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February 6, 2006

Sent via email to bjennings@waterboards.ca.gov and
Sent via facsimile to (916) 341-5199
State Water Resources Control Board
Office of Chief Counsel
Attn: Elizabeth Miller Jennings
Senior Staff Counsel
P.O. Box 100
Sacramento, CA 95812-0100

Re: PETITION OF LOS OSOS COMMUNITY SERVICES DISTRICT FOR REVIEW OF ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R3-2005-0137 ISSUED BY THE CENTRAL COAST REGIONAL WATER QUALITY CONTROL BOARD

Pursuant to Section 2050 of Title 23 of the California Code of Regulations, the Los Osos Community Services District ("District") hereby petitions the State Water Resources Control Board ("SWRCB") for review of Administrative Civil Liability ("ACL") Order No. R3-2005-0137 ("Order") issued by the Central Coast Regional Water Quality Control Board ("RWQCB") on January 5, 2006.

1. NAME, ADDRESS, TELEPHONE NUMBER AND EMAIL ADDRESS OF PETITIONER

Los Osos Community Services District
Attn: Dan Bleskey, Interim General Manager
P.O. Box 6064
Los Osos, CA 93412
Telephone: (805) 528-9436
Email: dbleskey@losososcsd.org

2. THE SPECIFIC ACTION OR INACTION OF THE REGIONAL BOARD WHICH THE STATE BOARD IS REQUESTED TO REVIEW AND A COPY OF ANY ORDER OF THE REGIONAL BOARD WHICH IS REFERRED TO IN THE PETITION

Petitioner seeks review of Administrative Civil Liability Order No. R3-2005-0137 concerning the Los Osos Community Services District. A copy of the final order is attached as Exhibit A.

3. THE DATE ON WHICH THE REGIONAL BOARD ACTED OR REFUSED TO ACT

The Regional Board acted on January 5, 2006.

4. A FULL AND COMPLETE STATEMENT OF THE REASONS THAT THE ACTION IS INAPPROPRIATE OR IMPROPER

- The RWQCB did not comply with the SWRCB's Enforcement Policy.

- The District's due process rights were violated in that it had inadequate preparation time and was denied its right to selected counsel. The evidentiary rulings by the Chair were unfair, inconsistent, and violated the RWQCB's own published rules. Minutes before the RWQCB adjourned to deliberate this matter, the Prosecution Team "poisoned the well" by announcing that the RWQCB had already filed suit against the District over a major defense raised by the District in the ACL proceedings.

- The ACL process violates Water Code Section 13360 in that it was designed to compel compliance by the specific means of constructing a wastewater treatment plant on a site known as "Tri-W."

- The ACL process here discriminated against the District because other similarly situated dischargers are being prosecuted via Cease and Desist Orders with 4 year opportunity to cure periods rather than ACL complaints with no opportunity to cure provisions.

- The Order and findings are vague and ambiguous.

- The civil liability for violation of the basin phase is arbitrary, punitive, and is not designed to motivate compliance; hence, it violates Water Code Section 13327.

- As to the Time Schedule Order liability, the RWQCB exceeded its authority by holding the District responsible for the entire Prohibition Zone and in forcing compliance with an impossible order. Further, Water Code Section

13308 was violated in assessing a civil liability that is not reasonably calculated to ensure compliance.

- The RWQCB did not follow the SWRCB Enforcement Policy.

5. THE MANNER IN WHICH PETITIONER IS AGGRIEVED

The RWQCB imposed $6,627,000 in civil liabilities on the District.

6. THE SPECIFIC ACTION BY THE STATE OR REGIONAL BOARD WHICH PETITIONER REQUESTS

The District requests that the SWRCB vacate ACL Order No. R3-2005-0137 and dismiss the ACL Complaint.

7. A STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL ISSUES RAISED IN THE PETITION, INCLUDING CITATIONS TO DOCUMENTS OR THE TRANSCRIPT OR THE REGIONAL BOARD HEARING WHERE APPROPRIATE

A Memorandum of Points and Authorities is filed concurrently herewith with references to documents and the transcript where appropriate. A Partial Administrative Record is also filed concurrently herewith under separate cover.

8. A STATEMENT THAT THE PETITION HAS BEEN SENT TO THE REGIONAL BOARD

A copy of this Petition, Partial Administrative Record and Memorandum of Points and Authorities was sent to the RWQCB.

9. A STATEMENT THAT THE SUBSTANTIVE ISSUES AND OBJECTIONS RAISED IN THE PETITION AND AMENDED PETITION WERE RAISED BEFORE THE REGIONAL BOARD

Except for the discrimination issue, which arose at the time the RWQCB announced its decision, the District raised the substantive issues and objections set forth in this Petition before the RWQCB.

