



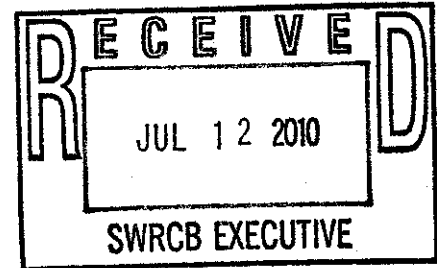
Santa Monica Malibu Schools

Extraordinary Public Education

VIA EMAIL

July 12, 2010

Jeanine Townsend
Clerk of the Board
State Water Resources Control Board
1001 I Street
Sacramento, California 95814



Re: **Comment Letter – Malibu Septic Prohibition**

Dear Ms. Townsend,

This letter serves as the Santa Monica-Malibu Unified School District's ("District") comments on the Proposed Approval of an Amendment to the Water Quality Control Plan for the Los Angeles Region to Prohibit On-site Wastewater Disposal Systems in the Malibu Civic Center Area ("Proposed Amendment").

The District operates Webster Elementary School within Winter Canyon, a portion of the Civic Center area that is included within the area of the Proposed Amendment, which would impose an eventual total ban on all septic systems. Webster Elementary School has been using a septic system since 1951. If the Proposed Amendment is approved as is, Webster Elementary School would have to stop using its septic system in approximately four years on November 5, 2015, abandon the septic system, and expend substantial funds to contribute to and connect with a future localized sewer system, pump and haul sewage to a remote sewer connection, or even worse. All of the options available to the District after a total ban are very expensive to both implement and to maintain. With State funding for schools being cut repeatedly, the District has no source of funding for these additional costs and would likely need to make additional cuts to staff positions.

The District supports both the State Water Resources Control Board and the Los Angeles Regional Water Quality Control Board's ("LA Water Board") efforts to protect our ocean and beaches and agrees that the status quo cannot continue. However, as explained in the "District's Comment Letter" dated October 5, 2009 on the Proposed Amendment, the LA Water Board's proposed fix by eventually banning all septic systems appears to go far beyond that necessary to achieve the Basin Plan's water quality goals. As discussed further below, the LA Water Board's responses to the District's comments was wholly lacking and demonstrate that the LA Water Board failed to take the District's comments seriously and was unwilling to fairly evaluate other alternatives that are less drastic than the total ban. For example, the City of Malibu has proposed a well thought out alternative that the District would prefer to the total ban.

A Reasonable Range of Alternatives Was Not Considered.

In the District's Comment Letter, it pointed out that in the LA Water Board's September 1, 2009 presentation at Pepperdine University and in its Draft Environmental Staff Report dated July 31, 2009, the LA Water Board presented only three alternatives to the proposed ban: (1) continued hauling (which the LA Water Board has declined to evaluate); (2) initiative by local entity; and (3) no action. Under the initiative-by-local-entity alternative, the LA Water Board further listed: action by the City of Malibu, existing or newly formed utility, existing or newly formed water authority, public benefit (non-profit) corporation, and privately-run organizations (for-profit corporations, partnerships, and proprietors). Further, the District explained that aside from the no-action alternative, the remaining two alternatives

Santa Monica-Malibu Unified School District

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would ban septic systems. The District commented that these three alternatives do not cover a reasonable range of feasible alternatives.

In Response #137, the LA Water Board claimed that it could not evaluate a central plant alternative suggested by another because it did not have sufficient details. Similarly, it claimed that a partial prohibition alternative was rejected because there was insufficient data on individual systems and there would still be the need for compliance projects. The LA Water Board stated that enhanced enforcement of individual permits was not considered to be a viable alternative because enforcement against Waste Discharge Requirement ("WDR") violators would not restore the water's beneficial uses of the entire region.

Section 3777(a)(2) of Title 23 of the California Code of Regulations requires the LA Water Board to analyze "reasonable alternatives to the proposed activity," which is identical to the California Environmental Quality Act's ("CEQA") mandate to analyze a reasonable range of project alternatives. The two total ban alternatives and the no action alternative are not all reasonable alternatives. Its claim that there is a lack of information is not sufficient to ignore a suggested alternative. If the information can be obtained, the LA Water Board is required to get it through additional studies, testing, or modeling. Only if the alternative is infeasible in some way can the LA Water Board not study it, but only after the LA Water Board provides substantial evidence that the suggested alternative or obtaining the information is indeed infeasible. The LA Water Board has done neither. Its response lacks substantive analysis and is entirely inadequate.

