

Santa Barbara County  
**PUBLIC Health**  
DEPARTMENT

**Environmental Health Services**

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January 23, 2009

Sorrel Marks  
Central Coast Water Board  
895 Aerovista, Suite 101  
San Luis Obispo, CA. 93401

Dear Ms. Marks:

**SUBJECT: Implementation Program for Revised Water Quality Control (Basin) Plan for Central Coast Region**

Santa Barbara County Environmental Health Services has received a copy of the proposed changes to the Central Coast Water Quality Control Board's Basin Plan Implementation Program related to onsite wastewater treatment systems. The following comments/suggestions are offered:

1. When the revised Basin Plan was considered by the Regional Water Quality Control Board in April 2008, this office, as well as other affected parties and local agencies, offered numerous comments and suggestions in testimony and in written correspondence dated April 7, 2008. Virtually none of those of comments or suggestions appear to be reflected in the amendments now under consideration and I am not aware of any responses to those comments.
2. A central requirement of the Implementation Program is for local governing jurisdictions to adopt wastewater management plans that must be approved by the Regional Board or its Executive Officer. Such plans are undoubtedly useful and desirable; however, they are likely to be quite costly and politically sensitive. The Plan does not address or even acknowledge these inconvenient, but very real, impediments to regional wastewater planning.
3. **Guidance Measure 1:**  
This measure calls for a survey and evaluation of systems with identification of suitable and problematic areas for onsite sewage disposal, with documented support for these findings. Problematic areas are generally known, but "suitable" areas are much more difficult to specify. As we know from experience, such studies can cost hundreds of thousands of dollars, even to just focus on the problematic areas. What will be the source of these funds?
4. **Guidance Measure 2:**  
Monitoring programs, if strictly interpreted, could involve very substantial costs for numerous monitoring wells, sampling & laboratory analysis, and staff for implementation. With no specific criteria, approval of programs appears to be left up to the Regional Board or its staff.
5. **Guidance Measure 3:**  
Current law does not allow an agency to mandate sewer connections unless specific findings can be made, as specified in the California Plumbing Code. Extension of public sewers requires significant community support and funding.
6. **Guidance Measure 4:**  
Existing systems may not be able to meet revised Basin Plan standards and past Regional Board policy has been

Item No. 18 Attachment No. 4  
March 19-20, 2009 Meeting  
Regionwide Onsite System  
Implementation Program

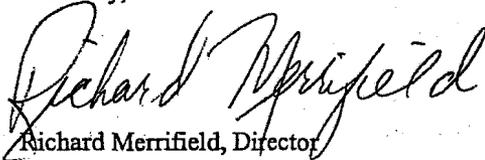
to exempt these existing discharges. It may be impossible for some dischargers to meet this condition.

7. ~~Guidance Measure 9~~

As noted in previous comments to your Board, septage treatment capacity is dependent on the treatment capacity and willingness of publically owned wastewater treatment facilities to accept loads from septic tank owners. Current waste discharge requirements promulgated by the Regional Board provide a strong disincentive for treatment plants to accept septage. Use of onsite sewage disposal systems addresses one of the weakest links associated with centralized treatment: major spills from the collection system. Without support from the Regional Boards and wastewater treatment plants to provide treatment capacity, this measure is virtually impossible to implement.

Thank you for the opportunity to review and comment on these proposed amendments.

Sincerely,



Richard Merrifield, Director  
Santa Barbara County  
Environmental Health Services

**From:** Martha Goldin <honmgret@charter.net>  
**To:** <CJones@waterboards.ca.gov>  
**Date:** 1/23/2009 4:29 PM  
**Subject:** Basin Plan Amendment

I am concerned about the following, which does not appear to be addressed in the Basin Plan Amendment being considered with respect to Septic Management districts:

① The Regional Board appears to retain the right to declare Prohibition Zones in which septic systems may not be used. What are the standards by which it will be determined which, if any, areas should not be allowed to use septic systems? What procedural due process will be available prior to the declaration of a Prohibition Zone? What scientific basis will be used to determine whether septic systems in any management district are polluting and should be prohibited? How will individual septic systems be evaluated to determine whether or not they are polluting and should be prohibited? The amended Basin Plan should have standards which do not presently exist in the Plan.

② There appears to be no plan to replace lost ground water, avoid depletion of aquifers, repair environmental destruction or control salt water intrusion in areas where this may be an issue when septic systems are prohibited. What are the plans for remediation? All of this needs to be in the amended Basin Plan.

Please address these issues and respond to them.

Thank you.

Martha Goldin, Judge of the Superior Court, retired

To: Sorrel Marks, Regional Water Quality Control Board

From: Alon Perlman, Los Osos. CA

Date: January 23, 2009

Re: Recommendations to RS-2009-0012 amending the Basin Plan to adopt a conditional waiver as an onsite wastewater system implementation program and minor revisions to the amendments to the basin plan adopted on May 9<sup>th</sup> 2008.

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This communication is to comment on the Water Quality Control plan proposed changes, (Primarily attachment A, VIII.D.3 Onsite) as well as to continue communications that took place at the November 14, 2008 Workshop and focused on process, including alternatives to this waiver process, on the relationship between the Waterboard (regulatory guidance) and the Implementers (City's and Counties), and at the recognition of a regulatory burden potential as well as the value of the existing structure of MOU's.

Comments in sequential order.

① Attachment A Chapter 4 Page 1. The change from "pollutant" to "waste" may indicate that a measurable component- "Pollutant" which may be classified, may now be subject to the non-scientific definition "Waste" which tends to follow a waste stream no matter how much processing and removal of pollutants has taken place. The full and precise definition of the term "waste" (as "waste" is used, but not defined in California Water Code 13260a) should be included within this section.

② Pages 2,3,4. Addresses the identification of "governing jurisdictions" and this is a necessary change. The success of the program depends on the participation of these implementers and on the adaptability and expansion of the guidance document mentioned on page 4 (attachment 2 to March 20 staff report). The lack of larger participation in the initial hearing May '08, or the November workshop, by some of the intended governing jurisdictions, indicates to this author, a need for further outreach to these agencies, who must not be aware of the difficulties ahead or the economic impacts involved.

③ Edit suggestion: page 3 column 2 paragraph 2 "*failing systems to be brought into compliance with (the) Basin Plan... or (with) repair criteria consistent with locally implemented*" suggest inserting "The" and "With". Additionally "failing systems" has been used in a regulatory meaning (as in failing systems in the Los Osos prohibition zone, indicating that they are all failing, irrespective of individual condition) page 2 of RS-2009-0012 includes a definition of "failing" that is functional. It should be made clear that it is failure of function that is to be addressed.

④ Strengthening regulation: page 3 column 2 paragraph 3 "*Land use changes should not be approved by the local governing jurisdiction until the existing onsite system meets criteria of this Basin Plan and local ordinances*". This author is uneducated as to current compliance. It would be regulatorily cumbersome to change the should to shall but adding language such as "and shall not be approved without a statement of no affect, conformance or planned conformance with..." Obviously additional documentation would need to be developed.

Clarifying responsible agency: page 4 **VIII.D.1 .c. ONSITE WASTEWATER**

**SYSTEM MAINTENANCE DISTRICTS** This section identifies local districts as suitable responsible parties, however due to the change in previous section which identifies "governing jurisdiction" rather than the more generic term "agency", it may be necessary to clarify who the implementer is; the service district or the city or county. This is necessary as they have different authorities and powers.

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Consistency in waterboard approval authority: **cVIII.D.2.c. DESIGN FOR ALTERNATIVE AND ENGINEERED SYSTEMS** and **VIII.D.2.e. ONSITE SYSTEM MAINTENANCE** page 9

The sections do not contain the change-*"approved by the Central Coast Water Board or its Executive Officer."* Found in other sections. This author speculates this may be due to design level decisions.

6

REQUIREMENTS Subsection *"5. Disposal of septage (solid residue pumped from septic tanks) shall be accomplished in a manner acceptable to the Central Coast Water Board Executive Officer."*

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Suggest more specific language for implementation, that would also clarify E.O. role.

Waiver comments continue after this section.

Technical note- the section below is not amended as part of the waiver but the following comments are relevant to a functioning basin plan.

Page 9

**VIII.D.2.e. ONSITE SYSTEM MAINTENANCE**

**"RECOMMENDATIONS**

1. Septic tanks should be inspected every two to five years to determine the need for pumping.
2. Septic tanks should be pumped whenever: (1)the scum layer is within three inches of the outlet device, (2) the sludge level is within eight inches of the bottom of the outlet device, or (3) every 5 years; whichever is sooner. EPA
3. Drainfields should be alternated when drainfield inspection pipes reveal a high water level or every six months, whichever is sooner."

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Discussion:

1. A reasonable recommendation that could be a "should" if managed properly, and have reporting requirements. New alternate systems could require inspections after 2 years of first installation and five years thereafter. Older tanks could be inspected every 2 years and scheduled to five thereafter if 2 successive 2 year inspections show stable capacity. First 2 years following a functional failing etc...
2. The section causes the most problems. The point of an inspection is to ascertain if pumping is necessary. There is no reason to assume that with adequate inspection, a modern Septic tank that is properly maintained and sized (leach pit included) can go unpumped for 20 years or so. Older tanks, provided they are intact (and that can be tested) may require more frequent testing. Currently a system considered for installation in Los Osos is assumed to require 5 year pumping intervals for brand new high capacity modern tanks. Elsewhere in the counties, this is mostly un-enforced.
3. Unlikely that this is happening much, the level of implementation should be evaluated by the waterboard for increased implementation or an implementable schedule should be adopted. It is unlikely that a regulation that alters pumping schedules could be found to not have an impact in the 2009 Air quality, Carbon and Global warming gasses, regulatory environment, or the physical environments in which the waters of California flow.

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**VIII.D.3. ONSITE SYSTEM IMPLEMENTATION PROGRAM**

9

Page 12 "7. *The discharges from onsite wastewater systems all discharge the same type of waste.*" The regulatory meaning of "same" appears to be used here. The word "type" is also vague. Could use more definition for clarity.

### VIII.D.3.a. and VIII.D.3.b.

"1. *The onsite wastewater system is sited, designed, managed and maintained in a manner consistent with criteria specified in the Basin Plan, Chapter 4, Section VIII.D.*"

Section VIII.D.3.a. relates to Systems directly regulated by the waterboard.

Even though size is a design component, usage patterns may change so "*sited, sized designed, managed and maintained*" is suggested. The issue of specifically identifying the size component may not apply to large Sewer systems which are designed for capacity and are monitored. However in the next section which applies to systems not directly regulated by the waterboard, "size" may matter.-page 13

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"4. *The onsite wastewater system is sited, **SIZED (suggested)** designed, managed and maintained in a manner consistent with the Water Board Executive Officer-approved onsite management plan implemented by the local governing jurisdiction.*" The local governing Jurisdictional agencies have a responsibility for land use, Additions or rebuilds are not always triggers for onsite system reevaluation. The sizing issue could appear in guidance level documents, or in the MOU's.

Page 13 "For Existing Discharges (systems installed before March 20, 2009):

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5. *The onsite wastewater system is managed and maintained in a manner consistent with the Water Board Executive Officer-approved onsite management plan implemented by the local governing jurisdiction.* The majority of existing (100,000) onsite systems will be regulated and grand-fathered in by this section. However the language is vague. Is the onsite management plan alluded to already in existence? Is such a plan in compliance with the Current basin plan? If such a plan is not in affect what is the scheduling of its submission, acceptance and implementation? (given that only management and maintenance are to be implantable).

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The language. "*Water Board Executive Officer-approved onsite management plan implemented by the local governing jurisdiction*". is present in the other sections, however those previous sections have prior conditions of acceptance; "enrolled", "permitted" etc... This ties them in to the current basin plan. The existing onsite systems have to be in compliance with the current basin plan (page 11 implementation;1, 2 and 3) How does section 5 page 13 achieve that end?

### General Discussion

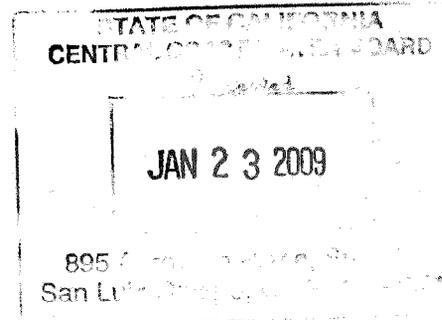
12

The housing bubble burst and financial crisis are affecting the abilities of the governing jurisdictions to comply with a large number of new regulations. Local governments are feeling the loss of tax revenue and are responding by reducing staff. The very people that partnered with the water board staff in producing the current Memoranda of understanding may not be available for this round of changes. Other regulatory government agencies (coastal commission for example) are reporting losses of planning positions and other essential staff. Global warming and weather change will ensure that 100 year flood events will take place every 50 years. This is a new era unanticipated in the plans that are now just being implemented. There have been encouraging signs in the Central Coast Waterboard in recognizing that the Governing Jurisdictions are partners in compliance rather than polluters to be enforced on. The economic burden of regulation must continue to be recognized. Actual conditions, recognized by local authorities, by valid scientific means must be prioritized. I hope these streamlining trends continue.

Alon Perlman

January 23, 2009

To: Regional Water Quality Control Board, Region 3  
 From: Jolene Horn, Atascadero  
 Re: R3-2008-00005/R3-2009-0012



① I do not see any evidence that the Regional Water Quality Control Board has paid any attention at all to the numerous comments that they have received from concerned citizens regarding what was R3-2008-00005 and is now designated as R3-2009-0012 in the updated draft of the Basin Plan/Onsite Wastewater Implementation Program.

