



FAX COVER SHEET

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DATE: 10/31/05  
<sup>805/</sup> cell: 234-1228

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(INCLUDING COVER SHEET)

TO: Celeste Cantu

FAX #: (916)341-5621

FROM: Dan Bleskey

RE: LOCSD vote of 10/30/05



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Preamble: In good faith, understanding that the history of the Los Osos Sewer has been complex, the LOCSD seeks to partner with the State Water Board to achieve an agreeable solution that will expedite the construction of a project out of town with a minimum delay. We are submitting this proposal to demonstrate that we are willing to make numerous concessions which, if adopted, would reduce future conflict. We hereby make the following acknowledgements:

1. That the groundwater quality in Los Osos is continuing to degrade because of the continued use of septic tanks.
2. That time is of the essence, and LOCSD agrees to whenever given discretion, to take any measure and expend funds as necessary to assure the quickest remedy.
3. That this agreement in no way precludes any all enforcement actions to be taken by the Central Coast Regional Water Board, nor does any agreement with the State Water Board in anyway imply that penalties should not be imposed for past or future delays in construction of a complete wastewater treatment facility.

Terms

1. Continue collection work immediately, foregoing any consideration of STEP/STEG, and implementing the current Gravity system with the current contractors as designed, notwithstanding minor modifications.
2. Commitment to the current disposal system, with future efforts to improve Ag exchange in cooperation with State Water Board experts and consistent with original timeframe.
3. Commitment to complete entire project within 2 years of original timeframe. A full schedule indicating all tasks necessary for completion will be submitted for approval. This task list should indicate the decision points at which if a task is not completed, the LOCSD will continue to construct the current approved project.
4. Commitment to pursue MBR as first-course technology, with a concurrent review of limited alternative technologies (that meet WDR) with final selection to be made by a time specified by State Water Board. The technologies to be reviewed must be standard technologies, commonly used, and their selection approved by the State Water Board. Regardless of the findings as to the cost savings of a different technology, the MBR will be utilized if a change in treatment technology would in anyway extend the completion of the project beyond the 2 years as indicated in item 3 above.
5. LOCSD will secure an option on those properties which are most likely under consideration.
6. A vote to comply with all legal requirements and to reaffirm that the LOCSD Board commits a dedicated source of revenue for repayment of loan. This includes continuation of the entire project until such time that alternative financing is in place as discussed in item 7 below.
7. Commitment to put in place within 6 months an assessment district vote to further secure the SRF loan. Construction activities will continue on the current Tri-W site until such time that an assessment is in place to secure an SRF loan amount that will cover at a minimum the collection and disposal portions of the project. If the assessment vote fails, then LOCSD will continue to build the current project at the current sites.
8. A vote of the CSD Board, authorizing immediate implementation of mailed ballot to repeal Measure B, and an advisory vote to allow the public to indicate whether it recommends that LOCSD continue to pursue a wastewater treatment plant out of town or to continue construction of the present project in it entirety at the Tri-W site.
  - a. Agreement to not litigate on Measure B.
  - b. Will ask the court to hear and render a decision as soon as possible.
  - c. Pass a Board resolution stating opposition to Measure B as it duly inhibits the future decisions of the LOCSD Board and makes maintaining current financial arrangements suspect as well as makes any future arrangements difficult and costly.

Adopted by a 5-0 vote of the CSD on October 30, 2005.

Lisa Schicker  
Lisa Schicker, LOSCD Board President

October 31, 2005  
Date



**TO:** State Water Resources Control Board  
**FROM:** Los Osos Community Service District  
**DATE:** October 31, 2005  
**RE:** Compromise Proposal to Resolve Current Impasse

#### Overview

The Proposal seeks to resolve the current impasse which, if unaddressed, would result in tens-of-millions of dollars of added project cost, extensive litigation, and long delays to improvements to water quality. This Proposal seeks to devise a plan for working with the State Water Board to eliminate those pitfalls by direct actions to resolve Measure B and steps to securitize state monies.