Less Drastic Alternatives Were Not Meaningfully Analyzed.

In the District's Comment Letter, it requested that the LA Water Board examine additional feasible, less drastic alternatives such as: (1) diligent investigation and enforcement to ensure the proper operation and maintenance of septic systems; and (2) practical septic system enhancements that would further reduce the pollutant load on the groundwater.

The LA Water Board responded in #177, "Many alternatives were considered but none met the objectives of the prohibition. A partial prohibition would not meet the objective because, based upon experience with compliance with and enforcement actions take on individual WDRs, water quality is not improving enough to restore beneficial uses in an acceptable time frame."

Aside from a cryptic reference to a partial prohibition alternative, the LA Water Board's response fails to identify any specific alternative considered other than the two septic ban alternatives and the no action alternative. The LA Water Board's response gives no specifics to the reader what other less drastic alternatives were considered, if any. Without such information and why they are infeasible, the response is nothing more than a bare, unsupported conclusion that lacks substantial evidence and violates the State Water Resources Control Board's certified regulatory CEQA process. Further, the response fails to provide any meaningful, explanation or substantial evidence of the extent that the LA Water Board has taken enforcement actions on individual WDRs. A slight slap on the hand would surely not be adequate enforcement of WDR violators. What does the LA Water Board consider to be an acceptable time frame for water quality to improve? Furthermore, the LA Water Board did not respond to the District's suggested alternative to practical septic system enhancements that would either increase a septic system's efficiency or add new treatments (such as peroxide) that could reduce pathogens and other pollutants. In sum, the response is merely dismissive, conclusory, and not in good faith.

The LA Water Board Has Not Considered More Aggressive Enforcement.

The District's Comment Letter noted that the Proposed Amendment's draft resolution cites, among other things, poor records of compliance for septic systems as a contributing factor to water quality degradation

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and that no public agency has provided assurances that properly designed septic systems would be adequate. The District then queried what improvements to water quality would occur if the LA Water Board took the necessary steps to ensure that septic systems are being properly designed, operated, and maintained; why does the LA Water Board simply rely on the lack of assurances of other public agencies; and should not the LA Water Board determine whether properly operated and maintained septic systems would provide sufficient improvements to meet the Basin Plan's water quality objectives?

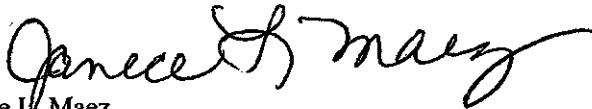
In Response #20, the LA Water Board responds with a single sentence: "Most of these systems were permitted by City or County and are under City or County's oversight." This response is inadequate. The LA Water Board has exclusive authority to issue WDRs. Through WDRs, the LA Water Board also has the authority to require dischargers to demonstrate that their on-site waste water discharge systems will achieve the limitations in the WDRs and to revoke WDRs from recalcitrant violators and ban their discharges. By its response, it appears that the LA Water Board has shirked its regulatory obligations and is opting for a "solution" that is easiest on the LA Water Board, yet the most burdensome for the District and others within the Proposed Amendment area.

Conclusion.

As shown above, the LA Water Board's responses are wholly lacking in that they are general responses that are conclusory and lack refuting substantial evidence. Accordingly, the State Water Resources Control Board should not approve the Proposed Amendment, vacate the LA Water Board's approval, and direct the LA Water Board to take a serious look at the District's comments and meaningfully analyze the suggested less drastic alternatives before re-approving the Proposed Amendment.

The District appreciates this additional opportunity to comment on the Proposed Amendment.

Sincerely,



Janece L. Maez
Assistant Superintendent,
Business and Financial Services
Chief Financial Officer

cc: Tim Cuneo, Superintendent, SMMUSD
Stuart A. Sam, Director of Facility Improvement Projects, SMMUSD
Hunter Gaines, Senior Project Manager, Parsons/CCM
Stan M. Barankiewicz II, Esq., Orbach Huff & Suarez LLP