



California Regional Water Quality Control Board

Central Coast Region



Alan C. Lloyd, Ph.D.
Agency Secretary

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Phone (805) 549-3147 • FAX (805) 543-0397

Arnold Schwarzenegger
Governor

October 6, 2005

Los Osos Community Services District
P. O. Box 6064
Los Osos, CA 93412

Dear Directors:

COMPLAINT FOR ADMINISTRATIVE CIVIL LIABILITY FOR VIOLATION OF TIME SCHEDULE ORDER NO. 00-131

Enclosed is Administrative Civil Liability Complaint No. R3-2005-0137 issued by the Executive Officer of the Central Coast Regional Water Quality Control Board (Central Coast Water Board) for violations of Regional Board Order No. 00-131, a Time Schedule Order Concerning Los Osos Community Services District in San Luis Obispo County.

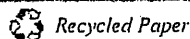
On December 1 or 2, 2005, the Central Coast Water Board at the Central Coast Water Board Hearing Room, 895 Aerovista Place, Suite 101, San Luis Obispo, will hear public testimony and decide whether to affirm the Executive Officer's recommended liability of \$11,190,000 to Los Osos Community Services District (CSD), increase or decrease the amount, or refer the matter for judicial civil action.

The Central Coast Water Board remains committed to resolving water quality problems in Los Osos. Our position is unchanged from that stated in earlier correspondence, hence there has been ample prior warning of this action. Time Schedule Order No. 00-131 contains a date-specific compliance schedule for completion of the wastewater project and specifies monetary penalties of \$10,000 per day for failure to comply with the schedule, unless such failure is beyond the CSD's reasonable ability to control. The Regional Board's requirements and Time Schedule Order No. 00-131 were issued to the community's governing entity (the Los Osos CSD) and recent election of new Los Osos CSD Directors does not change those requirements specified in Order No. 00-131. Controllable project delays, such as halting construction on the wastewater project, would clearly be within the CSD's ability to control.

If completion of the wastewater project proceeds immediately, I am prepared to recommend that the Water Board apply the assessed amount to project costs. However, such recommendation would be contingent upon the CSD taking all necessary actions to support completion of this wastewater project, including (but not limited to) continuing to defend against appeal of the recent Superior Court ruling invalidating the facility location initiative; that is, continue to support the Superior Court's ruling in favor of the project under construction.

I remain hopeful that each of the Los Osos CSD directors will solemnly consider the long-range economic, social and environmental impacts to your community that would result from halting the wastewater project. Monetary penalties in the enclosed Complaint represent just a portion of the costs that would result from such action. Additional costs include payment of the debt already incurred, repayment of the State loan with interest (see attached letter previously sent to the District by the State Water Resources Control Board), payment of construction contracts, repayment of grants, ultimately paying for a wastewater project without funding assistance currently available, and paying for a project

California Environmental Protection Agen

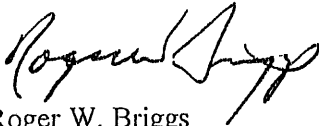


Item Number 3 Attachment No. 3
December 1-2, 2005 Meeting
Los Osos C.S.D.

that is likely to incur additional costs due to inflation. **We also intend to begin enforcement proceedings against individual dischargers; that is, individual property owners with septic system discharges in violation of the Basin Plan prohibition.** This action will also be additional cost to the community that you could avoid by choosing to comply rather than intentionally violating the prohibition and the Water Code, and intentionally continuing extended pollution.

Please review these documents and provide written comments **by Monday, October 31, 2005, 5:00 pm.** Late comments will be accepted only upon a ruling of the Chair. If you have questions or would like to discuss this matter further detail, please call me at 805/549-3140.