Now that the RWQCB has changed names and numbers, the new draft is even more difficult to describe and discuss. Those of us in the public who have taken time to get educated about this issue, go to meetings and submit comments both verbally and in writing are lay people, not attorneys. Clearly, we are at a disadvantage in even trying to read and understand all of this material.

② As I review the material to the best of my ability, I do not see that anything has changed from last May's Basin Plan, R3-2008-0005. The RWQCB is still excusing itself from doing an E.I.R., even though you have heard from numerous sources, including Atascadero Mutual Water, that we do not have the problem that you are attempting to solve with this Onsite Wastewater Implementation Program.

③ You have continued to paint Atascadero with a "broad brush" in your Area of Applicability, lumping us in with the entire Region #3 even though we have an entirely different set of circumstances here regarding onsite systems.

④ You have ignored our concerns about our State Mandate for Affordable Housing and, as far as I can tell, the same Prohibitions are in place. There can be no 2<sup>nd</sup> units on less than 2 acres on a septic system and any lot under 1 acre may not have a septic system unless approved by an officer of the RWQCB. Nothing has changed.

You have not, at any time that I know of, acknowledged any of our concerns even though you have heard them from us more than once.

Now, you are asking us again for more comments even though we have no reason to believe that they will be taken into consideration judging by our past experience.

I am deeply disappointed in your Board. I see no point in submitting yet another comment to be ignored by the RWQCB. Yet, I do feel a personal sense of obligation to finish the job I started.

⑤ I am deeply disappointed in the cavalier attitude of the RWQCB toward those of us who have attempted to get involved in the process and been ignored.

I am deeply concerned about the future of Atascadero and its waterways and water quality. With no E.I.R., the RWQCB is likely to do more harm than good.

I hope that you do not honestly believe that you represent the best interests of the community of Atascadero and its water resources because you do not.

Sincerely,

*Jolene A. Horn*  
 Jolene Horn  
 3650 Falda Road



Atascadero, CA 93422  
805.440.2825

cc: Suzie Anderson, Atascadero  
A Better Atascadero  
David Athey, City of Atascadero  
Geoff English, City of Atascadero  
Wade McKinney, City Manager, Atascadero  
Tom O'Malley, Atascadero City Council  
Jerry Clay, Atascadero City Council  
Roberta Fonzi, Mayor Pro Tem, City of Atascadero  
John Niel, Atascadero Mutual Water  
Michael Buckman, Environmentalist/Scientist, Sacramento

**From:** Sorrel Marks  
**To:** Jolene Horn  
**Date:** 1/22/2009 3:50 PM  
**Subject:** Re: new draft for Basin Plan

Jolene: We accept comments in whatever form you send them. Signed letter is best, but email message is also acceptable. If you want to fax them, please fax to 543-0397. For a bit of clarification, the Water Quality Control Plan, Central Coast Basin (commonly called Basin Plan) is the entire guidance document describing the Central Coast Watersheds, Water Quality Programs, Policies, etc. What Atascadero citizens often refer to as the Basin Plan is simply a portion of the actual Basin Plan that specifies criteria for onsite wastewater systems. The document currently circulating for public comment is a proposed Onsite Wastewater Implementation Program, and if adopted will become part of the Basin Plan. So, with that clarification, the documents for review are linked on the opening page of our website under "Announcements", last item in gray box.

[http://www.waterboards.ca.gov/centralcoast/public\\_notices/announcements/docs/onsite\\_wastewater\\_system\\_implementation.pdf](http://www.waterboards.ca.gov/centralcoast/public_notices/announcements/docs/onsite_wastewater_system_implementation.pdf) It is Resolution No. R3-2009-0012.

If you want to look over the entire Basin Plan, it is at [http://www.waterboards.ca.gov/centralcoast/publications\\_forms/publications/basin\\_plan/](http://www.waterboards.ca.gov/centralcoast/publications_forms/publications/basin_plan/) but that might be more than you really wanted. Last May's update (Resolution No. R3-2008-0005) is at the very bottom of the page of this second link.

If you have any questions, feel free to give me a call at 549-3695. Sorrel

>>> Jolene Horn <[joleneh@charter.net](mailto:joleneh@charter.net)> 1/22/2009 3:38 PM >>>

Hi Sorrel;

How do I go about submitting a comment for the new Basin Plan? Also, the Basin Plan was formerly R3-2008-0005. Would you send to me the new number for the new draft. I don't have it with me at work and I am unable to locate the number on your website.

Thanks.

Jolene Horn

Jolene Horn, REALTOR

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[joleneh@charter.net](mailto:joleneh@charter.net) Email

**From:** Sorrel Marks  
**To:** Jolene Horn  
**CC:** szanderson@charter.net  
**Date:** 9/18/2008 8:53 AM  
**Subject:** Re: Basin Plan

Jolene: Sorry if some of this is repetitive, but I want to make sure we are on the same page (literally and figuratively). The Basin Plan is available on our website at the following link [http://www.waterboards.ca.gov/centralcoast/BasinPlan/BP\\_text/chapter\\_4/Chapter4.htm#\\_Toc3102236](http://www.waterboards.ca.gov/centralcoast/BasinPlan/BP_text/chapter_4/Chapter4.htm#_Toc3102236) The onsite criteria text (current law) is the same as adopted in 1983. Last May, the Central Coast Water Board adopted revised criteria for onsite systems, a preliminary step in revising the Basin Plan. Those criteria are available at this link <http://www.waterboards.ca.gov/centralcoast/BasinPlan/Index.htm> (very bottom of the page).

However, they have not yet completed review and approval by the State Water Board and the Office of Administrative Law. When you refer to VIII.D.2.a SITE SUITABILITY, you must be referring to the revisions. The Site Suitability criteria adopted on May 9, 2008, is as shown at the link for the revisions and Prohibition 13 reads as follows:

#### PROHIBITIONS

13. For new land divisions (including lot splits) served by onsite systems, lot sizes less than one acre ~~should not be permitted~~ are prohibited unless authorized under an onsite management plan approved by the Central Coast Water Board Executive Officer. ~~While new septic tank systems should generally be limited to new divisions of land having a minimum parcel size of one acre, where soil and other physical constraints are particularly favorable, parcel size shall not be less than one-half acre.~~ 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 unless consistent with onsite management plans. LO 1994

The strike-out and underline indicate changes from the 1983 version and "LO 1994" indicates a legal opinion rendered in 1994 that has been utilized since that time. I'm not sure what you are looking at that does not include this prohibition, but it sounds like it is something incomplete. Please check the source of your copy and if it came from our website, I'd like to know as soon as possible so that we can repair whatever problem might be there.

Sorrel

>>> Jolene Horn <joleneh@charter.net> 9/15/2008 6:11 PM >>>

Hi Sorrel;

Thank you for putting me in touch with David Innis.

In the mean time, I am a little confused.

When you and I first started communicating, I printed out the Chapter4. Implentation Plan of the Basin Plan.

Specifically, I printed out VIII.D. Individual, Alternative and Community Onsite Wastewater Systems. On that document, when I go to VIII.D.2.a SITE SUITABILITY, I go to Paragraph 13, PROHIBITIONS. t paragraph has to do with restrictions of onsite systems on certain size parcels of land.

However, when I go on the RWQCB website today and I go to the very same location, there is no mention of PROHIBITIONS. Can you please tell me where the paragraph regarding prohibitions is? I would sure appreciate.

Thanks. Jolene

Jolene Horn, REALTOR

**From:** Sorrel Marks  
**To:** Jolene Horn  
**CC:** David Innis  
**Date:** 8/14/2008 11:51 AM  
**Subject:** Re: a couple more questions

Hi Jolene: I don't mind at all that you have these questions, I always hope that you will share the answers, which will result in a better informed community. There are creek setbacks in the onsite system criteria, unchanged from the criteria adopted in 1983. Page 10, item 17 of Attachment A (transmitted earlier) specifies the setback distance to watercourse (100'), drinking water reservoirs (200'), slopes, etc. And as indicated in my earlier response to questions, the setbacks apply to those areas where site conditions would permit migration of the leachate (sewage) to the water body. These setbacks are the "fall-back" position if no other information is available, or if information is not available to demonstrate that the sewage will not surface in the water body. Hopefully the underlines and strikeouts contained in my 7/22/08 message came through on your end so that you could see what the new language is. If not, please let me know and I will highlight it in some other manner.

Regarding stormwater management plans: I have to admit, I have not been wording directly with the stormwater program so you could get more complete (and likely more accurate) info from David Innis [dinnis@waterboards.ca.gov](mailto:dinnis@waterboards.ca.gov) However, he happens to be out of town today so in his absence I'll say what I think, and you should follow up with David Innis for confirmation. Okay, with that disclaimer - I believe creek setbacks, more specifically healthy riparian corridors, are a standard low-cost, efficient, BMP (best management practice) included in virtually all stormwater management plans. I do not know if setbacks are specifically required, but I suspect the requirements are not that specific. Most of the water quality protection regulations are based upon the premise that the local agency will come up with its own method of protecting water quality, and so long as it does, then the local agency is left to do so. If it fails to do so, then the state or in some cases feds, will take a more prescriptive approach of telling them what to do. You may recall this is exactly what I said at the first City Council hearing on creek setbacks...that I believe everyone would be happier for the City to control its own destiny by developing its own stormwater management plan components. I believe City staff are doing exactly that and I sincerely hope you will support such efforts. I will leave the schedule question for David Innis to answer, but please note that all issues coming before the Water Board for vote are listed on meeting agendas at the following link <http://www.waterboards.ca.gov/centralcoast/Board/>

Sorrel

>>> Jolene Horn <[joleneh@charter.net](mailto:joleneh@charter.net)> 8/13/2008 5:30 PM >>>

Hi Sorrel;

I have a couple of more questions. I hope you don't mind.

For some reason I thought that creek setbacks were mentioned in the Basin Plan Amendment R3-2008-0005. I printed out (thank you) and read through the Basin Plan Amendment and find no mention of creek setbacks. Am I missing something? Or, are creek setbacks mentioned in NPDES II Storm Water Management Plan?

Also, regarding the above described Storm Water Management Plan: is that scheduled to come before the Regional Water Quality Control Board for a vote?

Thanks again, Sorrel, for all of your help.

Sincerely,

Jolene

Jolene Horn, REALTOR

Academe GMAC Real Estate

7905 El Camino Real

**From:** Sorrel Marks  
**To:** Jolene Horn  
**CC:** Sue Gerdson  
**Date:** 7/31/2008 8:59 AM  
**Subject:** Re: Basin Plan

We have not made presentations like the Chamber's Empower Hour in any other communities since none have been requested. We do anticipate participating in local agency led public education workshops when communities are ready to present their onsite system management plans to the public, but that will likely be next year.

Please contact Sue Gerdson at 549-3465 or [sgerdson@waterboards.ca.gov](mailto:sgerdson@waterboards.ca.gov) if you want hard copy of the Basin Plan. I believe we only have electronic copies now, so you would need to pay in advance for hard copy and we would print it out. Based upon the small portion that you are likely interested in, I recommend you simply print the pages you want from the online version. I'd be happy to help you find what you are looking for if you have trouble finding it. Sorrel

>>> Jolene Horn <[joleneh@charter.net](mailto:joleneh@charter.net)> 7/29/2008 4:47 PM >>>  
 Hi Sorrel;

Thank you very much for getting back to me with answers to my questions. I do have one more question:  
 I know that the Regional Water Quality Control Board encompasses 6 counties. In what other cities or towns did you and Roger Briggs make a presentation like the one you made at the Empower Hour here in Atascadero?  
 Also, if you would be so kind to send me the hard copy of the Basin Plan I would greatly appreciate it. My address is:  
 Jolene Horn  
 3650 Falda Road  
 Atascadero, CA 93422

Thanks again, Sorrel.

JoleneAt 09:05 AM 7/22/2008, you wrote:

>Hi Jolene: Please see response to your questions below. If you  
 >have any further questions, please don't hesitate to email or call. Sorrel  
 >

> >>> Jolene Horn <[joleneh@charter.net](mailto:joleneh@charter.net)> 7/18/2008 6:27 PM >>>  
 >Hi Sorrel;

>I attended the Empower Hour this past Tuesday when you and Roger  
 >Briggs presented the Basin Plan and a bit of the Stormwater  
 >Management Plan. I came away a little confused and would like to ask  
 >a few questions, if you don't mind.

>1) Am I correct in assuming that the Regional Water Quality Control  
 >Board has already voted on and passed the Basin Plan?  
 >Response: The Regional Water Board voted on and approved an  
 >amendment to the Basin Plan. The amendment does not become part of  
 >the Basin Plan until it has been reviewed and approved by the State  
 >Water Board and State Office of Administrative Law. That  
 >review/approval process is expected to take approximately six months.  
 >

>2) May I obtain a copy of the Basin Plan?

>Response: I can send you hard copy if you like, otherwise it is  
 >available at the following

>link

><http://www.waterboards.ca.gov/centralcoast/BasinPlan/Index.htm#BasinPlanAmendment>

>(go to the very bottom of the page to find the Resolution and  
>Attachment A, the amended language).

>

>3) Is there a reason that I as a homeowner of Atascadero who lives on  
>a septic system was not advised ahead of time, before the vote, in  
>order to gather information and give input?