10. SUPPLEMENTAL EVIDENCE

Pursuant to Title 23, Section 2050.6 of the California Code of Regulations, the District requests consideration of supplemental evidence not available on or before the issuance of the Order and a hearing before the SWRCB.

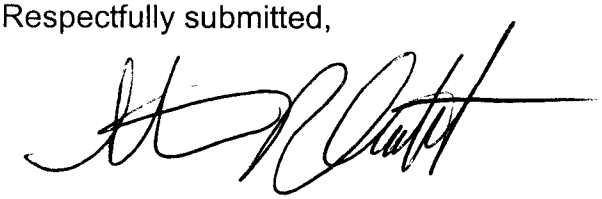
The additional evidence (dated January 27, 2006) is set forth as Exhibit 49 in the Partial Administrative Record and pages 413 to 417 of the transcript of the proceedings on January 5, 2006 (PAR 43).

This additional evidence relates to the RWQCB's enforcement against other discharges in the Prohibition Zone by way of Cease and Desist Orders with 4-year opportunities to cure provisions. The District was prosecuted under an ACL Complaint with no opportunity to cure provisions. Thus, the RWQCB is not following the SWRCB Enforcement Policy and is discriminating against the District.

If you have any questions regarding this Amended Petition, please contact Stephen R. Onstot at (213) 236-2830.

Dated: February 6, 2006

Respectfully submitted,



Stephen R. Onstot
Attorney for Petitioner

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R3-2005-0137

IN THE MATTER OF:

LOS OSOS COMMUNITY SERVICES DISTRICT
LOS OSOS WASTEWATER PROJECT
San Luis Obispo County

The Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board), finds that:

1. On October 27, 2000, the Central Coast Water Board adopted Order No. 00-131, a time schedule order concerning Los Osos Community Services District ("Los Osos CSD" or "CSD") in San Luis Obispo County. Order No. 00-131 specifies the following requirements.

   "**IT IS HEREBY ORDERED**, pursuant to Section 13308 of the California Water Code, Los Osos Community Services District, shall comply with the following time schedule for implementation of a wastewater management plan for the Basin Plan prohibition area in Los Osos which will result in compliance with the Cease and Desist Orders.

Task	Completion Date
Submit proof of circulation of draft Environmental Impact Report	December 15, 2000
Submit final California Environmental Quality Act (CEQA) document	April 1, 2001
Submit proof of voter approval of assessment district or comparable means of financing community wastewater system	July 29, 2001
Submit approved complete construction design plans	July 15, 2002
Submit County Use and Coastal Development permits	July 15, 2002
Commence construction of the community sewer system	September 6, 2002
Complete construction of the community sewer system	August 30, 2004
Report on compliance (per California Water Code Section 13267)	Two weeks after each above date, as well as quarterly reports beginning January 15, 2001.

   "This Board reserves its jurisdiction to modify the time schedule in this Order to permit a specified task or tasks to be completed at later dates if the CSD demonstrates and the Board determines that the delay was beyond the reasonable control of the CSD to avoid."

   "If the CSD fails to complete a task in compliance with the time schedule (or Board approved modification of the time schedule), the CSD shall be liable in the amount of $10,000 per day for each day in which the violation of the time schedule occurs."

2. The Los Osos CSD has failed to implement its community wastewater management plan in accordance with the schedule specified in Time Schedule Order No. 00-131. Specifically, the Los

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Osos CSD commenced construction on the community sewer system 1080 days behind the schedule specified in Order No. 00-131. Completion of construction of the community sewer system is currently (as of October 1, 2005) at least 396 days behind the schedule.

3. The CSD has asserted that no administrative liability should be imposed in this matter because the failure to meet the deadlines was beyond the reasonable control of the CSD to avoid.