Sincerely,



Roger W. Briggs
Executive Officer

Attachments:

Administrative Civil Liability Complaint No. R3-2005-0137

State Water Resources Control Board letter to Bruce Buel dated September 23, 2005

cs: Steve Monowitz

CA Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060-4508

John Euphrat
Department of Planning and Building
County Government Center
San Luis Obispo, CA 93408

Darrin Polhemus
SWRCB-DFA
P. O. Box 944212
Sacramento, CA 94244-2120

S:\seniors\shared\wdr\wdr facilities\san luis obispo co\los osos\enforcement\2005ACLletter
File: Los Osos CSD Wastewater Project
Task: 126-01

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

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R3-2005-0137

IN THE MATTER OF:

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

LOS OSOS COMMUNITY SERVICES DISTRICT IS HEREBY GIVEN NOTICE THAT:

The Los Osos Community Services District (CSD) is alleged to have violated provisions of California State law and an order of the Regional Water Quality Control Board (hereafter Central Coast Water Board, or Water Board), for which the Central Coast Water Board may impose civil liability pursuant to Sections 13308 and 13350 of the California Water Code.

Unless waived, a public hearing on this matter will be held before the Central Coast Water Board on December 2, 2005, at its office in San Luis Obispo. The Los Osos CSD and its authorized representatives will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Water Board.

An agenda will be mailed to you separately, not less than ten days before the public hearing date. At the public hearing, the Water Board will consider whether to affirm, reject or modify the proposed administrative civil liability, or whether to refer the matter to the State Attorney General for recovery of judicial civil liability.

ALLEGATIONS

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 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.

<u>Task</u>	<u>Completion Date</u>
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 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 at least 396 days behind the schedule.
3. 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.
4. 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.
5. 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.
6. 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.
7. 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.
8. These wastewater treatment and disposal systems discharge indirectly to groundwater. Each leachfield is set in Baywood fine sands, a porous formation through which septic tank effluent readily percolates. Waste discharged from each of the three systems ultimately migrates to groundwater. Therefore, the District is 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 is \$32.85 million.

LEGAL AUTHORITY

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 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.”

Section 13350 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.

Water Code Section 13327 provides:

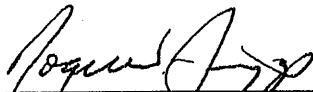
“In determining the amount of civil liability, the regional board, and the state board upon review of any order pursuant to Section 13320, shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, 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.”

PROPOSED CIVIL LIABILITY

The maximum civil liability for violations of Time Schedule Order No. 00-131 that can be imposed by the Central Coast Water Board in this matter is ten thousand dollars (\$10,000) for each day in which the compliance schedule violations occurred. The maximum civil liability for violations the Basin Plan prohibition that can be imposed by the Water Board in this matter is five thousand dollars (\$5,000) for each day of violation at each facility.

The potential maximum civil liability is \$44,040,000. Calculations of maximum and proposed civil liability are provided in the *Work Sheet for Assessment of Administrative Civil Liability for Los Osos Community Services District*, attached hereto, and incorporated herein by reference. The Executive Officer of the Central Coast Water Board (hereinafter Executive Officer) proposes that administrative

civil liability be imposed by the Central Coast Water Board in the amount of \$11,190,000, based on consideration of statutory factors in Section 13327 of the California Water Code.



Executive Officer

10-6-05

Date

**PROCEDURAL INFORMATION
FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
HEARING AND PAYMENT**

HEARING

Unless you waive your right to a hearing, a hearing on this matter will be held before the Central Coast Water Board within 90 days of receipt of this administrative civil liability (ACL) complaint. You or your representatives will have the opportunity to be heard and to contest the allegations in the ACL complaint and the imposition of civil liability by the Central Coast Water Board. A hearing is tentatively scheduled for:

December 1 or 2, 2005
Central Coast Regional Water Quality Control Board Hearing Room
895 Aerovista Place, Suite 101
San Luis Obispo, California

The meeting is scheduled to begin at 8:30 AM; however, no specific time has been set for your hearing. You will receive a notice for the hearing with more specific timing information about two weeks before the hearing. At the hearing, the Central Coast Water Board will consider whether to accept, decrease or increase the amount of the proposed administrative civil liability.

WAIVER OF HEARING

By checking this box, I agree to waive my right for a hearing before the Central Coast Water Board with regard to the violations alleged in Administrative Civil Liability Complaint No. R3-2005-0137. Also, I agree to remit payment for the civil liability proposed. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Executive Officer in this Complaint, and against the imposition of the amount of civil liability proposed.