>Response: So few of the changes effect existing systems that it  
>didn't justify individual mailing to the hundreds of thousands of  
>onsite system owners throughout the Central Coast Region. As you  
>can see by amendment language (Attachment A at the link above) the  
>underlined portions are the changes, the remainder has been in  
>effect for at least 25 years, some of it more. General public  
>notice was provided in the newspaper and, in the case of Atascadero  
>residents, many saw/hear/read discussion of the topic at the City  
>Council meeting. Based upon the great many comment letters  
>received, participation in the public meeting, and newspaper  
>articles on the topic, it appears many members of the public were  
>aware of the issue. If you would like to get onto a mailing list  
>for this specific issue, I'd be happy to add you. If you would like  
>to be informed of a variety of Water Board issues and upcoming  
>actions, I encourage you to visit our website periodically at  
><http://www.waterboards.ca.gov/centralcoast/>

>

>4) Unfortunately, we ran out of time on Tuesday before I was able to  
>ask you to give the new, revised definition of "watercourse". What is  
>the current definition?

>Response: The underlined words were added and strike-out words  
>deleted "Watercourse - A natural or man-made artificial channel for  
>passage of water. A running stream of water. A natural stream fed  
>from permanent or natural sources, including rivers, creeks, runs,  
>and rivulets. There must be a stream, usually flowing in a  
>particular direction (though it need not flow continuously) usually  
>discharging into some stream or body of water." Changing  
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>

>5) We also ran out of time before you spoke about creek and waterway  
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>Response: There are not newly adopted regulations. We are working  
>with the City (and agencies throughout the Central Coast Region) to  
>develop community-wide stormwater management plans. These plans  
>have specific components, but are tailored to the needs and unique  
>conditions in each community. Essentially, we are working with the  
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>

>I appreciate your help with this, Sorrel. I think you and Roger gave  
>an excellent overview. However, an hour was not enough time to  
>address all of the questions.

>Thanks very much.

>Sincerely, Jolene

>Jolene Horn, REALTOR

>Academe GMAC Real Estate

>7905 El Camino Real

>Atascadero, CA 93422

>805.461.0888 Office

>805.461.9065 FAX

>888.289.2827 Toll Free

>805.440.2825 Cell

>[joleneh@charter.net](mailto:joleneh@charter.net) Email

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[joleneh@charter.net](mailto:joleneh@charter.net) Email

**From:** Sorrel Marks  
**To:** Jolene Horn  
**Date:** 7/22/2008 9:05 AM  
**Subject:** Re: Basin Plan

Hi Jolene: Please see response to your questions below. If you have any further questions, please don't hesitate to email or call. Sorrel

>>> Jolene Horn <joleneh@charter.net> 7/18/2008 6:27 PM >>>

Hi Sorrel;

I attended the Empower Hour this past Tuesday when you and Roger Briggs presented the Basin Plan and a bit of the Stormwater Management Plan. I came away a little confused and would like to ask a few questions, if you don't mind.

1) Am I correct in assuming that the Regional Water Quality Control Board has already voted on and passed the Basin Plan?

**Response:** The Regional Water Board voted on and approved an amendment to the Basin Plan. The amendment does not become part of the Basin Plan until it has been reviewed and approved by the State Water Board and State Office of Administrative Law. That review/approval process is expected to take approximately six months.

2) May I obtain a copy of the Basin Plan?

**Response:** I can send you hard copy if you like, otherwise it is available at the following link <http://www.waterboards.ca.gov/centralcoast/BasinPlan/Index.htm#BasinPlanAmendment> (go to the very bottom of the page to find the Resolution and Attachment A, the amended language).

3) Is there a reason that I as a homeowner of Atascadero who lives on a septic system was not advised ahead of time, before the vote, in order to gather information and give input?

**Response:** So few of the changes effect existing systems that it didn't justify individual mailing to the hundreds of thousands of onsite system owners throughout the Central Coast Region. As you can see by amendment language (Attachment A at the link above) the underlined portions are the changes, the remainder has been in effect for at least 25 years, some of it more. General public notice was provided in the newspaper and, in the case of Atascadero residents, many saw/hear/read discussion of the topic at the City Council meeting. Based upon the great many comment letters received, participation in the public meeting, and newspaper articles on the topic, it appears many members of the public were aware of the issue. If you would like to get onto a mailing list for this specific issue, I'd be happy to add you. If you would like to be informed of a variety of Water Board issues and upcoming actions, I encourage you to visit our website periodically at <http://www.waterboards.ca.gov/centralcoast/>

4) Unfortunately, we ran out of time on Tuesday before I was able to ask you to give the new, revised definition of "watercourse". What is the current definition?

**Response:** The underlined words were added and strike-out words deleted *"Watercourse - A natural or man-made artificial channel for passage of water. ~~A running stream of water. A natural stream fed from permanent or natural sources, including rivers, creeks, runs, and rivulets.~~ There must be a stream, usually flowing in a particular direction (though it need not flow continuously) usually discharging into some stream or body of water."* Changing artificial to man-made is the only addition and is admittedly trivial, but City of Atascadero staff thought it would improve clarity so we made that change. The deleted phrases added unneeded detail and in the interest of streamlining the entire section, were deleted. If you look at page 10 (item 17) of the Attachment A (amendment language) you will also find that the phrase *"where geologic conditions permit water migration"* is clarified to read *"where site conditions permit migration of wastewater to water"* and relocated to be applicable to each of the stated (unchanged) setbacks.

5) We also ran out of time before you spoke about creek and waterway setbacks. Can you tell me what those new regulations are?

**Response:** There are not newly adopted regulations. We are working with the City (and agencies throughout the Central Coast Region) to develop community-wide stormwater management plans. These plans have specific components, but are tailored to the needs and unique conditions in each community. Essentially, we are working with the City to follow through with its 2002 General Plan commitment to develop and implement a stormwater management plan consistent with federal regulations. More information regarding stormwater management is also available on our website. If you have specific questions regarding the City's stormwater plan, please contact Water Board staff, David Innis at 549-3150.

I appreciate your help with this, Sorrel. I think you and Roger gave an excellent overview. However, an hour was not enough time to address all of the questions.

Thanks very much.

Sincerely, Jolene

Jolene Horn, REALTOR

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# CITIZENS FOR CLEAN WATER

## PROHIBITION ZONE LEGAL DEFENSE FUND

dedicated to clean water, regulatory compliance  
and protection of property rights

CCW-PZLDF  
P.O. Box 6095  
Los Osos CA 93402

January 23, 2009

Central Coast RWQCB  
895 Aerovista Pl. Suite 101  
San Luis Obispo Ca. 93401

### **RE: Notice of Filing of a Draft Environmental Document**

### **To Consider Amending the Water Quality Control Plan Regarding Onsite Wastewater Treatment System Implementation Program**

Supplemental Comments to those submitted May, 2008:  
Waiver of Discharge Requirements for Onsite Wastewater System discharges resolution R3-2009-0012 (Previously Resolution No. R3-2008-0006) and is a continuance to the May 9, 2008 hearing.

Dear Chairman Young and Honorable Board Members:

Thank you for providing the opportunity to submit comments for the Amendment to the Water Quality Control Plan, (Basin Plan) Implementation of revised criteria for Onsite Wastewater Systems.

Citizens for Clean Water submitted 11 pages of questions and comments on April 7, 2008. On May 7, 2008 a written supplement was attached and presented with oral remarks at the hearing to address, in part, responses to the supplemental staff report for agenda items 9 and 10, as well as to question the criteria revisions and waiver. The Board continued item 10, and since provided a public workshop, some minimal noticing from the list of known "interested" property owners. CCW has not had the opportunity to review subsequent written testimony that staff received since May 2008, and reserves further comments for the hearing that may result from such a review.

Staff proposed new and revised regulations and requirements which the Board adopted, in part, on May 9, 2008. (awaiting approval by OAL) The resolution completes a basin plan

triennial review task from at least 1998. The revised onsite management plans are made mandatory, for local agencies to administer, to allow a consideration of waste discharge waivers for onsite systems. The resolutions and amendments make many aspects of the former Basin Plan local management plan "recommendations" mandatory.

CCW understanding is that one consequence of this action to the public is that the resolution requires all onsite systems to come under a local program, or will be required to obtain waste discharge permits (WDR) just as a large wastewater facility. Where onsite systems are found to be outside the basin plan criteria, but were permitted by the cities, or county permitting process, would enroll in a local program (if it is available) and be eligible for a waiver.

It is difficult to assess the full consequence of the changes to mandatory criteria, as the affects on existing properties is site specific. CCW noted in May 2008 comments that the unspecified impacts, level of interest, controversy, and concern justified a continuance to assure a well informed public process. CCW appreciates the staff's work to provide information and opportunity to respond.

#### Questions/Concerns:

1. Is there an implementation hierarchy and/or decision process diagram that describes the implementation process? Can you present this, and provide this to interested parties?
2. Is there a timeline or deadlines (implementation schedule) for local agencies to enter MOU's with the water board, and provide the property owners with enrollment into a approved local program?
3. If the local agency does not comply with the requirements for a local onsite management program, what recourse does the property owner have, other than the required costly WDR program?
4. The SWRCB AB885 hearing is scheduled for Feb 9, 2009. What changes to the basin plan are anticipated to comply with AB 885? What might be "more stringent requirements" that will have to be incorporated in an amendments to the Basin Plan?
5. Will the local programs site, system, and operational criteria, waiver implementation & exceptions, monitoring & permitting costs, local program maintenance criteria, and local program timeline change as a result of AB 885? How specifically?
6. Sorrel Marks stated "waivers are not proposed to be issued to existing systems" Is this true for those not enrolled in a local program?
7. What monitoring and permitting process will be used to regulate existing systems? What is the cost to the water board for the tracking system? Is this covered by the SWRCB permitting costs?
8. The earlier staff reported stated it will take months/years to implement, please provide a timeline of expected milestones that will track RWB program progress and provide alerts for property owners where local programs are absent, and not progressing.

9. Both EPA and SWRCB efforts supports mandatory onsite management programs, but existing data indicates systems are not causing widespread pollution, the costs to local agencies with higher priorities and projects, and limited funding may not be able to comply. How will enforcement actions be prioritized and determined? Can/will individual property owners be fined?
10. The proposed amendments use mandatory onsite management programs to shift the burden of non point source programs and water shed monitoring to local agencies with the costs passed on to onsite property owners. What are the anticipated TOTAL costs for those enrolled in programs (eligible for waivers) and to the property owners that are ineligible and require WDR's?
11. What percentage of owners DO NOT meets the onsite criteria, and must make major repairs, upgrades to advanced treatment systems, or system replacement. When and how when will they be informed? Will CDO's be Issued?
12. Is the permitting fee (\$560) cited in the staff report assessed on each property or just once to the local agency for all the systems enrolled in the local program?
13. Funding constraints is stated as the major reason for inaction by local agencies in staff reports from EPA, SWRCB and RWQCB. Creating new and increased fees and taxes to fund programs by property owners may require approval. (218 approval) Has this requirement been determined?
14. The role of the water board is to provide assistance to local agencies and private property owners within the water code. What funding and assistance is available, (grants and low interest loans programs) and what new program for assisting onsite owners and communities is planned?

The following represents a few questions submitted this week. Staff answers are bolded. CCW further inquiry for response is in italics:

15. What triggers WDR's permits and monitoring programs for existing onsite system? **(Staff: See State Water Code sections described in Staff Report.)** *Please explain the process of permitting, granting exemption, and how waivers differ from exemptions in layman's terms. Provide the water code citation and a link to aid public communication. CCW is a citizens group.*
16. Will the recently adopted SLO County program cover LAFCO organizations? **(Staff: Please contact SLO County for questions regarding its program)** *The Co. program is approved by the regional water board. Surely there is an answer you can provide without the public having to research and investigate.*
17. How will owners that aren't granted waivers (and require) WDR's be implemented? **(Staff: Individual Waste Discharge Requirements are the only currently available mechanism to authorize discharge without the waiver.)** *Does this mean the WDR will be issued to each onsite not enrolled in the local program by RWB staff? Has the RWB estimate budget--cost and workload?*
18. What is the cost to the homeowner? **(Staff: Annual fees for WDR set by State Board as described in Staff Report, currently \$560, plus any cost related to application for WDR, and monitoring)** *Is the \$560 fee for a permit for five years, or less? Has the monitoring schedule been developed for constituents, sampling points and frequency? Please provide this information for a typical OSWTS with a WDR.*

19. What triggers existing systems for upgrades to advanced treatment? **(Staff: Failure of system, evidence of water quality impacts.)** *Failure of systems aside, is the monitoring results based on impacts community-wide or on individual property that trigger individual upgrades? How are these upgrades funded?*
20. What happens to existing lots with OSWTS that are under (less than) 1 acre, and are permitted and operating properly? **(Staff: Nothing proposed in this implementation program except that they would be authorized under the Waiver if the area has an approved onsite management plan. Assuming your term "permitted" refers to County permit rather than Water Board permit.)** *Further issues are raised in No.24 below.*
21. How will the proposed "discharge prohibition zones" noted in the triennial review priority list be determined, where are they anticipated, and how will you notice property owners, and how will enforcement be applied? (not clear from current or proposed SWRCB enforcement policy) **(Staff: This question does not appear to relate to the onsite implementation policy. Please contact staff working directly with the triennial review.)** *The development of 'discharge prohibition zones' in at least 13 other areas is discussed in reports and other RWB planning documents. It is reasonable to have the public aware of information on the areas where the RWB believes that impairment exists, or may exist, as these areas will not be eligible for waivers, and require costly upgrades, or community treatment plants. Please provide this information and it concerns implementation of waivers.*
22. Please post for the public the approximate cost for typical local program, the individual enrollment cost ranges, and the unfunded mandate costs for the newly required programs to local agencies. Are the assumed impacts the same as those listed in AB 885? **(Staff: Costs are addressed in the staff report, \$560 enrollment fee.)** *I understand surveys have been conducted, and the annual budget information is available. This information would be very helpful to other local agencies, public taxpayers, and the water board members.*
23. . Post the typical cost for advanced systems---are these required for all new systems consistent with AB 885 or are the R3 more stringent? (R3 staff once quoted as \$40-60K)? **(Staff: This does not directly relate to the proposed implementation program. However, cost of alternative treatment systems is addressed in the staff report for the May 9, 2008, update of criteria; draft EIR for AB 885 regulations; and study performed by UC Davis under contract to the State Water Board. Advanced treatment systems are not required for all new systems by proposed State Water Board regulations or Regional Water Board criteria for onsite systems. See report on alternative systems at [http://www.waterboards.ca.gov/water\\_issues/programs/septic\\_tanks/techonsite/index\\_introduction.pdf](http://www.waterboards.ca.gov/water_issues/programs/septic_tanks/techonsite/index_introduction.pdf) .....found the partial report, but costs not included.**
24. Discuss and evaluate the impacts on the prohibition of second unit(granny suite split) on less than the proscribed 2 acres----This conflicts with existing OSWTS, the policies, and land planning authority in several counties, and where no community system is available, how will the property owner come into

compliance? **(Staff: The implementation program does not change the minimum lot size criteria.)**