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The Proposal includes additional augmentations that result in improved water quality versus the original plan. We offer these augmentations, though they come at some expense, to mitigate the potential delay, which may in no case exceed two year, and may in fact be shorter. If this compromise Proposal is not implemented, and an effective partnership not developed to repeal Measure B, the likelihood of Measure B prevailing increases significantly, which would present a dangerous precedent for other projects around the state.

The first course of action of this Proposal is the, as designed, as bid and as approved project. This includes identical collection, disposal and MBR Treatment Facility at Tri-W site using current contractors. This Proposal allows for a change in only the treatment element of the project, which is conditioned upon meeting several criteria established by the State Water Board, including successful elimination of Measure B obstacles and a Prop 218 vote.

The Proposal allows for the possibility an out-of-town location, but any such change could result in no more than a 2 year delay in the treatment portion of the project. The largest and most expensive portion of the project (the gravity collection & disposal systems) must proceed immediately, expeditiously, and as contracted.

The Proposal was formalized after a week of intense negotiations that were agreed to by the State Water Board in a letter dated October 21, 2005 which included nine specific criteria for entering into such negotiations. The Proposal, which included input from State Water Board members and staff, was adopted unanimously by the Los Osos CSD on October 30, 2005.

#### Included in this transmittal is:

1. An official statement from the LOCSB Board president stating that a 5-0 vote occurred in public session after extensive public comment in full compliance with the Brown Act on the evening of October 30, 2005. The official Board vote indicated unanimous acceptance of the negotiated Proposal, as presented, word-for-word, with no edits or revisions.
2. Specific language drafted during negotiations with specific input from State Water Board.
3. A list of additional Proposal augmentations that would result in further improvements to water quality beyond the original plan.
4. A detailed description of planned steps and contingencies to ensure that impediments to progress cannot reoccur.

Please bear in mind that the compromises offered in this Proposal are bilateral and contingent upon the SWB providing the flexibility described herein.



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## Detailed Description of Plans and Contingencies

### How would this Proposal affect the existing contracts and contractors?

Barnard Construction and Whitaker Construction: The current contracts for collection and waste water disposal with Barnard and Whitaker would stay in full force and effect. The Proposal allows for no further discussion, negotiations or changes on those contracts. Work must resume immediately and be completed on schedule.

Monterey Mechanical Construction: The Monterey Mechanical contract would continue to stay in full force and effect, for the designed MBR technology, at the downtown Tri-W site. Flexibility allowed for in the contract would be exercised to order the timing of expenditures so that there is an opportunity to secure repeal of Measure B and passage of a Prop 218 vote. The current contract allows for such re-phasing of work, and if built at the current site, such re-phasing would not change the completion date of the overall system. The treatment system requires 550 days of construction which is approximately 6 months less than the time required for the collection/disposal system. The passage of prop 218 and efforts to repeal Measure B must occur within that timeframe if an out-of-town site is to be considered.

Given these facts, we believe the current SRF loan can proceed as granted and ministerial changes will be sufficient to move the project forward. Once the repeal of Measure B and Prop 218 votes are secured, we anticipate the need for final action from the State Water Board as a body to implement any necessary revisions to the terms of the SRF loan.

### What would happen to the Tri-W site?

The Tri-W site will be retained until such time that a successful Prop 218 vote is secured and other milestones, as developed by the SWB and LOCSD, are met. We assume that we will be free to sell or change the purpose of the Tri-W property once it is clear that the facility at the alternative site is sufficiently under way, per the conditions of this Proposal.

### How would a new site be financed?

The Tri-W site will not be sold to generate revenue to finance an alternative site. At this time, the CSD may bond for an additional \$2.4 million for land purchases based on a previous assessment. All the sites currently being considered are significantly below this amount.

The LOCSD will immediately seek options on various properties that would be suitable for a treatment facility to ensure that prices do not escalate or that properties become unavailable.