Discharger

Date

Title

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File: Los Osos CSD WWP
Task: 126-01

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-5411

WORKSHEET FOR ASSESSMENT OF ADMINISTRATIVE CIVIL LIABILITY
COMPLAINT NO. R3-2005-0137

FOR

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

The Los Osos Community Services District (CSD) has failed to comply with the compliance dates specified in Order No. 00-131, a time schedule order concerning Los Osos Community Services District in San Luis Obispo County. Order No. 00-131 includes the following compliance schedule.

"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.

<u>Task</u>	<u>Completion Date</u>
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."

Failure to comply with the above schedule subjects the Los Osos CSD to monetary liability in the amount of \$10,000 per day of violation.

Los Osos CSD has also discharged waste in violation of a prohibition contained in the Water Quality Control Plan, Central Coast Basin (Basin Plan). Los Osos CSD is liable for \$15,000 per day since October 1, 1999, for these discharges.

I. MAXIMUM ALLOWABLE CIVIL LIABILITY

Water Code Section 13308 authorizes the Central Coast Water Board to administratively impose civil liability in an amount not to exceed \$10,000 per day for each day of violation of compliance dates specified

in a time schedule order. In 2000, the Central Coast Water Board adopted Order No. 00-131 with the compliance dates specified above. Water Code Section 13350 authorizes the Central Coast Water Board to administratively impose civil liability in an amount not to exceed \$5,000 per day for each day the CSD has discharged waste in violation of the Basin Plan prohibition. The maximum civil liability that may be imposed by the Central Coast Water Board is therefore \$44,040,00, as shown in the following table:

Assessment Basis	Days of Violation	Total
a) Commenced construction of the community sewer system on August 22, 2005	1,080 days past compliance date	\$10,800,000.
b) Complete construction of the community sewer system (incomplete as of September 30, 2005)	396 days past compliance date	\$3,960,000.
c) Single violation assessed during time of more than one violation	357 days overlap of a and b above	<\$3,570,000>
d) Discharged wastewater from three facilities from October 1, 1999, to October 1, 2005.	2190 days x 3 facilities	32,850,000
Maximum Allowable Civil Liability for TSO Violations	(a plus b minus c)	\$11,190,000
Maximum Allowable Civil Liability	(a plus b minus c plus d)	\$44,040,000

II. MINIMUM CIVIL LIABILITY

Water Code Section 13308 provides that the Central Coast Water Board may impose a penalty in an amount less than \$10,000 per day (the amount prescribed in Order No. 00-131) only if the Water Board makes express findings setting forth the reasons for its actions based on the specific factors required to be considered pursuant to Section 13327. These factors are described below in Section III. The same factors apply in determining the amount of civil liability under Section 13350 for violations of the prohibition. This is discussed in Section IV.

III. FACTORS TO CONSIDER IN ASSESSMENT OF ADMINISTRATIVE CIVIL LIABILITY FOR VIOLATION OF TIME SCHEDULE ORDER 00-131

Pursuant to Water Code Section 13327, in determining the amount of liability, the Central Coast Water Board shall:

...take into consideration the nature, circumstances, 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 that justice may require.

These factors apply as follows:

1. The Nature, Circumstances, Extent, and Gravity of the Violations

Discharge of inadequately treated waste in Los Osos has degraded and continues to degrade groundwater, which is the area's sole source of municipal supply, and surface waters in Morro Bay National Estuary. The Baywood Park/Los Osos area of San Luis Obispo County is located on the southern edge of Morro Bay National Estuary, approximately ten miles west of the city of San Luis

Obispo. The community has a population of approximately 15,000 people and contains about 5,000 individual septic systems. Throughout the community, on-site septic systems are used for treatment and disposal of wastewater. Because many of the lots are too small for conventional leachfields, deeper seepage pits are often used. In wet weather cycles, ponded water accumulates in some areas that is a combination of surfacing effluent from septic tanks, groundwater, and stormwater. Surfacing effluent can be a health hazard and detrimental to Morro Bay National Estuary. Samples of groundwater seeps to the estuary contained fecal coliform of human origin.