4. The Central Coast Water Board conducted a public hearing on this matter over three days, December 1 and 2, 2005, and January 5, 2006, took extensive written evidence, argument and oral testimony from the Prosecution Staff and the CSD, and heard the views of the interested public, concerning this matter. Based on this record, applicable law and good public policy, the Central Coast Water Board finds that administrative liability is appropriate because a) the provision in the TSO cited in paragraph one (1) above is a discretionary opportunity for the Board to modify prospective deadlines in the TSO, not a basis for excusing long-passed deadlines, b) the CSD was forewarned by the Executive Officer that any failure to continue on a compliance track would result in recommended penalties for all missed deadlines, including those which the Executive Officer was willing to forbear so long as the CSD was on a compliance track, and c) to the degree that the Water Code section 13327 factors might implicate equitable consideration of the hurdles for compliance presented by Measure B or the loss of the State Revolving Fund Loan monies, the CSD itself created or permitted those hurdles to compliance to come into being and to continue in effect. Specifically:
   i. With the adoption of Measure B by the electorate of the CSD, a barrier was created inhibiting compliance with the TSO, and making future compliance with that order subject to subsequent CSD voter approval.
   ii. The CSD Board of Directors and employees simply represent, and derive all of their powers and authorities from, the voters in the CSD. In short, the voters are the CSD. The voters in this manner exercised their ultimate authority as decision-makers for the CSD, and the passage of Measure B was therefore an affirmative act of the CSD: an affirmative act to halt compliance with the TSO.
   iii. Thus, by approval of Measure B, through its initiative vote, the CSD prohibited its Board and staff from taking the steps necessary to comply with the TSO.
   iv. After Measure B was passed, the CSD's new Board of Directors, with the new majority installed by the CSD voters in the same election as Measure B, chose to abandon the previous Board of Directors' legal efforts to invalidate Measure B, thereby affirmatively taking further steps to inhibit the CSD's ability to comply with the TSO.
   v. After Measure B was passed, when faced with the choice of complying with Measure B and being subject to a potential lawsuit by the district's initiative proponents, or stop work on compliance with the TSO and be subject to potential administrative civil liability, the CSD, through its Directors and managers, chose the latter – it chose to stop work on the project and thereby consciously chose to increase the extent of the CSD's long-term noncompliance and face this administrative civil liability.
   vi. On the basis of the foregoing, the assessment of administrative civil liabilities for violation of Water Code section 13308 is appropriate for the period ranging from

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the date of certification of Measure B, October 1, 2005, and the date of issuance of the draft ACL, October 6, 2005. Thus, for six days at $10,000 per day, the assessment for this violation is $60,000.

5. The Water Quality Control Plan, Central Coast Region (Basin Plan) prohibits all discharges after November 1, 1988, from on-site disposal systems within the Los Osos/Baywood Park area ("Prohibition Zone") depicted in the Prohibition Boundary Map included as Attachment "A" of Resolution No. 83-13 (attached). The Prohibition is set forth in Section VIII.D.3.i of the Basin Plan, page IV-64. Since its formation in 1998, the Los Osos CSD has operated an on-site disposal system at its Fire Station. The CSD also operates on-site community disposal systems serving Bayridge Estates and Vista de Oro subdivisions. The CSD previously operated an on-site system at the Water Division. The Water Board lacks information about the dates of the Water Division discharge or when it ceased. All four of these facilities are located within the Prohibition Zone.

6. The Bayridge Estates subdivision generates about 27,000 gallons per day of wastewater. The CSD's wastewater treatment and disposal system consists of 11 septic tanks and associated leach fields.

7. The Vista de Oro subdivision generates about 11,000 gallons per day of wastewater. The CSD's wastewater treatment and disposal system consists of three septic tanks and associated leach fields.

8. Wastewater generated at the Fire Station, located at 2315 Bayview Heights Drive, Los Osos, passes through a septic tank before being discharged to a leach field.

9. Since at least October 1, 1999, the Los Osos CSD has discharged waste at the Fire Station, Bayridge Estates and Vista de Oro in violation of the prohibition. Since these facilities include on-site septic tanks and leach fields, wastewater is continuously discharged at each facility.

10. These wastewater treatment and disposal systems discharge wastewater that migrates to groundwater. Each leachfield is set in Baywood fine sands, a porous formation through which septic tank effluent readily percolates. Therefore, the District is potentially liable for administrative civil liability of up to $5,000 per day for each of the three facilities, or $15,000 per day, from October 1, 1999, to the present, pursuant to Water Code section 13350. The maximum civil liability under Section 13350(e)(1 of the California Water Code is $32.85 million (as of October 1, 2005). The maximum civil liability under Section 13308 of the California Water Code (as of October 1, 2005) is $11,190,000.

11. Section 13308 of the California Water Code states:

"(a) If the regional board determines there is a threatened or continuing violation of any cleanup or abatement order, cease and desist order, or any order issued under Section 13267 or 13383, the regional board may issue an order establishing a time schedule and prescribing a civil penalty which shall become due if compliance is not achieved in accordance with that time schedule."

"(b) The amount of the civil penalty shall be based upon the amount reasonably necessary to achieve compliance, and may not include any amount intended to punish or redress previous violations. The amount of the penalty may not exceed ten thousand dollars ($10,000) for each day in which the violation occurs."

"(c) Any person who fails to achieve compliance in accordance with the schedule established in an order issued pursuant to subdivision (a) shall be liable civilly in an amount not to exceed the amount

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prescribed by the order. The regional board may impose the penalty administratively in accordance with Article 2.5 (commencing with Section 13323). If the regional board imposes the penalty in an amount less than the amount prescribed in the order issued pursuant to subdivision (a), the regional board shall make express findings setting forth the reasons for its actions based on the specific factors required to be considered pursuant to Section 13327."