### What are the benefits of a larger, out-of-town location?

The current Tri-W site introduces a number of important constraints that affect cost and usefulness, both now and in the future. The downtown Tri-W property is located in a drainage basin just uphill from the Morro Bay National Estuary. The eventuality of a raw sewage spill directly in the National Estuary is highly predictable.

Additionally, due to the proximity of the site to low income housing and minority populations, environmental justice issues are of great concern. Odor complaints and fines, as well as health and safety concerns are also foreseeable.

The current location is too small for sludge treatment activities or for potential expansion should higher standards be required in a future treatment facility. An out-of-town location creates

opportunities to "sewer" locations outside of prohibition zone, thereby improving water quality in the basin.

The current location is located in sandy, poorly consolidated soils which require expensive foundation engineering that increase cost and susceptibility to earthquake failure and National Estuary pollution.

Finally, the out-of-town location would eliminate many of the expensive aesthetic upgrades, including wave walls, buried facility, large architectural concrete screens, dog park, and recreational facilities that do not meet the intent of the SRF program, which runs into the millions of dollars.

**What are the treatment technology options?**

This Proposal requires utilization of standard technologies, commonly used, with their selection approved by the State Water Board. Membrane Bioreactor (MBR) is the first course technology, which must be pursued, unless the SWB, due to cost savings and other considerations, allows an alternative. That decision must be made in a timely way, such that, whatever technology is employed, a facility is built within the time constraints of the Proposal.

**What are the cost ramifications of the Proposal?**

Cost benefits include avoidance of years of conflict and direct savings due to project refinement. If the compromise is rejected and the parties seek to resolve these issues through litigation, a number of significant costs would be incurred. The contractors could declare breach of contract and sue for significant damages. The entire process of bidding and securing new contracts would need to occur at perhaps a much later date in time. The likelihood of high quality competitive bids at a future point is significantly reduced, which would further increase overall costs.

The Proposal includes some important direct cost savings, in addition to the conflict costs which would be avoided. First, the MBR treatment facility would no longer require the aesthetic or engineering complexities which have made this facility so expensive. Discussions with Darrin Polhemus indicated that a similar MBR technology built in an out-of-town location would likely cost between \$25-30 million, significantly less than the \$46 million currently allocated. Even assuming the maximum allowable extension of two-years and redesign charges, the exact same technology be built out-of-town should result in a lower final cost to the SRF. If the technology were revised from MBR to oxidation-ditch, a technology which meets all Water Discharge Requirements, the savings should be even larger. Two similarly sized facilities were very recently built in this county for under \$20 million each.

These estimates were made in consultation with Darrin Polhemus and District Engineer Rob Miller, based on their familiarity with the bidding environment and the construction costs of similar projects. Inflation, permitting, design and O&M costs were carefully included in the analysis.

*\*The assessments shown above were developed through the negotiation process. They may require further analysis and refinement to determine hard numbers for the budgeting process.*

**What can be done to increase the certainty that the SRF loan will be repaid?**

The terms under which the SRF loan was originally provided relied upon the willingness of the CSD to charge for delivered sewer services. Over and above the prior assurances the state

required for the SRF loan, this Proposal significantly increases the securitization for any SRF loan monies by requiring a Prop 218 vote. With this securitization, the SWB could collect on its loan regardless of the "delivery of service" requirement in the current loan agreement.

The alternative site location may not be pursued unless the Prop 218 vote is successful, thereby providing a higher level of securitization than currently exists. The vote must occur within six months of this agreement. The LOCSD district engineer who oversaw the prior assessment district vote believes he can complete the entire process with a final vote by the end of February, 2006.

We think that there is a high likelihood that the property owners, who are the voters in a Prop 218 election, would vote overwhelmingly in favor, as this would protect their property values and prevent interference from a future CSD Board. In the unlikely event that the Prop 218 vote fails, the current project at its current location would be built, thereby providing the same delivery of service assurance that the SWB approved in its original vote.