In 1983, the Regional Board adopted Resolution No. 83-13, which amends the Basin Plan and prohibits, effective November 1, 1988, all discharges of waste from individual and community sewage systems within portions of the Baywood Park/Los Osos area of San Luis Obispo County (Basin Plan prohibition area).

In November 1998, Los Osos voters formed a community services district specifically to build a wastewater treatment project to remedy the ongoing violations of the prohibition. The Los Osos CSD chose not to proceed with a proposed wastewater project that the County had already designed, began anew the process for project development, and developed a revised project for wastewater collection, treatment and disposal.

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. In 1999, the Water Board issued Cease and Desist Orders Nos. 99-53, 99-54, 99-55 and 99-56 to the CSD for discharges from Bayridge Estates, Water Division, Fire Department and Vista de Oro respectively. The cease and desist orders imposed a schedule for the Los Osos CSD to achieve compliance with the prohibition at the four facilities it operated. The schedule was based on a list of specific tasks and due dates that the Los Osos CSD proposed pursuant to Water Code Section 13300. In 2000, the Water Board issued Time Schedule Order No. 00-131, which specifies compliance dates for completion of critical project components. The time schedule order was necessary because the Los Osos CSD was already in violation of the four cease and desist orders, and again was based on milestones and due dates that the Los Osos CSD proposed. To date, the Los Osos CSD has completed the environmental permitting and design of the wastewater project and began construction in August 2005.

Approximately one million gallons of waste are discharged daily in Los Osos in violation of the prohibition; such discharges will continue until the community sewer is complete. Unless the community's method of complying with the prohibition will consist of individual solutions such as the use of holding tanks rather than leachfields, failure of the CSD to comply with the time schedule will cause the continuation of not only the CSD's own discharges, but those of the entire community. These discharges have degraded shallow groundwater to the extent that most shallow wells have been abandoned. Drinking water supply is limited primarily to deeper groundwater zones, and in turn this reliance upon deeper groundwater is contributing to increasing threat of seawater intrusion. The three facilities that the Los Osos CSD operates discharge in excess of 38,000 gallons per day in violation of the prohibition.

In assessing a penalty for violation of the time schedule order, a penalty of less than \$10,000 per day is justified only if the factors listed in Water Code Section 13327 justify a lesser penalty. This factor does not justify a penalty of less than the \$10,000 per day imposed by the time schedule order, i.e., \$11,190,000.

2. Degree of Culpability

The Los Osos CSD is directly responsible for compliance with Time Schedule Order No. 00-131. The community wastewater project is designed, permitted, funded and under construction. The Los Osos CSD has repeatedly promised to proceed with the project. However, the CSD issued temporary stop-work notices to its contractors. Terminating the project will result in continuing the water-quality impacts described above (groundwater degradation, impacts to Morro Bay, and increased seawater intrusion). Even a temporary stop-work order is a clear violation of the time schedule order since the CSD is already in violation of the completion due date. Since the project is fully permitted and under way, any further delay in complying with the time schedule order is avoidable and intentional.

With respect to the Fire Station and Bayridge Estates and Vista de Oro subdivisions, the Los Osos CSD is directly responsible for the discharges of wastewater from the on-site disposal systems.

Accordingly, consideration of this factor does not support assessment of liability that is less than \$11,190,000.

3. Susceptibility to Cleanup or Abatement

Inadequately treated wastewater discharged within the Los Osos Basin, and resulting water quality impacts, are not susceptible to cleanup until such time as the waste discharges cease. Even after completion of a community-wide sewer, many years will be needed before groundwater quality is restored to drinking water quality. Cleanup or abatement of the water quality problems in Los Osos will not even begin to occur until the community-wide sewer is constructed. Consideration of this factor does not support assessment of liability that is less than \$11,190,000.

4. Voluntary Cleanup Efforts Undertaken by the Violator

Although the Los Osos CSD has previously taken steps to complete the wastewater project, the October 2007 completion date in its State Revolving Fund Loan agreement is more than three years behind the schedule in Time Schedule Order No. 00-131. The CSD issued temporary stop-work notices to the project contractors on October 3, 2005. Consideration of this factor does not support assessment of liability that is less than \$11,190,000.