- a. *CCW sent follow up question: .....the issue of granny units. These have been allowed on the same 1 acre lot as the main housing structure. These are existing onsite systems where the minimum lot size in the criteria now requires 2 acres for the (added and approved) bed & bath unit. How will these properties that are violation of the Basin Plan be handled? Similarly, the lots outside the Los Osos PZ are under 1 acre through out Cabrillo Estates. How will these be handled? (Staff: One acre has been the minimum lot size for onsite systems over 25 years. The updated language clarifies the existing policy and provides for exception where the local agency implements an onsite management plan. More specifically in your community, this means that inside the prohibition area it is a moot point since onsite systems are not allowed. Outside the prohibition area, variance from the one-acre minimum would need to be supported by a locally-implemented onsite management plan, which would undoubtedly include sewerage most of the developed area (the prohibition zone). Sorrel) The question is really about how the basin plan will be enforced in situations that violate the criteria for lot size, (once they are identified) and how they will be rectified. This goes to where prohibition zones might be established, CDO's and other enforcement tools, and the full consequences for the implementation process need to be discussed publically.*
25. Will the R3 WB request new program federal funding, or reevaluate the timing for this additional financial burden to individuals and agencies within the current economic climate? **(Staff: Unknown)** *Local programs require staff, equipment and ordinances to implement and to enforce this NOW mandated program. The public should be aware of the costs, expectations & process you anticipate for implementation, including enforcement against property owners.*

The basin plan amendments affect over 100,000 systems operated by individual property owners. The RWB has complied and published public notices, but the public is largely unaware of the process to protect their interests at this level. The water board regulatory enforcement powers are delegated to local jurisdictions through MOU's. While local agencies are not required to provide public information and town hall meetings to inform their public of the water board regulatory process, the public remains largely unaware of the consequences of the actions the water board is taking until the local agency presents the mandated program to the taxpayers. Unfortunately, it isn't until the local expenditures hit the owner/taxpayers wallet that they respond. However, the property owner/taxpayer will have no recourse to affect the regulations at this point, and threats of enforcement or fines assures a compliant citizen. The onsite property owner is clearly missing from knowledge about their role in the regulatory approval process and has no voice.

This stifling of the public, taxpayer, and property owners' access to effective public

participation serves neither the interests of your agency or the 'People of the State'. The practice in place may be legal, but is unwise and erodes the public trust.

CCW does appreciate that the Board continued the waiver resolution, noticed the draft environmental document and is proceeding in a more thoughtful and deliberative approach in adopting the waiver. Public information and discussion of the possible outcomes that will affect the public is also appreciated. I look forward to reviewing the public documents from other agencies, and the public concerns prior to the March 20 hearing.

I request that you attach prior CCW correspondence related to the May 9 2008 hearing (agenda item 9&10) in the board packet as part of the record on this matter.

Sincerely,

Gail McPherson  
Citizens for Clean Water

**From:** "Gail McPherson" <mcp@charter.net>  
**To:** "smarks" <smarks@rb3.swrcb.ca.gov>, "smarks" <smarks@waterboards.ca.gov>...  
**CC:** <CJones@waterboards.ca.gov>  
**Date:** 1/22/2009 1:55 PM  
**Subject:** Basin plan onsite implementation comments due Jan 23-----

Ms. Marks:

This is what I found on the site: Resolution No. R3-2008-0005 | Attachment A | Attachment B | Attachment C | Attachment D  
[http://www.waterboards.ca.gov/centralcoast/public\\_notices/announcements/docs/onsite\\_wastewater\\_system\\_implementation.pdf](http://www.waterboards.ca.gov/centralcoast/public_notices/announcements/docs/onsite_wastewater_system_implementation.pdf)

This issues within Resolution No. R3-2008-006 was handled separately from the onsite amendment adopted May 9, 2008 (agenda item 9) and forwarded to SWRCB and Office of Administrative Law for Final Adoption, June 2008.

The reports and documents on Item 10 are more difficult to locate. The notice and staff report provides no links to the many documents that make up the public process to date. Your report states "Comments will only be accepted on the revisions to the amendment to the criteria adopted on May 9, 2008, and on the proposed Implementation Program. But there are no links to review the program, criteria or amendments. Searching, I was able to bring some information together from you site, but for the most part I have to rely on my own files of documents I collected from past meetings. Other "interested parties" have noted that this is a problem for them as well in preparing meaningful responses to what was in May 2008 listed as agenda item 10, which was deferred until now.

I hope you will accept this request for the Central Coast to post all related documents and public comments from 2008 and 2009 process in one place, and send interested parties links to the relevant docs, just as the SWRCB site does for public participation for proposed statewide regulations.

I also noted: the implementation plan criteria and waivers must have comments in by Jan 23. send to: [CJones@waterboards.ca.gov](mailto:CJones@waterboards.ca.gov) <[CJones@waterboards.ca.gov](mailto:CJones@waterboards.ca.gov)> f this is not correct and you require the comments sent to you please notify me.

Some questions:

1. Will waivers be issued to existing onsite system during a specified period while the local agency develops an acceptable onsite management program in place?
2. What triggers WDR's permits and monitoring programs for existing onsite system? Will the recently adopted SLO Co. program cover LAFCO organizations?
3. How will owners that aren't granted waivers WDR's be implemented? At what cost to the homeowner?
4. What triggers existing systems for upgrades to advanced treatment?
5. What happens to existing lots with OWTS that are under 1 acre, that are permitted and operating properly?
6. How will the proposed "discharge prohibition zones" noted in the triennial review priority list be determined, where are they anticipated, and how will you notice property owners, and how will enforcement be applied? (not clear from current or proposed SWRCB enforcement policy)
7. Please post for the public the approximate cost for typical local program enrollment cost ranges, and the unfunded mandate costs for the newly required programs to local agencies. Are the assumed impacts the same as those listed in AB 885?
8. Post the typical cost for advanced systems---are these required for all new systems consistent with AB 885 or are the R3 more stringent? (R3 staff once quoted as \$40-60K) ?
9. Discuss and evaluate the impacts on the prohibition of second unit (granny suite split) on less than the proscribed 2 acres----This conflicts with existing OWTS, the policies, and land planning authority in several counties, and where no community system is available, how will the property owner come into complainance?

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Some questions:

1. Will waivers be issued to existing onsite system during a specified period while the local agency develops an acceptable onsite management program in place?

**No, waivers are not proposed to be issued to existing systems.**

2. What triggers WDR's permits and monitoring programs for existing onsite system? **See State Water Code sections described in Staff Report.** Will the recently adopted SLO Co. program cover LAFCO organizations? **Please contact SLO County for questions regarding its program.**

3. How will owners that aren't granted waivers WDR's be implemented? **Individual Waste Discharge Requirements are the only currently available mechanism to authorize discharge without the waiver.** At what cost to the homeowner **Annual fees for WDR set by State Board as described in Staff Report, currently \$560, plus any cost related to application for WDR, and monitoring.**

4. What triggers existing systems for upgrades to advanced treatment? **Failure of system, evidence of water quality impacts.**

5. What happens to existing lots with OWTS that are under 1 acre, that are permitted and operating properly? **Nothing proposed in this implementation program except that they would be authorized under the Waiver if the area has an approved onsite management plan. Assuming your term "permitted" refers to County permit rather than Water Board permit.**

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7. Please post for the public the approximate cost for typical local program enrollment cost ranges, and the unfunded mandate costs for the newly required programs to local agencies. Are the assumed impacts the same as those listed in AB 885? **Costs are addressed in the staff report, \$560 enrollment fee.**

8. Post the typical cost for advanced systems---are these required for all new systems consistent with AB 885 or are the R3 more stringent? (R3 staff once quoted as \$40-60K) ? **This does not directly relate to the proposed implementation program. However, cost of alternative treatment systems is addressed in the staff report for the May 9, 2008, update of criteria; draft EIR for AB 885 regulations; and study performed by UC Davis under contract to the State Water Board. Advanced treatment systems are not required for all new systems by proposed State Water Board regulations or Regional Water Board criteria for onsite systems. See report on alternative systems at [http://www.waterboards.ca.gov/water\\_issues/programs/septic\\_tanks/techonsite/index\\_introduction.pdf](http://www.waterboards.ca.gov/water_issues/programs/septic_tanks/techonsite/index_introduction.pdf)**

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10. Will the R3 WB request new program federal funding, or reevaluate the timing for this additional financial burden to individuals and agencies within the current economic climate? **Unknown.**

Please include this email in the submitted comments. However, I anticipate submittal of a more detailed comment letter, and provision of public testimony at the hearing in March. **Will do.**

Thank-you,

Gail McPherson & Citizens for Clean Water

**From:** Sorrel Marks  
**To:** Gail McPherson  
**CC:** Burton Chadwick  
**Date:** 1/22/2009 3:32 PM  
**Subject:** Re: Basin plan onsite implementation comments due Jan 23-----

Ms. McPherson: The documents available for public comment (proposed onsite implementation program) are at the link I just sent you, under announcements on our opening web page [http://www.waterboards.ca.gov/centralcoast/public\\_notices/announcements/docs/onsite\\_wastewater\\_system\\_implementation.pdf](http://www.waterboards.ca.gov/centralcoast/public_notices/announcements/docs/onsite_wastewater_system_implementation.pdf)

If you would like to review the materials from May 9, 2008, you can go to those linked to the Meeting Agenda Items 9 and 10 at the following link [http://www.waterboards.ca.gov/centralcoast/board\\_info/agendas/2008/may/05\\_08\\_agenda.shtml](http://www.waterboards.ca.gov/centralcoast/board_info/agendas/2008/may/05_08_agenda.shtml)  
Public comments are included with those documents.

If you would like to review the final resolution updating the criteria adopted on May 9, 2008, that is linked at the bottom of the "Basin Plan" page under "Draft Basin Plan Amendments" at the following link [http://www.waterboards.ca.gov/centralcoast/publications\\_forms/publications/basin\\_plan/index.shtml](http://www.waterboards.ca.gov/centralcoast/publications_forms/publications/basin_plan/index.shtml)

As stated in the public notice for the onsite implementation program, comments should be directed to me, but if you need assistance with special accommodations, please contact Cyndee Jones. Is it possible you are referencing something other than the public notice? I am not finding any reference to sending comments to Cyndee. However, if she does receive any, she will forward them to me. If you continue to have trouble locating these documents, please call and I will be happy to assist you further. Please also see responses to your questions below.

Sincerely, Sorrel 549-3695

>>> "Gail McPherson" <[mcp@charter.net](mailto:mcp@charter.net)> 1/22/2009 1:55 PM >>>

Ms. Marks:

This is what I found on the site: Resolution No. R3-2008-0005 | Attachment A | Attachment B | Attachment C | Attachment D  
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This issues within Resolution No. R3-2008-006 was handled separately from the onsite amendment adopted May 9, 2008 (agenda item 9) and forwarded to SWRCB and Office of Administrative Law for Final Adoption, June 2008.

The reports and documents on Item 10 are more difficult to locate. The notice and staff report provides no links to the many documents that make up the public process to date. Your report states "Comments will only be accepted on the revisions to the amendment to the criteria adopted on May 9, 2008, and on the proposed Implementation Program. But there are no links to review the program, criteria or amendments. Searching, I was able to bring some information together from you site, but for the most part I have to rely on my own files of documents I collected from past meetings. Other "interested parties" have noted that this is a problem for them as well in preparing meaningful responses to what was in May 2008 listed as agenda item 10, which was deferred until now.

I hope you will accept this request for the Central Coast to post all related documents and public

10. Will the R3 WB request new program federal funding, or reevaluate the timing for this additional financial burden to individuals and agencies within the current economic climate?

Please include this email in the submitted comments. However, I anticipate submittal of a more detailed comment letter, and provision of public testimony at the hearing in March.

Thank-you,

Gail McPherson & Citizens for Clean Water

# CITIZENS FOR CLEAN WATER

## PROHIBITION ZONE LEGAL DEFENSE FUND

DEDICATED TO CLEAN WATER, REGULATORY COMPLIANCE  
AND PROTECTION OF PROPERTY RIGHTS

CCW-PZLDF  
PO BOX 6095  
LOS OSOS CA 9341

April 7, 2008

CCRWQCB  
895 Aerovista Pl. Suite 101  
San Luis Obispo, Ca 93401

**RE: General Comments CCRWQCB–Basin Plan Triennial Review Projects;**  
Amending the Water Quality Control Plan; Revising the Onsite Wastewater System Criteria-  
Basin Plan Chapters 4 and 5 (onsite sections only); and the Rescission of Resolution R3-83-12.