#### **How would CSD assist SWB with Measure B?**

We recognize that Measure B, as passed, introduces significant impediments to expeditious resolution of the Los Osos sewer issue. Our Proposal commits this board to work with the SWB to repeal Measure B. We agree to undertake any and all of the following steps as necessary to achieve this end:

- 1) immediately initiate an electoral repeal of Measure B by mail ballot at our own cost;
- 2) pass a resolution declaring our opposition to Measure B;
- 3) work cooperatively with the SWB to encourage the courts to hear and render a decision as quickly as possible;
- 4) agree to not litigate on Measure B; and

We believe that these actions would almost certainly result in the repeal of Measure B. If, despite all efforts, the measure were to be upheld, we agree to work with the SWB and its attorneys to determine what further course of action would be most appropriate.

If after all these efforts, Measure B were upheld, we would look to the SWB for guidance on how to best proceed. As part of this Proposal, Tri-W remains a viable option. This Proposal does not limit the SWB's flexibility in dealing with this situation. Measure B does not apply to the collection/disposal system, so moving forward with that portion of the plan immediately is a prudent and reasonable action.

One last observation - if all efforts to repeal Measure B fail, but the Prop 218 vote succeeds, the state would still have securitization beyond that currently provided by the terms of the SRF contract and legal authority to support the out of town site with no further delays.

#### **How does this Proposal affect the timeline?**

The Proposal has no effect on the most expensive portion of the project, the collection/disposal system, which would be completed in the original timeframe. Ultimate completion of the treatment facility must occur within two years of the collection. This two year extension would be considerably briefer than the many years of litigation and lost opportunity that would occur if the contractors were to abandon the work and pursue damages. Delays would be even greater when a future CSD sought to restart this project, given the new financial constraints produced by enormous fines, litigation and lost opportunities. Our analysts indicate that this two-year extension should be sufficient to handle planning and permitting issues, and under an ideal

scenario, including assistance from state agencies, such as the SWB, the project might be built with no delay beyond the current schedule.

**How would you handle the worst case scenario?**

The worst case scenario we can envision is a failure of both the Prop 218 and Measure B votes, in which case our situation is no worse than where we are at this moment in time, and per the terms of our agreement, we would proceed with the construction of a downtown site, pending legal advice from the SWB.

This worst case scenario is very improbable due to the alignment of property owner's interests and the will of the public to end these disputes. What is probable in the event this Proposal is rejected is a near certain acceptance of conditions that are riskier to the state and more damaging to the water supply. If this compromise is rejected, instead of the low likelihood worst case scenario described above, we would face certain loss of any infrastructure improvements, indefinite delays to water treatment, loss of contractor's plans and bids, contractor damage awards, and cycles of litigation and counter-litigation.

**How will LOCSD cover the suspension costs incurred to date and in the immediate future, and what funds are available for future contingencies since LOCSD has committed to maintain a five percent contingency fund?**

We anticipate conducting value engineering exercises to reduce project costs through deductive change orders from the contracts, revenue borrowing from other CSD accounts, federal and state grants, bonding and future waste water revenues. We will seek to leverage current land assets as collateral for other loans.

**Additional Water Quality Commitments**

1. Aggressively pursue and implement Agricultural Exchange program which would successfully recharge the ground water, reduce salt water intrusion and increase the drinking water supply over current levels.
2. Establish septic tank management district immediately that requires increased inspection and pumping of all septic tanks on a regularly scheduled interval.
3. Implement an aggressive water conservation program immediately, becoming signatories on Best Management Practices from California Urban Water Conservation Council. Include a tiered water rate schedule that would reduce consumption of high quality lower aquifer drinking water, and reduce discharge quantities in the upper aquifer in the area of the community septic tanks, thereby reducing nitrate pollution.
4. Begin immediate exploration of possibilities to pump down the upper aquifer to allow for further nitrification within the soil matrix.
5. Explore implementing installation of additional production well in East Basin, therefore allowing reduced pumping in deep West basin, and reducing salt water intrusion.