5. Degree of Toxicity of the Discharge

Waste discharges in Los Osos have degraded groundwater (indicated by nitrate concentrations) and surface water in Morro Bay (indicated by coliform bacteria). Reliance on deeper groundwater zones has increased seawater intrusion. Halting the current wastewater project to redesign an undefined, alternative project in an unspecified location that the CSD does not even own would result in many years of delay in resolving Los Osos's waste and water quality problems. Although the CSD has not taken action yet to permanently suspend the project, the CSD took seven years from its formation just to start construction. As stated above, water quality impacts will continue until the wastewater project is completed.

Accordingly, consideration of this factor does not support assessment of liability that is less than \$11,190,000.

6. Prior History of Violations

The Los Osos CSD has a long history of violations. The time schedule order was necessary because the CSD was already in violation of the four cease and desist orders. The CSD's predecessor, the County of San Luis Obispo, was in violation of cease and desist orders the Water Board issued to the County.

Consideration of this factor does not support assessment of liability less than \$11,190,000.

7. Economic Benefit or Savings Resulting from the Violations

Staff estimates that economic benefit realized by the Los Osos CSD by failing to implement its wastewater project exceeds \$125 million. This benefit is based upon the project cost (approximately \$150 million) less the amount already spent by the CSD (\$25 million, estimated). Although a precise dollar value is not currently available, staff estimates that the amount of economic benefit or savings resulting from the violations is significantly greater than the maximum assessment amount. On the other hand, if it builds the project, the CSD will have a revenue stream to offset the costs. Consideration of this factor does not support assessment of liability less than \$11,190,000.

8. Discharger's Ability to Pay Civil Liability and Ability to Stay in Business

The Los Osos CSD has not provided any information that would indicate ability or inability to pay the proposed civil liability. The Los Osos CSD does have a wastewater treatment facility for which it can collect fees, and therefore has a limited revenue stream. If the CSD does not resume the project, it may not have the ability to pay for costs associated with terminating the project, including past construction costs and loan and grant repayments, or for developing a new project, and therefore may be unable to pay fines. On the other hand, these additional costs all relate to the same violations that are the subject of the Complaint, and would all be based on the intentional actions of the CSD.

The CSD does not operate a business so its ability to stay in business is not a factor.

Consideration of this factor does not support liability less than \$11,190,000.

9. Other Matters that Justice May Require

Central Coast Water Board staff time was used in responding to waste and water quality problems in Los Osos, violations of the Time Schedule Order, assistance in preventing such violations, and associated enforcement actions (hundreds of hours preparing letters and staff reports, participation in public and agency meetings, responding to public and agency inquires, etc.) Estimated staff costs for preparation of this complaint are \$3,120, as shown in the following table:

ESTIMATE OF STAFF COSTS FOR DRAFTING THE ACL			
Staff Classification	Hours	Rate (\$/hr)	Amount (\$)
Technical Staff	20	75	1,500
Senior Staff	12	75	900
Staff Counsel	8	90	720
Total Staff Cost			\$ 3,120

In addition, Water Board staff has expended many, many hours since 1983 attempting to obtain compliance with the prohibition.

The proposed liability exceeds the amount of staff costs associated with this action but is significantly less than the amount of economic benefit or savings created by the violations.

In terms of consistency with other enforcement actions in the Central Coast Region, a lesser amount than the maximum liability may be appropriate. Comparisons with some recent enforcement actions follow:

Pismo Beach – combined penalties in the last few years of \$375,000 for effluent violations. The Los Osos violations are much more egregious because the CSD is deliberately stopping the compliance project. The Water Board penalized Pismo Beach even though the City was proceeding as fast as possible with its compliance project. The Los Osos water quality problems stem from illegal discharges and are much more significant in terms of overall environmental effect than the ocean outfall effluent violations in Pismo Beach.

California Men's Colony – combined penalties in the last few years of \$650,000 for effluent violations and collection system overflows. CMC is proceeding as fast as possible with treatment system and collection system improvements, while the CSD deliberately delays compliance. CMC's illegal discharges have had short term surface water impacts, while Los Osos's discharges are continually in violation, have caused long term groundwater degradation, and apparently have on-going impacts on surface waters (bacteria seeping to the estuary).