Dear Chairman Young and Honorable Board Members:

*Citizens for Clean Water* is a watershed wide group of concerned professionals and private citizens. We are submitting these written comments, and respectively requesting detailed information and documents, and well as written responses and copies of other comments and questions. We are also requesting your staff's list of all system regulators and interested parties along with their contact information. Please also provide all documents related to the amendment process, the scoping meetings, and discussions in addition to other requests within this document.

The line by line analysis of the changes to the Basin Plan is not complete at this time. However, we plan to submit additional written testimony prior to, and at the May 9, 2008 hearing.

**Lack of Notice:** The Public and Stakeholder Process have been inadequate. Although *Citizens for Clean Water* generally supports update the Basin Plan for onsite treatments systems, the Central Coast Regional Water Quality Control Board must comply with all public process requirements, and is not allowed to deprive the citizens of information and review, and thereby abuse its regulatory powers.

**Affected Parties are the Property Owners:** Even if the minimum legal requirements are met, the lack of notification to the actual property owners affected by the Regional Board's proposed regulations denies the public the opportunity to challenge the RWQCB actions. The Public Notice provided by staff was only to a very select group of agencies and groups that are no more than delegated "third parties" to administer the private onsite system requirements. *Citizens for Clean Water* is on the list for notices, yet received none. Other individuals under the proposed amendment will not be eligible for waivers, and are directly affected, yet were not noticed.

**Lack of Adequate Time for Written Response:** The actual affected parties on private property that inadvertently learned of the RWQCB actions are now faced with the lack of adequate time to respond, inadequate specificity in reports and resolutions, an absence of defined outcomes, no cost analysis, vague language throughout, and possibly very onerous consequences that require critical information and a legitimate public process for participation.

**Staff Says it needs to Eliminate Vague Language:** There have been global complaints of abbreviated staff reports that are presented without proper references or links to important information or statutes. Many statements appear to be the opinions of staff and the use of "fuzzy" explanations and assertions abound without being anchored in facts. Just one example of the lack of definitions and vague statements can be seen in the Staff report statement justifying the need for the Triennial Review 'project'. Staff states the number of onsite systems "exceed 100,000" and the number that is designed properly and performing adequately as "many". The public should know if the RWQCB staff has this information and, if so, the RWQCB should supply it to the public.

- What is the accurate number of septic systems the RWQCB is seeking to regulate?
- What is the accurate number of systems that are failing?
- What are the affected water bodies, and the onsite systems responsible?
- What is the accurate number of wells and their locations that are impacted by pathogens from onsite sources?

(Other detailed comments and questions concerning vague language are in Attachment A that reviews the individual staff documents and amendments to be submitted.)

**Pending Litigation:** *Citizens for Clean Water* formally objects to the proposed amended Basin Plan in that it seeks to strengthen enforcement powers in order to apply the enforcement tactics against individual property owners throughout the region that were used against Los Osos homeowners. These actions are currently being challenged in Superior Court (*CV 070472 Citizens for Clean Water-PZLDF vs. Central Coast Regional Water Quality Control Board*)

**Expanded Authority without Oversight or Accountability:** The regional water board seeks to expand its discretionary power in every resolution. While making claims that the current WQCP is confusing because it is left open for conflicting interpretations, the language remains unclear, and the consequences undefined. The attitude that it can be "figured out later" is unacceptable and contradicts the stated intent and justification given for the hasty update. The likelihood that RWQCB revisions to onsite will be especially onerous to individual property owners throughout the entire region requires facts and specificity.

**Ca Water Code 13263** does not mention 'onsite' or authorize regulation of waste discharge "including discharges from Onsite systems" as stated in the RWQCB staff report. *Citizens for Clean Water* do not deny that the RWQCB has such authority, but that this code is misquoted.

Ca Water Code 13263. (a) The regional board, after any necessary hearing, shall prescribe requirements as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge, except discharges into a community sewer system, with relation to the conditions existing in the disposal area or receiving waters upon, or into which, the discharge is made or proposed. The requirements shall implement any relevant water quality control plans that have been adopted, and shall take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of **Section 13241**. (See below)

(b) A regional board, in prescribing requirements, need not authorize the utilization of the full waste assimilation capacities of the receiving waters.

(c) The requirements may contain a time schedule, subject to revision in the discretion of the board.

(d) The regional board may prescribe requirements although no discharge report has been filed.

(e) Upon application by any affected person, or on its own motion, the regional board may review and revise requirements. All requirements shall be reviewed periodically.

(f) The regional board shall notify in writing the person making

or proposing the discharge or the change therein of the discharge requirements to be met. After receipt of the notice, the person so notified shall provide adequate means to meet the requirements.

(g) No discharge of waste into the waters of the state, whether or not the discharge is made pursuant to waste discharge requirements, shall create a vested right to continue the discharge. All discharges of waste into waters of the state are privileges, not rights.

(h) The regional board may incorporate the requirements prescribed pursuant to this section into a master recycling permit for either a supplier or distributor, or both, of recycled water.

(i) The state board or a regional board may prescribe general waste discharge requirements for a category of discharges if the state board or that regional board finds or determines that all of the following criteria apply to the discharges in that category:

(1) The discharges are produced by the same or similar operations.

(2) The discharges involve the same or similar types of waste.

(3) The discharges require the same or similar treatment standards.

(4) The discharges are more appropriately regulated under general discharge requirements than individual discharge requirements.

(j) The state board, after any necessary hearing, may prescribe waste discharge requirements in accordance with this section.

The reference in Ca Water Code 13263 indicates that "reasonable protection of beneficial uses" and factors to be considered.

**Ca Water Code 13241.** Each regional board shall establish such water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance; however, it is recognized that it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses. Factors to be considered by a regional board in establishing water quality objectives shall include, but not necessarily be limited to, all of the following:

**(a) Past, present, and probable future beneficial uses of water.**

**(b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto.**

**(c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.**

**(d) Economic considerations.**

**(e) The need for developing housing within the region.**

**(f) The need to develop and use recycled water.**

**Exceed Water Code Authority and Affects Land Planning:** The entire multi-county region will find the proposed amendments will provide the regional water board's with powers to act as the final authority on land planning. There are many unintended consequences, including incentives for high growth and unsustainable development in rural areas, and discouragement for affordable housing. In areas that contain the best soils, or valuable riparian zones, development may be incentivized. Further, urbanization, and growth for high end housing through energy intensive centralized treatment is promoted.

- What is the justification for requiring a 5 unit parcel development that now will be required to have a community system with permits, monitoring, and reporting burdens?
- Explain why granny units are no longer allowed without adding another acre to the property footprint for onsite?

- How will this affect the affordable housing stock and future of housing in the 4 counties affected by the WQCP?

Note the Water Code referenced below:

***Ca Water Code 13291.7. Nothing in this chapter shall be construed to limit the land use authority of any city, county, or city and county.***

**Economic Disparity for Affected Communities:** How will the amendments specifically affect the targeted communities of San Martin, San Lorenzo Valley, Carmel Valley, Carmel Highlands, Prunedale, El Toro, Shandon, Templeton, Santa Margarita, Garden Farms, Los Osos, Baywood Park, Arroyo Grande, Nipomo, Upper Santa Ynez Valley, Los Olivos and Ballard? Certainly property owners in targeted communities should have been noticed with an analysis of the costs, benefits and consequences provided to them.

**Anti-Property Rights:**

The line between private onsite systems as private property, and the public nature of community programs that manage onsite treatment system is blurred. Access to private property and regulation of private treatment systems, with resultant enforcement that can lead to possible criminal liability is unacceptable. The retroactive liability for past pollution levels in adjacent water is incompatible with private property laws. OAL review is needed.

**Forecloses on Environmentally Sound Green Solutions:**

The amendments add unacceptable liability for properties with onsite treatment systems, and discourage such energy efficient wastewater systems. These systems are compatible with SB 32 goals for greenhouse gas (GHG), emissions, yet the amendments ignore the importance of low or zero carbon footprint treatment systems, such as onsite systems, that are compatible and supportive of EPA guidance for GHG. The full range of environmental impacts created by the amendments needs to be studied, evaluated, and disclosed.

**Amendment Process Violates CEQA:** The Triennial review and amendments and resolutions represents a project which requires CEQA. RWQCB Staff indicated they are exempt, but, the proposed language changes and resolutions are NOT minor, and the consequences lack scrutiny. The staff reports indicate that staff held a scoping meeting with county representatives pursuant to CEQA.

- Provide the scoping report
- Provide the list of county representatives with whom you met
- Provide documents and notes from the meetings with county representatives

The staff has provided no cost/benefit information or analysis. The environmental review process consists of denying that they have a duty under CEQA to provide information and yet a environmental checklist is included. Staff states that no scientific findings are required, and cavalierly note that enough already has been done and the impacts are minimal.

(A separate response to the checklist will be submitted)

**Affordability and Environmental Justice:** SWRCB requirements to review affordability and environmental justice are completely ignored. Further, the uncertainty about the financial effects of the proposed amended WQCP to private property as the private systems are subject to a new quasi-public ownership- are not addressed. The issues "inverse condemnation" or "regulatory takings" of private property that may result are not addressed either.

- What assurance can a property owner have in the value or future value of their property, when the onsite system is granted a waiver, only to be later required to have a WDR permit--(all waivers are conditional and no guarantee they will continue)
- How has the RWQCB handled the statutory requirement to evaluate the economic disparity for areas with waivers vs. those with WDR's or Urban vs. Rural economic impacts?

- If the water boards discretionary findings later require a property owner to hook up to a community system, yet one is not available, what are the anticipated outcome, costs, and enforcement issues?

**Unfunded Mandates:** Proposed Amendment to WQCP institutes mandatory compliance programs that represent an unfunded mandates on already strapped government agencies for yet another costly local program. The proposed resolution violates Article XIII B of the California Constitution which requires that "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government; the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service". The proposed resolution is unconstitutional as it mandates a higher level of services, regulation, monitoring and enforcement of septic maintenance without providing any funds to implement same. (see costs and funding questions raised elsewhere)

**There is Insufficient Evidence That the Amendment is needed(as written):** Until questions can be answered and statutory requirements met, the adoption hearing is premature. Among these are questions are those raised by the National Onsite Wastewater Association posted on the California Onsite Wastewater association white paper on statewide standards (AB 885)

Please respond to each of them in detail in written responses.

- What is the desired level of risk reduction?
- What are other contributors to the problem?
- What part of the problem is attributable to onsite systems?
- Will the contemplated rules achieve the objective?
- Will the surface and subsurface waters meet the standard of beneficial use after implementation?
- Will the public and private cost be reasonable and politically sustainable? (Costs include money, time and citizen's ability to use their land.)
- Will the regulatory community be able to implement the provisions reasonably - equitably, technically and politically?
- Will the agencies have sufficient resources?
- Will the onsite service provider community be able to implement the rules – sufficient trained personnel with the tools and treatment components necessary to do the job?
- To what extent, if any, do the rules represent a mixed motive, such as rural land use control?

**Resulting Fees and Charges are Undefined and Unapproved:** The amendments fail to address the requirements of proposition 218, as local agencies will be required to fund onsite programs. The justification by local agencies requires analysis of the services, the cost/benefits or anticipated outcomes, and must be sufficient for such voter approvals. To fail to supply any information it can be assumed the amendments place an unfair burden on the property owners and local agencies without adequate justification for the changes.

**Water Quality Benefits are Unknown:** There is no reason to anticipate that this amendment will result in any water quality protection or improvements of any kind. There is no scientific data; no studies are referenced, no independent expert review of the amendment, no stakeholder's development process, and no peer review. The costly revisions are simply unfounded and nothing indicates such changes will better protect or improve water quality in any way.

**Assumptions must be backed by Science:** The Central Coast is largely rural, and onsite impacts and the contribution to pollution by failing Onsite wastewater *treatment* systems is not quantified in any real defensible scientific studies by the RWQCB. The State Water Resources Control Board (SWRCB) and EPA both state that "Technically sound regulatory policy is based on assumptions supported by science"

**Onsite represents but a Fraction of the Non Point Source Pollution: Citizens for Clean Water** believes that greater control of non-point source pollution is long overdue. The control of

point source pollution is well established; however, the continued examples of harmful pollutant loadings from preventable sanitary sewer overflows, storm water contaminants, and agricultural runoff pose the greatest threat. These sources comprise the majority of contamination to the ground water, streams, beaches and bay, is clearly unacceptable. The status of the 303 (d) listing of water bodies is directly impacted by the continued uncontrolled pollution from these non-point sources, and the proposed changes ignore the relationship to onsite waivers and impacts to private properties for pollution from sources other than onsite systems.

**Waivers Denied ---Impaired Water Bodies:** Amended language and new resolutions do not allow waivers if property is proximate to impaired water bodies, (303 (d)) and require burdensome requirements for private properties. The basis for impairment is NOT (in most all cases) due to onsite treatment systems, but from historically major pollutant sources such as sanitary sewer overflows, storm water and agricultural runoff. The retroactive burden to owners of private property with onsite systems (that did not contribute to the historic impairment of the water body) is inconsistent with the law.

