this process until all septic system permit holders in the County are notified by individual mailing and provided opportunity to comment, Staff's response was "The proposed waiver will authorize new onsite systems; therefore, it is not clear why existing system owners would need individual notification of the proposed action. No change or delay is recommended."

This response is dishonest and exemplifies what Los Osos residents were told when 83-13 was adopted 25 years ago, to wit, only new systems would be impacted by the regulations, not existing systems. If these regulations only impact existing systems, why does the resolution state "the proposed conditional waiver establishes regulatory oversight management and monitoring of onsite systems" which obviously includes existing onsite systems? If these regulations intended only to affect future development or systems, this needs to be explicitly stated in the resolution, not just the MOUs which can change or terminate at the whim of the Executive Officer.

If a waiver will not be granted to the County (and all the other entities with septic tanks within their jurisdiction) unless they agree to this unfunded mandate to monitor, regulate and enforce what the Executive Officer tells them is required, then obviously existing systems are impacted. Furthermore, recital of the newly reinterpreted 83-13 in these regulations that purports to bar community and onsite sewage disposal systems affects and renders illegal all existing septic systems in Los Osos. It also prohibits recharge of the basin by a community wide system which would necessarily involve a discharge. Are you now claiming this resolution's recital regarding 83-13 only affects future systems as your Board claimed in 1983? Why is 83-13 repeated here? If we are successful in *Citizens for Clean Water, a California Nonprofit Corporation a.k.a., Prohibition Zone Legal Defense Fund, et al. v. Regional Water Quality Control Board,* San Luis Obispo Superior Court Case No. CV 070472, will you maintain these regulations reaffirm 83-13 regardless of the outcome of the suit?

(7) I object to any claim that a scoping meeting for these resolutions and amendments occurred in July 2004. If there was a scoping meeting in July 2004, I suspect it was for compliance in meeting environmental review for Senate Bill 885, not these amendments.

(8) I object to the failure of your agency to meet the requirements of 23 C.C.R. 3775, including the failure to complete a proper environmental checklist or to respond to the checklist as required for certification criteria. In comparing the Environmental Checklist Form provided in Appendix G of the CEQA Guidelines to the Environmental Checklist provided by the Regional Water Quality Control Board's Attachment D, the following information needs to be addressed pursuant to CEQA:

A "No Impact" answer must be based on referenced information sources.

(1) . . . A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved . . . A "No Impact" answer should be explained where it is based on project-specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).

(2) All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.

(3) Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. "Potentially Significant Impact" is appropriate if there is substantial evidence that an effect may be significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.

. . .

(5) Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration. (Section 15063(c)(3)(D)). In this case, a brief discussion should identify the following:

a) Earlier Analysis Used. Identify and state where they are available for review.
b) Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.
c) Mitigation Measures. For effects that are "Less than Significant with Mitigation Measures Incorporated," describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.

(6) Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g., general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.

(7) Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.

(8) The explanation of each issue should identify:
a) the significance criteria or threshold, if any, used to evaluate each question; and
b) the mitigation measure identified, if any, to reduce the impact to less than significance.

We request that you not adopt these resolutions and that your agency not attempt to circumvent environmental review and public comment by this stealth move to adopt your own regional version of regulations under AB 885.

Nothing contained herein is intended to be, nor shall it be construed as, a waiver of any or all rights, claims or defenses against the RWQCB and SWRCB for these actions by my clients or myself, individually or in any representative capacity. This letter is not intended to be a complete statement of all claims and defenses we may claim if this Board proceeds with adoption of these resolutions.

Very truly yours,

Sullivan & Associates
A Law Corporation

Shaunna Sullivan

SLS:jn