Pearson and Kelegian - \$125,000 and \$100,000, respectively, for discharges of sediment in violation of a Basin Plan prohibition. Environmental damages were relatively short term, as opposed to the long term nature of Los Osos degradation discussed above. These were single property owners, as opposed to a public entity such as the CSD.

Cambria School - \$300,000 for stormwater/sediment violations. The school cleaned up much of its sediment discharge, leaving little lasting impact (the opposite of Los Osos). The discharge was relatively short term (unlike Los Osos), and the violations were not deliberate (unlike Los Osos).

PG&E - \$14.2M settlement for alleged withholding of data (reporting violations). This case was egregious in that data were deliberately withheld (allegedly), and that is comparable to Los Osos. With PG&E, there were no direct water quality impacts (but the potential for increased larval intake due to the data not being available for analysis), while the water quality problems with Los Osos are known to be significant, as discussed above.

Unocal Guadalupe – About \$43M settlement for oil field leaks. Problems are long term, similar to Los Osos. Unocal allegedly withheld information and intentionally delayed cleanup, while the CSD's recent actions also delay any solution intentionally.

City of Hollister - \$1.2M for spilling 15 million gallons of treated water to a dry river bed. Violation was one time (Los Osos is on-going), impacts were short lived (Los Osos is on-going and much more severe), and unintentional (Los Osos is intentional).

The cases listed above indicate there should be some reduction from the maximum civil liability of \$44,040,000, to be reasonably consistent with the level of enforcement for violations elsewhere in the Central Coast Region.

IV. FACTORS TO CONSIDER IN ASSESSMENT OF ADMINISTRATIVE CIVIL LIABILITY (ACL) FOR VIOLATION OF PROHIBITION

The considerations in Section III apply equally to the violations of the Prohibition, which give rise to liability under Water Code Section 13350. For the reasons discussed above, the Section 13227 factors do not support liability that is less than the statutory maximum. On the other hand, when the Board issued Time Schedule Order No. 00-131, it determined that \$10,000 per day was an appropriate amount necessary to achieve compliance. Although this amount does not include any amount intended to punish or redress violations that occurred before Time Schedule Order No. 00-131 was issued, and does not address violations of the prohibition (as opposed to violations of the time schedule order), the Water Board found in 2000 that \$10,000 per day was necessary to achieve compliance in light of the project cost, estimated to be \$70 million dollars (in 2000). Although \$11,190,000 represents only about one-quarter of the maximum available civil liability, it is a very large amount and will ultimately be borne by the owners and residents that the District serves. It is unlikely that a larger liability amount would increase the likelihood of achieving compliance or deterrence in this case.