**Failure in Non-Point Pollution Programs:** The RWQCB lack of meeting their program goals for non-point source control and the improvement goals in water quality, now places the burden on private properties with onsite treatment systems. As stated these systems are proportionally insignificant in most areas. Information on each affected property and demonstration that the proposed actions will protect and improve such water bodies needs to be demonstrated. Ignoring pollutant loadings from other sources, while failing to estimate loads from onsite systems, actually places the cart ahead of the water shed horse. Onsite pollution represents but a fraction of the water shed pollution, and it is well known that Water Quality programs designed to protect precious drinking water supplies are compromised. These programs abandoned onsite, and now in historically sewered communities, such as Morro Bay, have Nitrates that are not from onsite systems at all. In Morro Bay, and elsewhere, such nitrate contamination is common, and has actually increased and renders their drinking water wells unfit.

**Provide the Proportion of Pollutants from all Sources:** The basis for the added expense of RWQCB amendments is said to achieve water quality, however the majority of pollution (well established based on scientific information) is from sources other than onsite septic systems. While the onsite treatment systems need to be addressed, the first step is to properly quantify the extent of the problem to be solved. Onsite treatment systems should have some program for monitoring and reporting performance after construction, however the cost and benefits in placing a huge bureaucratic program in place without any foundation for scientifically defensible process to assure (measurable) beneficial outcomes is specious.

The staff report by the Water Board is silent on the proportional contaminates from onsite systems, and the loadings from other sources, however staff has stated they believe programs concerning onsite systems has been ineffective based on faulty interpretation. It is well established that funding for local programs is the chief constraint. The delegated tasks through various County Memorandums of Understanding (MOU's) building permit criteria, building moratoriums, and planning departments' criteria for onsite have actually worked quite well at assuring minimum standards for onsite systems. The RWQCB has SWRCB's statewide minimum standards and consistency under AB 885, however the RWQCB has moved swiftly to amend, revise and replace its onsite rules. Concern that the lack of proportional pollutant findings presents undue hardship placed on onsite treatment discharges and needs to be addressed in a public forum.

The effectiveness of implementing programs to control non-point pollution must be quantified and resources expended proportionally. The obvious budget issues and "water quality" urgency requires selection of programs that provide "more bang for the buck". If it is really about water quality the need to step up the Storm water and agricultural runoff pollution prevention programs promise to have the greatest impacts on protection and improvement to water quality in streams and beaches.

- Please provide a list of non-point source programs
- Provide status on non-point programs and enforcement actions

- Provide the proportional pollution for each source of non-point pollution, and the specific watershed areas affected, and the specific relationship to onsite impacts.
- Provide models of nonpoint source water shed loadings from all sources
- What are the anticipated reduction in the loadings from onsite to impaired water bodies?

**Conditional Waivers and Inherent Uncertainty:** *Citizens for Clean Water* agrees that reviewing established minimum standards for onsite systems is an important part of proper watershed management. According to the *Onsite Treatment in California and Progression Toward Statewide Standards*, (Cal State Chico Research Center, June 2004), provides a history of the water boards local approach to onsite systems. "Generally, the regional boards delegate direct regulatory authority for individual onsite sewage treatment systems to local agencies. Delegation is through a waiver process, which waives the requirement for WDRs for onsite systems."

- How do the proposed resolutions and amendments to the basin plan, which change the current status to "mandatory programs" affect delegation through waivers? ①
- What is the exact number of onsite systems, zones or areas that will not be eligible for waivers? (such as any property with onsite systems adjacent to a 303(d) listed water body) ②
- What permit fees and charges will the local agency pay to the RWQCB for their program review and approvals? ③
- What is the risk for fines, enforcement, establishment of prohibition zones, and added cost to homeowners for WDR and monitoring under the proposed changes? ④
- When is the property owner to learn of the status of their property and costs associated with the amendments?
- Why hasn't an EIR for your triennial project been prepared?
- How does the WQCP (Basin Plan) amendments and resolutions differ or deviate from Waivers within AB 885-the statewide plan? ⑤

**Triennial Review Process:** The Staff report references Water Quality Control Plan, Triennial Review backlogged projects the basis for the current urgency and action now. A review of the Central Coast Regional Water Quality Control Board's (RWQCB) Water Quality Control Plan, Triennial Review Priority List, Dec. 7, 2001, and attachment "A" proposed and final issues lists indicated the proposed "projects" to update the WQCP (basin plan) and is dependent on the **AB 885** process by the SWRCB. The RWQCB reports defer efforts, request funding, and state that the RWQCB is dependent on the State timetable for AB 885 Onsite standards.

**Compare WQCP with AB 885:** *Citizens for Clean Water* objects to the RWQCB preemptive revisions without a side by side comparison, for the public to view, of the proposed statewide standards established by AB 885. With the efforts by the SWRCB well underway, consistency and analysis is a key concern, and an EIR process required to provide guidance for local agencies, such as the RWQCB, and information for the public.

**How does Water Code 13291 (a) differs from (AB 885)?** And which is being used in formulating the amendments and triennial review process? AB 885 requires: The adoption of statewide standards or regulations for existing, construction, and performance of onsite sewage disposal systems by the State Water Resources Control Board by January 1, 2004. The standards to apply to any onsite sewage disposal system that:

- is constructed or replaced on or after July 1, 2004 (or six months after the adoption date of the regulations, whichever is sooner)
- is subject to a major repair
- pools or discharges to the surface of the ground
- in the judgment of the Regional Water Quality Control Board or the authorized agency has the reasonable potential to cause a violation of water quality objectives, to impair present or future beneficial uses of water, to cause pollution, nuisance, or contamination of waters of the state.

- The provision of financial assistance to assist private property owners with existing systems whose cost of compliance with these regulations exceeds one-half of one percent of the value of their property.

**Amendments are Fiscally Irresponsible:** To promulgate regulatory requirements, and consequences, without full knowledge of what, why, and how they will be implemented has high likelihood of wasting taxpayer monies, and fails to hold public agencies, such as the RWQCB accountable. A stepped approach to revisions preserves resources and targets the problems, and provides measurable results.

- What is the estimated cost for program compliance?
- How many of the affected property owners will be eligible for financial assistance?
- Will the RWQCB make financial assistance available through requests to the SWRCB?
- Is funding currently available for this purpose?
- How much funding is available for assistance?
- How much funding is the RWQCBN receiving for development of onsite standards in region 3?

**Evaluate and Disclose Property Owners Costs NOW:** Quoting from the AB 885 scoping report: *“Compliance costs versus the environmental benefit should be evaluated; a cost/benefit analysis is needed on a regional basis, not just from a statewide perspective”.*

- The regulations do not address the legislative intent of AB 885 with respect to assisting private property owners with funding assistance.
- Quantify the increased costs for homeowners
- Quantify the increased costs for agencies
- The 303(d) provisions will force people with existing systems from their homes. In many cases there is no suitable area to install systems that meet the dispersal system area requirements, even with supplemental treatment (e.g., Malibu, Russian River).

13291.5. It is the intent of the Legislature to assist private property owners with existing systems who incur costs as a result of the implementation of the regulations established under this section by encouraging the state board to make loans under Chapter 6.5 (commencing with Section 13475) to local agencies to assist private property owners whose cost of compliance with these regulations exceeds one-half of one percent of the current assessed value of the property on which the onsite sewage system is located.

- Has affordability been considered and an analysis conducted?
- How many private property owners are eligible for assistance, and how will be assisted?

**Unintended Consequences:** Los Osos is a real world example of unintended consequences, and excessive regulatory costs that resulted from the misunderstood and unchallenged water board resolutions 83-12 and 83-13. That 83-13 was developed, seeking to purposely ignore resolution 83-12, it sacrificed opportunities for onsite management altogether. This was in violation of Ca Water Code, but “strongly encouraged” by the RWQCB. Resolution 83-13 sought funding for a centralized treatment plant, replacing onsite, and resulted in degradation to water quality. Further, 83-13 blatantly violated SWRCB resolution 68-16 (Antidegradation) with SWRCB approval of the provision of 1150 additional housing units and established a prohibition zone. Further discussion of 83-13 is probably not helpful, but suffice it to say that the often dire and costly unintended consequences of resolutions and amendments must be acknowledged.

**Efforts for Voluntary Compliance:** The justification for the resolutions and amendments is to make voluntary programs that have not been instituted now mandatory. Los Osos records (over the last 5 years) show that unlike the government predecessor, San Luis Obispo County, Los Osos was one of the best recent examples of a community development of onsite management plans instituted on a voluntary basis.

The record also show that in 2004-08 the LOCSD worked toward offering work-plans and assistance in updating and strengthen the onsite regulations in Los Osos voluntarily, and in lieu of the adverse punishment.(ACL fines the CDO's and settlement CAO's). These sincere efforts, based on RWQCB report and proposed actions to amend the basin plan would result in actual water quality protection and improvements, but were repeatedly rejected.

Santa Cruz County successfully avoided a building moratorium and punitive enforcement through the use of onsite management in 1986. Funding and adoption of the wastewater plan in 1994 certainly differs from the Los Osos example of "regulations gone wrong." Unfortunately, all efforts from the community's property owners and the Los Osos Community Services District to work cooperatively with Water Board Staff have been thwarted to date. We are hopeful this can change in the near future. However, the amendments and resolutions will not assist in providing a fair and consistent program for Los Osos, and the prohibition zone with all its failures will remain. Please explain:

- How will Conditional Waivers Affect Los Osos:
- Will waivers be applied in Los Osos outside the probation zone?
- Under what circumstances will waivers be applied inside the prohibition zone?
- What is the cost for the WDR, monitoring, and reports?
- What is the estimated program costs estimated for the local agency?
- Is the Co or the LOCSD to administer the mandatory program?

### **Conclusions:**

***Citizens for Clean Water*** opposes this segmented and shotgun approach to water shed protection. As stated, the timing of the amendments and resolutions with the pending lawsuit (CV 070472) makes such amendments to WQCP suspect. It is the existing Basin Plan resolutions that have been used to justify imposition of harsh individual enforcement, and violated constitutional protections, yet these are now being replaced. There is no reason for private property owners to believe that they will be treated differently than Los Osos, under the proposed amendments. The changes to replace and strengthen resolution 83-12 appear to be no more than subterfuge for the ill-founded Los Osos enforcement at best, or added power over others in the region without adequate justification. I ask the board to question the staff motives. Based upon the lack of statutorily required application of criteria for assessing economic impacts, environmental justice, current science, hard facts and sound analysis requires a process restart at a minimum.

The central coast is largely rural and onsite treatment systems and their contribution to pollution from failing systems are simply unknown at this time. The local programs are expected to supply such data for the RWQCB. However, it is well known that onsite contributes a very small percentage of the total non point source pollutant loadings, and proportional responsibility poses an unfair burden on private property owners.

Management programs to assist in quantifying impacts are an estimable effort, but other elements of the amendments are premature to impose on property owners without first providing impact information to affected parties.

### **Recommendations:**

***Citizens for Clean Water*** recommends that the staff develop a stakeholders program that is convened to reviews current policies, criteria, and implementation plans. Current voluntary efforts should be reviewed and further action encouraged. Funding should be sought by the RWQCB to provide the assistance to local agencies and private property owners, as this is the major reason for inaction by local agencies.

The intent is increase the knowledge and understanding of impacts from onsite treatment systems, to improve protection of water quality based on this information, yet the amendments contain unintended consequences, and lack any third party review. By postponing adoption of the

amended basin plan and resolutions, and using the staff's efforts to date to bring together the true stakeholders, (property owners with septic systems) in a working group forum will provide a fully vetted process, with necessary changes, based on fully defined program goals.

It is disingenuous to imply onsite systems causes widespread pollution, or that this effort is urgent, or to propose that onsite owners shoulder the largest portion of the costly burden of non point source programs and water shed monitoring through their local agencies. If local agencies are to assume the entire burden for non-point source pollution monitoring and control, the SWRCB must provide comprehensive programs that assess costs fairly and programs that cross jurisdictions, and provide the necessary funding as well.

Only through a truly public process (properly noticed and informed public participants) will a credible water shed protection program emerge. By proceeding in a thoughtful and deliberative approach, with provisions for regional oversight and accountability can prevent wasteful expenditures, and abuses of the public process.

#### Referenced Documents

1. EPA Handbook for Managing Onsite and Clusterd Wastewater Treatment Systems, NO 832-B-05-001 December 2005
2. Voluntary National Guidelines for Management of Onsite and Clustered (Decentralized) wastewater Treatment Systems, March 2003
3. Onsite Sewage Treatment In California and the Progression Toward Statewide Standards, Chico Research Foundation, June 2004
4. National Decentralized Water Resources Capacity Development Project, Lombardo Associates, Aug 2004
5. Proposed regulations to add to CCR Title 27, Division 2, subdivision 1 Chapter 7. Onsite WWTS Article 1. Definitions -22900
6. WQCP Triennial Review Priority List, Dec. 7, 2001 and attachment A proposed and final issues lists
7. AB885 Status discussion <http://www.swrcb.ca.gov/ab885/index.html>
8. AB 885 CEQA
9. AB 885 project Scoping report, and Summary of Comments SWRCB Onsite Wastewater Treatment Systems Regulations, Oct. 2005
10. Chico Onsite Management Plan
11. NOWRA White Paper on the Ca Onsite Rules under AB 885, May 5, 2004
12. LOCSD Septic Management Plan, July 2003-2006
13. LOCSD Voluntary Onsite Program 2004
14. LOCSD Onsite SMMP resolutions, LOCSD onsite work plan in lieu of enforcement, Oct. 2006
15. LOCSD WWAC Onsite Management plan draft

#### Web sites:

<http://www.waterboards.ca.gov/centralcoast/index.htm>

<http://www.waterboards.ca.gov/centralcoast/Permits/Index.htm>

<http://www.ndwrcdp.org>

#### Other Suggested References:

Arenovski, A. L. and F. C. Shephard. 1996. *A Massachusetts Guide to Needs Assessment and Evaluation of Decentralized Wastewater Treatment Alternatives*. Marine Studies Consortium & Waquoit Bay National Estuarine Research Reserve.