12. Section 13350(e)(1) of the California Water Code provides that any person who, in violation of any prohibition, discharges waste into waters of the state, or causes or permits waste to be deposited where it is discharged into the waters of the state, shall be liable for administrative civil liabilities of up to $5,000 for each day of violation.

13. Water Code Section 13327 provides:

"In determining the amount of civil liability, the regional board, and the state board upon review of any order pursuant to Section 13320, shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require."

14. When the Central Coast Water Board adopted Order No. 00-131, it determined that $10,000 per day was the amount necessary to achieve compliance with the time schedule set forth in Order No. 00-131. The Los Osos CSD has not complied with the time schedule and has not demonstrated that a daily amount less than $10,000 is appropriate.

15. The Central Coast Water Board further finds that:
    a) Re "nature, extent, and gravity:" There have been and continues to be ongoing unpermitted discharges occurring in violation of the TSO and the Basin Plan discharge prohibition, and evidence supports the conclusion that those discharges contain nitrates and pathogens that are getting into groundwater, and threaten to migrate to drinking water supplies, and potentially discharging to surface waters. These discharges threaten the public health and the environment and violate the applicable Basin Plan prohibitions.
    b) Re "prior history of violations:" The CSD has been under various directions, prohibitions, cease and desist orders, and time schedule orders, since its inception to address the problems described above and intended to be addressed through compliance with the TSO.
    c) Re "economic benefit or savings:" The CSD Board of Directors presented testimony and evidence noting that had they complied with the TSO, the operation and maintenance of the treatment system would cost approximately $2.5 million per year (or $208,333 per month). The TSO required that the plant be built by August 30, 2004, therefore the CSD has realized, at a minimum, an economic savings or benefit of $2,708,333 (for 13 months of avoided costs, as of October 1, 2005). This amount represents the minimum that should be assessed against the CSD pursuant to State Water Board Enforcement Policy.
    d) Re "the ability to pay:" This is the sole factor militating in favor of a less-than maximum liability and is the basis for assessing less than the $32,850,000 maximum calculated by staff. The CSD has presented evidence of its inability to pay any

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liability of any significant amount, however, pursuant to the State Water Resources Control Board enforcement policy, a reduction is appropriate only where the discharger is acting in a cooperative manner and has the ability and intent to come into compliance in a reasonable period of time. That has not been demonstrated. The CSD has abandoned the Tri-W site that was funded and permitted, it has no alternative site identified, project designed, engineered, funded, or permitted. Thus, there is no evidence of an ability or current intent to come into compliance in a reasonable period of time.

e) Re "other matters as justice may require:" It is vital to the Regional Water Board's ability to maintain an effective water quality protection program to ensure that communities are held to account, literally and figuratively, for their conscious decisions to not do what is required under State law and Regional Water Board orders to protect water quality and the public health and environment that depends thereon. Decades of patience, cooperation, assistance, prodding, pushing and ordering by the Central Coast Water Board has led to this point where the CSD and its decision-makers feel that if it chooses not to, compliance is not required and without consequences. A strong enforcement action is necessary to clear up that misconception and deter further noncompliance.

16. The Central Coast Water Board finds that the unlawful discharges from each of the three CSD-controlled facilities warrant an assessment of administrative civil liabilities of $1,000 per day for the period of October 1, 1999 to September 30, 2005, under Water Code section 13350, totaling $6,567,000 for these violations, in addition to the $60,000 in liabilities for violations of Water Code section 13308 described in paragraph four (4) above.

17. The administrative civil liabilities imposed herein for violations of the Basin Plan Prohibition under Water Code section 13350 are based on discharges only from the CSD's three facilities and no other discharges.

18. Any person affected by this action of the Central Coast Water board may petition the State Water Resources Control Board to review the action in accordance with Section 13320 of the California Water Code and Title 23, California Code of Regulations, Section 2050. The petition must be received by the State Water Resources Control Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request.

IT IS HEREBY ORDERED: Pursuant to California Water Code sections 13308 and 13350, the Los Osos Community Services District is assessed a total civil liability of $6,627,000, to be delivered to the Central Coast Water Board at the letterhead address by February 6, 2006. The check is to be made payable to the State Water Resources Control Board.

This Order only resolves liability that the Los Osos CSD incurred through October 6, 2005, for the specified violations, and does not relieve the Los Osos CSD from liability for any additional violations not alleged in the Complaint.

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I, **Michael Thomas, Assistant Executive Officer**, do hereby certify that the foregoing is a full, true and correct copy of an order adopted by the Central Coast Water Board on January 5, 2006.

Michael Thomas 1-12-06

Michael Thomas, Assistant Executive Officer **Date**

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