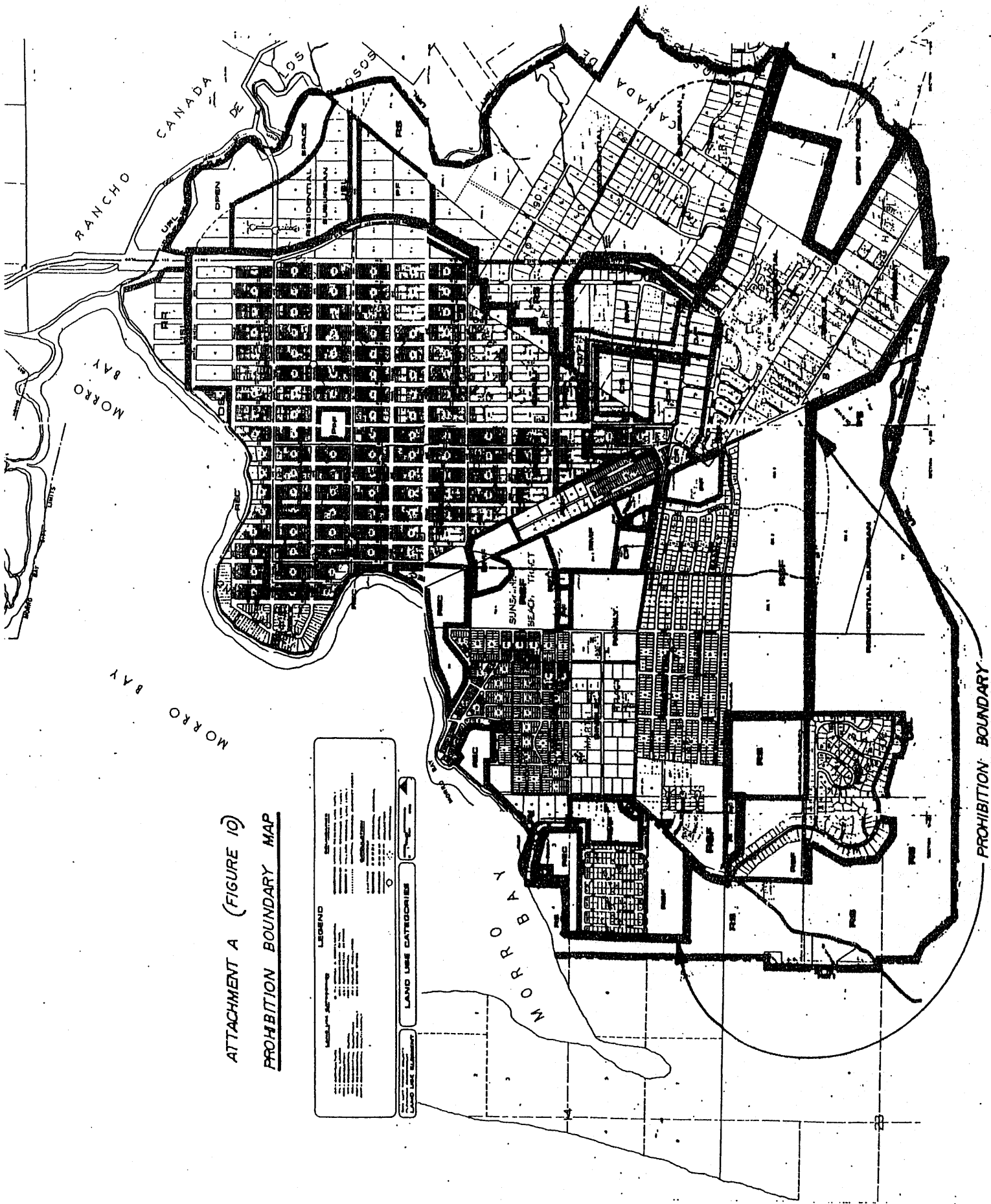
7. Economic Benefit or Savings Resulting from the Violations

Staff does not have information at this time of the economic benefit or savings resulting from these specific violations. Staff estimates that more frequent pumping of the three systems could cost up to \$6,000 per month (based on containing waste in the tanks and pumping every four days to prevent discharge of waste to the leachfields). The proposed liability may be more than the economic benefit or savings from not implementing interim or alternative solutions at these three facilities.

V. RECOMMENDATION

The factors considered in Section IV of this worksheet support the assessment of liability under Water Code Section 13350 in an amount less than the maximum for the reasons stated in Section IV.

The factors considered in Section III do not support the assessment of civil liability under Water Code Section 13308 in an amount less than the maximum civil liability stated in Section I of this worksheet (\$11,190,000). In recognition of the nature and history of violations, the Los Osos CSD's culpability, and its intentional action to cause and continue violations, staff proposes liability in the amount of \$11,190,000.



ATTACHMENT A (FIGURE 10)
 PROHIBITION BOUNDARY MAP

LEGEND

Use/Land Use Categories

LAND USE CATEGORIES

Commercial	Industrial
Residential	Public
Open Space	Water
...	...