Bounds, T. R. 2001. "Management of Decentralized and Onsite Wastewater Systems," *Proceeding of the Ninth National Symposium on Individual and Small Community Sewage Systems*. ASAE.

California Conference of Directors of Environmental Health (CCDEH). 1992. *Model Onsite Sewage Disposal Code*. CCDEH Technical Advisory Committee, Sacramento, CA.

CCDEH. 1998. *Guidelines For The Design, Installation, And Operation Of Mound Sewage Disposal Systems*. CCDEH Technical Advisory Committee, Sacramento, CA.

California Environmental Quality Act (Public Resources Code §21000 *et seq.*), Div 13, Environmental Protection.

California State University, Chico. 1999. *Final Draft Model Ordinance for Onsite Sewage Disposal Systems*. Model Ordinance Committee. California State University, Chico, CA.

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California State Water Resources Control Board. 1980. *Guidelines for the Design, Installation, and Operation of Mound Sewage Disposal Systems*. State Water Resources Control Board, Sacramento, CA.

California State Water Resources Control Board. 1980. *Guidelines for the Design, Installation, and Operation of Evapotranspiration Systems*. State Water Resources Control Board, Sacramento, CA.

California State Water Resources Control Board. 1994. *Report Of The Technical Advisory Committee For Onsite Sewage Disposal Systems, November 1994*. State Water Resources Control Board, Sacramento, CA.

ITEM #9  
5-9-08

# CITIZENS FOR CLEAN WATER

## PROHIBITION ZONE LEGAL DEFENSE FUND

DEDICATED TO CLEAN WATER, REGULATORY COMPLIANCE  
AND PROTECTION OF PROPERTY RIGHTS

CCW-PZLDF  
P.O. Box 6095  
Los Osos CA 93402

May 7, 2008

Central Coast RWQCB  
895 Aerovista Pl. Suite 101  
San Luis Obispo Ca. 93401

**RE: Item 10:**

Supplemental Comments

Waiver of Discharge Requirements for Onsite Wastewater System discharges  
(Resolution No. R3-2008-0006) and follow up on Item 9 Comments for Amendment to  
the Water Quality Control Plan, Revising criteria for Onsite Wastewater Systems

Dear Chairman Young and Honorable Board Members:

Thank you for allowing me the opportunity to provide the following general comments:

Citizens for Clean Water submitted 11 pages of questions and comments on April 7, 2008. My oral comments today and the written supplement attached addresses only in part my responses to the supplemental staff report for agenda items 9 and 10. I have not had the opportunity to review all the written testimony staff received, but I would like to incorporate by reference into my testimony the contents of letters noted<sup>1</sup>.

Staff has proposed new and revised regulations and requirements today and is asking the Board to make a decision to adopt the revised onsite management plans, criteria for onsite systems, waste discharge waiver programs, and resolutions and amendments that make many aspects of the former Basin Plan "recommendations" mandatory.

The possible consequence of this action to the public is difficult to discover through the staff, local agency information, or staff reports, or within the limited responses to the public's questions and concerns. Certainly it appears the level of interest, controversy, and concern justifies a continuance to assure a well informed public process.

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<sup>1</sup> John Ricker, Shaunna Sullivan, Ann Calhoun, Sandy Bean, Rhian Gulassa, Keith Weimer

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There is no urgency to adopt revisions today. In fact the staff report states the actual Basin Planning process to implement the revised requirements has been backlogged, and has been low priority, dependent on the SWRCB AB885 process. If adopted staff says it will take months/years to implement, however urgency to put these amendments in place today without real input from stakeholders is in opposition of basic Basin Planning policy and practice.

Both EPA and SWRCB information supports onsite management programs, but data indicates systems are not causing widespread pollution, and the priority is not high. This effort is clearly important, but not urgent. The staff intent is to increase the knowledge and understanding of impacts on the water shed from onsite treatment systems, to improve protection of water quality based on this information is indeed significant. However, the amendments seek hasty adoption, contain unintended consequences, and lack adequate review.

The proposed amendments seek to use mandatory onsite management programs to shift the burden of non point source programs and water shed monitoring to local agencies with the costs passed on to onsite property owners. By continuing adoption of the amended basin plan and resolutions the Board can assure staff's efforts will bring together the property owners ultimately responsible for the costs and consequences of the onsite programs.

Funding constraints is stated as the major reason for inaction by local agencies. Creating mandatory resolutions to justify new and increased taxes, especially outside a public process of those paying fees, is imprudent policy.

The role of the Board to provide assistance to local agencies and private property owners should encouraged, since local agencies are to assume the majority of the burden for program implementation. The State Water Board AB885 environmental process is likely required here. The comprehensive watershed programs that cross jurisdictions, assess costs fairly, and assist in providing local funding for implementation is vital. By involving property owners the Board can provide public information, public education, regional cooperation, and best-a better understanding of the necessary revisions based on well defined tools and program goals.

It is unfortunate that Staff has failed to notify those property owners affected, instead they used minimum effort in public noticing through one-day newspaper notices. (Tuesday Mar. 11, 2008). A broad electronic list serve is available to notice interested parties, but was not used. Mailing lists through the local agencies is likewise available, but not utilized. It is disingenuous to cite the past practice using a newspaper ad as sufficient notice because it meets the minimum legal threshold to comply with the code.

It appears it is not the spirit and intent of the staff to truly notify affected parties, and having an engaged public process was clearly not a desire of the staff. I hope the Board will change that today. These amendments certainly concern individual property owners

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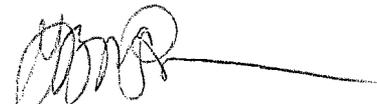
with onsite systems, as regulatory enforcement powers against their homes are clearly strengthened.

Further, the staff was asked to televise the meeting, but did not voluntarily elect to do so. (The public is seeking private donations for the broadcast) This stifling of the public and property owners' access to public information does not serve either the interests of your agency or the People of the State. This is again unwise and erodes the public trust.

Only through a truly public process (properly noticed and informed public participants) will credible water shed protection programs succeed. By the Board proceeding in a thoughtful and deliberative approach, with provisions for regional oversight and accountability you can prevent wasteful expenditures, and claims of abuses of the public process.

I urge your board to continue this process, to direct staff convene a stakeholders group to review the proposed amendments, current policies, criteria, and implementation plans, and report back with recommendations to adopt Basin Plan Revisions at a later date.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gail McPherson', with a long horizontal line extending to the right.

Gail McPherson  
Citizens For Clean Water

Attachments:

A Supplemental Comments

B: Comments on Resolution R3-2008-006

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## Attachment A

Supplemental Comments  
May 9, 2008 CCRWQCB  
Agenda Items 9 & 10

### **False Urgency:**

There is no justification for urgency that should obstruct sound policies and practices for basin planning and public process. The May 9 2008 Staff report for agenda items 9 & 10 concerning the Water Quality Control Plan- correctly states Triennial Review tasks has been backlogged for updating onsite criteria and waivers. However it is misleading and inaccurate that there is urgency, or justification to jettison an open stakeholder/public process.

A review of the Basin Plan Triennial Review List (Central Coast Regional Water Quality Control Board's (RWQCB) Water Quality Control Plan, Triennial Review Priority List, Dec. 7, 2001, and attachment "A" proposed and final issues ) indicated the proposed "projects" to update the WQCP (basin plan) and is dependent on the **AB 885** process by the SWRCB. The RWQCB reports defer revision efforts, request funding, and states that the RWQCB is dependent on the State timetable for AB 885 Onsite standards.

If as stated in Paragraph 2 Pg 2 of the Staff Report "Revision of the waiver and implementing the MOU's will take place over the coming months/years" why is there no stakeholder process, public process, no CEQA, or input sought from the dischargers.

The County or agencies are NOT the dischargers the water board holds responsible and liable for dischargers. (Justification for the recent individual enforcement actions in Los Osos). In fact the proposed resolutions specifically use the ambiguous legal/regulatory term "persons" Simply-when are you going to tell the dischargers? (see testimony-PCA definition of "persons" in the December 15, 2006 CDO hearing documents)

Public interest seems to be interpreted as saving the staff effort and expenses and shifting the burden to (local agencies) communities to deal with the water board's mistakes and lack of effective implementation of programs for 25 years. This effort seems aimed at self interest, not the public interest.

### **Water Board Failures**

The staff report admits it is the Regional Water Boards failure in successfully implementing R3-1983-12-the Central Coast Region Onsite Management Program over the last 25 years. Only one successful onsite management program is cited in the report, Santa Cruz County. It is important to note that 25 years ago BOTH San Luis Obispo and Santa Cruz Counties faced similar challenges concerning onsite systems, and the Basin Plan Resolution 83-12 was required in both cases.

### **Los Osos and 83-13**

Unfortunately, the County of San Luis Obispo's decision to fully urbanize development in Los Osos brought a Basin Plan amendment approving a build out population of 28,000. This amendment to the basin plan through resolution 83-13 was a land use agreement, and sought to secure funding for a sewer project, instead of first halting and preventing

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further pollution. 83-13 actually authorized the County to permit 1150 new homes to help pay for a community sewer. The justification for the haste was to secure diminishing SRF funding, and findings of pollution sought to secure the highest funding priority.

Unlike the successful septic management (the only local agency program staff found satisfactory) the County of San Luis Obispo ignored the regulatory requirements for implementing any onsite management for Los Osos in favor of the desires of the wastewater industry, land developers, and government tax collectors. 25 years later it is clear the process to force a project on the population was unwise.

Not so in Santa Cruz. 25 years later, there are septic systems that have converted to a sewer hook up, and others that are well managed onsite systems. There is no prohibition zone without site specific evidence, used to punish residents for resisting mass development, or for voting a flawed sewer project sited in the middle of town.

Today, many suspect the true motive for this rush to adopt is because staff has been advised they do not have a sufficient regulatory hammer. Just as the development/funding resolution 83-13 has been misapplied to Los Osos individual property owners, still without site specific evidence, after 25 years of government failure, the sufficiency of 83-13 for supporting such enforcement and is being challenged in Superior Court.

#### **Connecting Nitrogen management Plans with Onsite programs**

The Basin Plan Triennial Review Staff report for December 7, 2001 may help illuminate the programs that are intended to establish such site specific evidence for future prosecution. Citizens for Clean Water believes that stepped up enforcement is at the heart of both the onsite management program and the nitrogen management plans, (both listed on the Basin Plan Triennial review report of 2001).

page 4-is the response to Nipomo community services district concerning nitrogen management plans:

**[the CCRWQCB intends]...development of a region wide nitrogen management plan for all ground water basins....this general nitrogen management plan developed from the need for nitrogen management plans for at least 13 individual groundwater basins....Following development of a general plan applicable to all ground water basins of the region, including Nipomo Mesa, basin specific nitrogen management measures may be considered for some groundwater basins.**

But a mandatory program in the form proposed through revisions to the Basin Plan, the Regional Water Board will have the ability to that 'measures' if local agencies cannot or will not implement programs, and legally extend their reach to enforce against individuals properties.

The actions by staff to shore up a region-wide failed onsite program, considering what has happened in Los Osos, and the current challenge to the enforcement against individual property owners by the Regional Water Board, is more likely the basis for the current urgency in revising the Basin Plan. The obvious lack of public noticing sufficient to alert individual property owners required a continuance and agency oversight.

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Comments Related to the Supplemental/Revised Staff Report Summary Prepared  
April 29, 2008

The summary explains how the Regional Water Board historically regulated septic discharges under Water Code 13269(b)(2) and general waiver of WDR through multi agency Memoranda of Understanding (MOU). Citizens for Clean Water expressed concern and asked questions in our first response about the period between 2004 and 2008 when the Regional Water Board allowed the MOU with the County to lapse.

- Are all discharges in the seven county regional board jurisdiction actually unauthorized discharges since 2004? Or does this just apply to building permits those in San Luis Obispo County
- Why did the RWQCB allow the MOU and waiver to expire?
- Why did the County allow the MOU and the Waiver to expire?
- Why was the public with onsite systems never notified of the lapse, and the ensuing risk and liability for “unauthorized discharges”?
- Please discuss the enforcement risks and liabilities to the property owner, and if the enforcement powers for the 4 year period during which the RWQCB/County failed to maintain legally approved waivers will be forfeited for enforcement purposes.
- The review of the MOU’s is required at 5 year intervals, and renewed based on the program effectiveness and compliance with the Basin Plan. Provide the history of the MOU’s and the review process (every five years) with document references, and MOU’s attached for San Luis Obispo County.
- Is there a penalty for the RWQCB for allowing MOU’s to lapse, or for waiver’s not be reviewed and reissued? Or do such compliance standards only apply to those regulated?

The staff report uses the terms in the same summary paragraph “formally authorized” and “consistent compliance” please define the meanings in the statement “Onsite systems have not been formally authorized by the Central Coast Water Board, Due in part to this lack of regulatory oversight, consistent compliance with Basin Plan criteria is sporadic and there is little(if any) monitoring of onsite system performance or water quality impacts from onsite disposal.”

- Where is the septic systems out of compliance, and were the property owners aware of this violation to the Basin Plan?
- Has the duty for regulatory oversight been violated by the Regional Water Board?
- The water board has little or no monitoring of onsite system performance anywhere. Does this preclude individual enforcement actions until there is evidence?
- Please provide the previous “conditional waiver” and where it has been properly/correctly implemented and communities in compliance with the conditions of that waiver.

Executive officer has all the power to waive or terminate waivers. But admits he has little or NO water quality information. It also waives the monitoring and filing of reports.

Conditions for waived Systems: No where does it say if this is for individual dischargers (whom the Board holds ultimately responsible if the government fails) or for the agency

- a. Submit a report, standard WDR application and FEE of waste discharges ROWD- Is this the same format as the reports that Staff said is waived?

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- b. Meet the revised criteria in the basin plan update for waivers. The staff made many changes which create areas where waivers are not available. These are not well defined, and the public and owner/dischargers are uninformed. Please list these for the Board and public or provide a map with the exclusion or prohibition zones.
- c. Pay a fee-for what service, how much, and how often? Why not attach the fee schedule instead of making the board and public search out the information?
- d. What program oversight will assure fees are accurate reflection of the services, and evaluate the program effectiveness, as well as assure against abuses in discretion for issuing and terminating waivers?
- e. All current discharges and discharges since 2004 are “unauthorized discharges” and will be until an authorized local permitting agency implements a RWQCB approved program. What is the interim status and risk to homeowners for enforcement action for “unauthorized discharges”?

The confusion continues: Conditions for waived ROWD requirement

- f. Enrollment in a local agency program (the ones that are currently failing to meet the basin plan-and dischargers are unauthorized-will allow individuals to be protected against enforcement once the agency puts an approved program in place. Please provide the anticipated timeline, cost, and requirement/burdens placed on the individual property owner.
- g. MOU with Local Agencies: Delegated permitting process-Staff report-states some are more than 20 years old, have taken years to develop, are not in place.
- h. Individual MOU's-Is this proposing that individual MOU's outside the County umbrella might be developed. Is this homeowners associations, as well as Cities and districts considered authorized entities?
- i. Is the County program going to assure monitoring of groundwater?
- j. At what expense to local agencies is the commitment of monitoring and additional measures going to cost taxpayers?
- k. MOU's and conditional waivers (already in place and used for 20 years) will avoid duplicative agency oversight- but there is no reason to believe this statement, when there has been a dismal failure by the “duplicative” agencies in the past. In fact the individual enforcement action by the board is solely based on the failure by the agencies to effectively carry out their own policies, plans and mandates. What oversight and assurance does the public and property owners have that their properties will not be placed at risk, or have not already been compromised as has occurred in Los Osos.

CEQA-Environmental Summary: Again the staff report appears to be misleading the Board and public. The Environmental Summary on page 6 states all comments have been considered, however staff has refused to address the comments concerning issues relating to environmental impacts, environmental justice, and program goals, including the questions raised during a similar process for AB 885-which was determined to require compliance with CEQA. In fact, the CEQA scoping that is said to have occurred concerning these revisions and resolutions was in 2004, and likely was addressing AB 885.

Citizens for Clean Water made requests for the records for the scoping meeting but have been refused. This information should have been included in the report if it actually applies to these revisions, and is needed for comment, and is not a typical public records request.

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Below are comments/questions submitted, which staff said were unrelated to agenda items 9 and 10 but should be information on which a decision to revise the current Basin plan is made:

- What is the desired level of risk reduction?
- What are other contributors to the problem?
- What part of the problem is attributable to onsite systems?
- Will the contemplated rules achieve the objective?
- Will the surface and subsurface waters meet the standard of beneficial use after implementation?
- Will the public and private cost be reasonable and politically sustainable? (Costs include money, time and citizen's ability to use their land.)
- Will the regulatory community be able to implement the provisions reasonably - equitably, technically and politically?
- Will the agencies have sufficient resources?
- Will the onsite service provider community be able to implement the rules – sufficient trained personnel with the tools and treatment components necessary to do the job?
- To what extent, if any, do the rules represent a mixed motive, such as rural land use control?

Additionally these legitimate questions were raised by the National Onsite Wastewater Association and posted on the California Onsite Wastewater association white paper on statewide standards (AB 885)

- How do the proposed resolutions and amendments to the basin plan, which change the current status to "mandatory programs" affect delegation through waivers?
- What is the exact number of onsite systems, zones or areas that will not be eligible for waivers? (such as any property with onsite systems adjacent to a 303(d) listed water body)
- What permit fees and charges will the local agency pay to the RWQCB for their program review and approvals?
- What is the risk for fines, enforcement, establishment of prohibition zones, and added cost to homeowners for WDR and monitoring under the proposed changes?
- When is the property owner to learn of the status of their property and costs associated with the amendments?
- Why hasn't an EIR for your triennial project been prepared?
- How does the WQCP (Basin Plan) amendments and resolutions differ or deviate from Waivers within AB 885-the statewide plan?

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Staffs Response to Comments

The Regional Water Board has a duty that requires respect for the *People of the State*-as defined in their mission and the Porter Cologne Act.

The responses from staff seek to narrow the publics concerns to the most basic issues, and avoid providing useful and meaningful information. Many questions staff deemed "pertinent" received only cursory responses while questions staff felt were unrelated to the agenda items were dismissed. We believe the questions, especially those that were drawn from the AB 885 documents are legitimate concerns, and require response. Staff response was at times appears to be incorrectly restated statements in order to fit an answer staff wanted to provide. An example is in the letter from Sandy Bean. The question concerning zero discharge (advanced systems) is misrepresented and the answer provided is therefore is not relevant.

This occurs several times throughout the public comments, and unless the original questions are carefully compared, staff's ruse is not discovered. The questions raised are often quite pertinent and should perhaps be reviewed by senior staff and addressed. A most glaring example is confusion concerning the status of agencies, and existing systems. Staff almost glibly asserts that the resolution only applies to new systems, while it is still unclear how existing systems will be handled.

The entire process requires oversight and responses that assist and enlighten the public.

Comments on Resolution R3-2008-006  
Waiver and Revision to Basin plan criteria for onsite systems

Waiver:

1. (2) A waiver may not exceed five years in duration, but may be renewed by the state board or a regional board.
2. The waiver shall be conditional and may be terminated at any time by the state board or a regional board.
3. The conditions of the waiver shall include, but need not be limited to, the performance of individual, group, or watershed-based monitoring, except as provided in paragraph (3).
4. Monitoring requirements shall be designed to support the development and implementation of the waiver program, including, but not limited to, verifying the adequacy and effectiveness of the waiver's conditions.
5. In establishing monitoring requirements, the regional board may consider the volume, duration, frequency, and constituents of the discharge; the extent and type of existing monitoring activities, including, but not limited to, existing watershed-based, compliance, and effectiveness monitoring efforts; the size of the project area; and other relevant factors. Monitoring results shall be made available to the public.

**Staff has provided misleading and inaccurate information that the Basin plan revisions apply only to new or future systems:**

According to excerpts from Resolution R3-2008-006 General Waiver of Waste Discharge Requirements for Onsite Wastewater Systems:

1. California Water Code (Water Code) Section 13260(a) requires that any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the State, other than into a community sewer system, shall file with the appropriate Regional Board a report of waste discharge (ROWD) containing such information and data as may be required by the Central Coast Water Board, unless the Central Coast Water Board waives such requirement.

The effort to ferret out answers beginning on page 4 of the staff report for Item 10 in comments Staff answers a question:

2. Will all new onsite wastewater systems in areas without approved onsite management plans need to submit a report of waste discharge to the Water Board and pay a filing fee?

Staff response: Yes, as described in the staff report (Page 2, *Conditions for waived systems*), proposed onsite wastewater systems in areas without onsite management plans and implementing MOUs will need to enroll under the waiver by filing a complete report of waste discharge and associated filing fee.

The Reports (ROWD) are required for every septic system property in the region. Staff has failed to answer, and appears to avoid the question of how existing systems in areas without onsite management plans and implementing MOU. That is a real and reoccurring theme from the public. The answer is that the revisions “will result in significant change in the way in which onsite systems are regulated” (Onsite treatment in Ca and the Progression toward Statewide standards, Chico Research Foundaton, 2004)

**Are these systems in violation of the basin plan, and if so what does the water board plan to do about it?**

The question is asking about ALL systems-existing systems not eligible for waivers:

**Staff report Page 6:**

2. What is the exact number of onsite systems that will not be eligible for waiver enrollment?

Staff response: It is impossible to say how many (not yet proposed) onsite systems will not qualify for waiver enrollment. However, any system that is not proposed to be sited, designed or constructed in a manner consistent with the Basin Plan criteria would not be eligible for waiver enrollment.

After many questions concerning the cost of a waiver, and having to visit web sites on SWRCB staff finally stated \$400 yet the “persons” again are in the dark and unnoticed, note below:

3. What fees will be charged for waiver enrollment?

Staff response: Enrollment fees set by the State Water Board are currently \$400.

**Define and provide the guidance documents and the specific criteria for onsite waivers. Is this paid every 5 years right?**

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2. California Water Code Section 13263 requires the Central Coast Water Board to prescribe waste discharge requirements, or waive waste discharge requirements, for the discharge. The waste discharge requirements must implement relevant water quality control plans and the Water Code.

Provide example of the current WDR that implements "*relevant water quality control plans.*" Provide the table of the permitting costs, and how the onsite treatment, monitoring, and reporting requirements will be applied to various properties with onsite treatment systems that will NOT be granted waivers.

3. California Water Code §13269 authorizes the Central Coast Water Board to waive the submittal of reports of waste discharge and waste discharge requirements for specific types of discharges where such a waiver is consistent with applicable state and regional water quality control plans and is in the public interest.

Waiving reports for individual systems occurs only if they are enrolled in an onsite program and the agency that has entered into an approved MOU. The costs for the waiver are assumed to be passed through the authorized local agency to the water board. What is the fee for the local authorized agency for septic system waiver? Is it \$400 per onsite system?

4. California Water Code §13269 requires that waivers shall be conditional and may be terminated at any time by the Central Coast Water Board. Waivers may be granted for discharges of waste to land, but may not be granted for discharges of waste subject to the NPDES requirements of the federal Clean Water Act. The waiver must also include monitoring unless the Regional Board determines that the discharges do not pose a significant threat to water quality.
6. Central Coast Water Board staff will develop and implement a waiver tracking and compliance program.

What is the total estimated program cost for the RWQCB waiver tracking program?

8. Although a discharge may qualify for waiver enrollment, the Central Coast Water Board retains the right to regulate that discharge through other programs or Central Coast Water Board actions (such as enforcement orders, individual waste discharge requirements, general orders, etc.). **The Central Coast Water Board may terminate a waiver at any time and require the discharge to obtain waste discharge requirements or terminate the discharge.**

The intent to provide the power to launch enforcement orders for Local agency failures, similar to actions against individual property owners in Los Osos is clear.

11. Sections (3) and (4) of this Resolution identify the types and conditions of discharges for which waivers are granted by this Resolution. **These discharges will not have a significant effect on the quality of waters of the State provided the conditions of this waiver are met.**

How will this be disclosed to home buyers, and affect property values, and influence land use decisions? CEQA should be required as it was for AB 885.

12. Appropriately developed and implemented memoranda of understanding (MOUs) between the Central Coast Water Board and local permitting agencies (e.g., counties and cities) provide practical and enforceable tools to compel compliance with the Basin Plan criteria for onsite systems and ensure water quality protection. Such MOUs allow the Central Coast Water Board to issue a waiver of waste discharge requirements for onsite sewage treatment systems regulated by local agencies which enter into such MOUs.

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Please describe the enforcement tools that will be used to compel compliance. Is the County (e.g. counties and cities) to be held responsible or the individual property owners with onsite systems for the failure of the local agency?

In the case where there is failure will advanced onsite systems be allowed?

In cases where there is failure will the property owners be forced to vacate their homes?

**13. This Resolution waives the requirement that certain individual onsite wastewater system dischargers submit ROWD and obtain waste discharge requirements from the Central Coast Water Board, if the discharge is regulated by a local agency that has a Memorandum of Understanding (MOU) with the Water Board that meets the conditions of the Basin Plan and complies with the criteria set forth in the Implementation Program for Onsite Wastewater Systems in the Basin Plan.**

Again the question of how you will handle existing systems where they are not in compliance with the Basin Plan? Will you issue Cease and Desist Orders? Clean up and Abatement Orders? Or Notices of violation? Disclose the possible risk and exposure property owners have.

14.

**§13291. The adoption of this Conditional Waiver is also in the public interest because: (1) it was adopted in compliance with Water Code Sections 13260, 13263, and 13269 and other applicable law; (2) it requires compliance with the Basin Plan criteria that are developed to be protective of waters of the state; (3) it includes conditions that are intended to reduce and prevent pollution and nuisance and protect the beneficial uses of the waters of the State; (4) it contains more specific**

**and more stringent conditions for protection of water quality compared to the existing Basin Plan criteria; and (5) given the magnitude of the number of persons who operate onsite systems, it provides for an efficient and effective use of limited Central Coast Water Board resources.**

Define public interest-it appears that the existing resolution simply needs to be implemented. Is the motive to have the language adjusted so you are covered legally to strong arm communities and justify the actions that have been taken in Los Osos?

**20. Central Coast Water Board will evaluate local permitting agencies at least once every five years to ensure their onsite wastewater system approval practices consistently implement Basin Plan criteria for onsite wastewater systems and ensure water quality protection.**

This appears to be another paper process. Provide the criteria for the evaluation of the local permitting agency. What are the monitoring and the reporting requirements? What are the estimated costs for local programs to the property owner, based on existing programs. This information should be included for the Board and the public to see what you are proposing and requesting approval for.

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