PROHIBITION BOUNDARY



State Water Resources Control Board



Alan C. Lloyd, Ph. D.
Agency Secretary

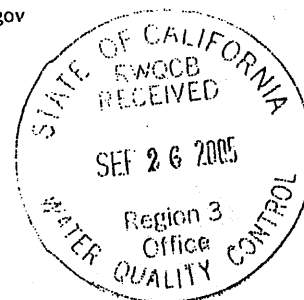
Division of Financial Assistance

1001 I Street, Sacramento, California 95814
P.O. Box 944212, Sacramento, California 94244-2120
(916) 341-5700 ♦ FAX (916) 341-5707 ♦ www.waterboards.ca.gov

Arnold
Schwarzenegger
Governor

SEP 23 2005

Mr. Bruce Buel, General Manager
Los Osos Community Services District
PO Box 6064
Los Osos, CA 93412



Dear Mr. Buel:

RESPONSE TO QUESTIONS REGARDING CONSEQUENCES OF TERMINATING LOAN AGREEMENT; LOS OSOS COMMUNITY SERVICES DISTRICT (LOCSO); WASTEWATER COLLECTION, TREATMENT AND DISPOSAL PROJECT (PROJECT); SAN LUIS OBISPO COUNTY

Thank you for your letter dated September 21, 2005. You've asked that we clarify the consequences should the LOCSO terminate the Project. Please find our responses to your questions, shown in italics, below.

1. *Would the State Water Resources Control Board (State Water Board) require LOCSO to repay funds already fronted?*

Yes, upon termination of the project, and hence the loan agreement, all funds disbursed are to be repaid immediately with any interest that has accrued up to the date of payment.

2. *Would LOCSO be able to sell the Wastewater Treatment Facility and Disposal Properties to raise these funds?*

We would expect LOCSO to take whatever actions are necessary to repay any loan funds disbursed. This may include the sale of any assets, such as property, possessed by LOCSO. Please note however, that the LOCSO will remain under order from the Central Coast Regional Quality Control Water Board (Central Coast Regional Water Board) to comply with Time Schedule Order 00-131. Sale of the property required to comply with this order will undoubtedly be problematic for LOCSO.

It should also be noted that failure to comply with the Central Coast Regional Water Board's order might result in enforcement action against LOCSO and the individual property owners within the Prohibition Zone. Enforcement actions against LOCSO may include, but are not limited to, enforcement of the assessment of \$10,000 per day penalty for failure to comply with Time Schedule Order 00-131 and issuance of a Complaint for Administrative Civil Liabilities. These possible penalties were reported by the Central Coast Regional Water Board to be in excess of \$7 million.

Enforcement against individual property owners is also a possible outcome of failure to proceed with the project and has been taken before in similar cases. A Complaint for Administrative Civil Liabilities could be issued to owners of homes, businesses and government facilities discharging from on-site disposal systems (except those complying with Basin Plan exemptions). Economic benefit is a

SEP 23 2005

Mr. Bruce Buel

- 2 -

factor when the Board considers liability amount. Existing dischargers are currently saving over \$180 per month in deferred sewer use fees. The 1983 prohibition had an effective date of 1988, yet those using their septic tanks illegally since then have paid no sewer use fees for the intervening 16 years (at the current estimate of \$180 per month, that amounts to \$34,560). In this way, waste dischargers would take financial responsibility for the water quality impacts caused by their discharges. The maximum potential Administrative Civil Liabilities are \$5,000/day and thus the potential liability is even larger.

3. *Could the State Water Board take over the project and arrange for construction?*

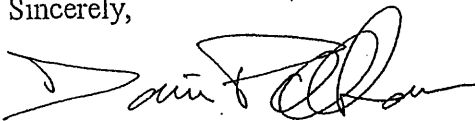
No, as the local agency responsible for providing sanitation services, LOCSD is ultimately responsible for completing the project and complying with all water quality orders.

4. *Would LOCSD be able to use the current State Revolving Fund (SRF) Commitment to build a different project?*

No, as discussed in more detail in our letter of June 22, 2005, the SRF loan commitment is for the current project only. If the current project is stopped and a different project proposed, the SRF commitment would be withdrawn and the loan agreement terminated. LOCSD would have to repay all funds disbursed to date on the current project.

If you have any questions regarding the SRF funding program, please contact me at (916) 341-5694 or dpolhemus@waterboards.ca.gov.

Sincerely,



Darrin Polhemus, Assistant Chief
Division of Financial Assistance

cc: Mr. Roger Briggs
Ms. Sorrel Marks
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

Mr. Marc Merritte
Wastewater Projects Coordinator
Los Osos Community Services District