

LOS OSOS TECHNICAL TASK FORCE

Post Office Box 7091

"Scientists and Engineers for an Environmentally Responsible Wastewater Project"

Los Osos, Ca 93412

April 17, 2006

Re: Damaged Citizens Challenging SWRCB Actions-Complaint of Waste Of taxpayers Money
Complaint filed 5/3/06

Case Number: W20060079

**Attachments LOCSD letters to SWRCB3/10, 3/20 and 5/1 2006 as well as SWRCB
response of 3/2 rejecting settlement offers. Tribune Public Records Request by
reference**

Citizens of Los Osos are being irreparably damaged by the actions of the State Water Resources Control Board and their handling of a State Revolving Fund Loan in 2005-06. This action and others described below represent the concerted efforts against the community of Los Osos by a political organization seeking SWRCB/RWQCB support to destroy a duly elected body-elect. The actions by SWRCB/RWQCB to coordinate actions raises serious questions of impartiality, proper exercise of powers, SWRCB has irreparably harmed individual citizens, and the community as a whole.

Most recently (March 10, 2006) the LOCSD requested that the SWRCB forward LOCSD SRF loan funds previously obligated, in order to cover the cost of a construction contract closeout offer made by Whitaker Construction Company (letter attached). The background on why LOCSD was terminating the construction contracts and who is the liable party is partly addressed herein and in the attached documents.

Because it is expected that the "prohibition zone" property owners of Los Osos will ultimately be financially liable for the costs incurred by the public agencies managing the closeout of the wastewater project, this group and the community has a vested interest in the timely completion of this closeout process at the lowest possible cost.

Any action or inaction by a public agency to impede this process will likely increase the cost to this taxpayer base, and therefore would not be in the property owners' and taxpayers' best interest. For a state agency to act to escalate costs to taxpayers, and in a manner contrary to their obligation and duty under their charter as "protectors of public funds" requires careful inquiry and justification. It can also be said that an unwillingness to protect these taxpayers is a violation of their fiduciary duty to manage the public funds prudently.

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In addition, unwillingness by the state agency (SWRCB) to address a fair settlement offer from a contractor in a timely manner will likely expose these property owners and taxpayers to costly litigation and a higher settlement cost.

Therefore, by the SWRCB delaying the settlement action, the property owners and taxpayers of Los Osos are exposed to a higher cost in the form of legal fees and court awarded judgments. Even if the SWRCB pays these contractor settlement costs and forgives this debt, the taxpayers of California will ultimately have to bear the financial burden created by the SWRCB's lack of timely action.

We have attached correspondence that has been forwarded to SWRCB urging them to release the previously obligated SRF loan funds so that these construction contracts can be closed.

In addition, LOCSD presented their analysis of why the SWRCB will likely be held to be liable for these contract obligations (see LOCSD letter dated 3/21/2006), and SWRCB's delaying this settlement action will only result in more cost to the taxpayers.

It is our opinion that individuals in the SWRCB and RWQCB are acting in a punitive and illegal manner with the intent of punishing the Los Osos residences and the District for taking the legal action to control the development of the infrastructure in their community.

The SWRCB and RWQCB are using their entrusted power to advance their preference for a large, centralized treatment facility solution located in the heart of the community. The solution they support in this instance is concerns issues of both environmental justice, and unauthorized action by the electorate. The modification to one of the most expensive sewage disposal solution per end user, (perhaps the most expensive in the country), and this highest cost solution, in a community that has one of the lowest per capital incomes of any on the California coast, would be an extreme financial burden to these property owners. The costs approved by the State Board exceed the SWRCB and EPA's own guidelines and increase financial risks to the fund and the community.

The solution selected and supported by the SWRCB/RWQCB was not even the preferred environment solution. This large, complex sewage plant located 500 yards from the stagnant end of Morro Bay, adjacent to the community's center, park and recreation facilities is an environmental accident waiting to happen. The sizing and layout of the project anticipated overflows and spills and unlined sewage pits are adjacent to the largest community drinking water well. The Gravity collections systems add another layer of vulnerability in the hilly dune sand environment. The collections system and number of pumping stations required have documented anticipated failure rates, and spill will occur. The site, process, cost and emissions and spills will have a significant impact on both the environment and the community, yet these considerations were not included in a risk assessment or alternatives analysis, usually required for funding by the state.

When it became clear through a local referendum petition action that the community was rejecting the solution, it is alleged that the SWRCB and RWQCB acted in concert with other parties to expedite the award of construction contracts, hoping that this action would take away the voters choice. Fund authorizations were rapidly approved, and funds quickly released (disbursement check from the SRF loan fund was release in less than 5 days). The SWRCB was uncharacteristically responsive, and this raises a question as to why they issued funds in such an expedited manner. The Community protest and LOTTF report in 2004-05 asked that no more funding than previously authorized be approved. (already an original \$46 million loan grew to \$64 million and was increased to \$93 Million) In May hundreds of faxes and email, and letters asked the SWRCB to hold funding until after election. Testimony before the SWRCB made it clear that the result of the election would be a relocating of the plant and selection of lower cost technology that met all regulatory requirements. The plethora of citizen activities and information made it abundantly clear the outcome of the election would provide the direction for the funding obligations. It clearly would have been prudent for the SWRCB to await the result of the recall election, and follow loan guidelines which encourage validation of ratepayer acceptance when controversy arises involving an otherwise unsecured loan obligation. The actions by the SWRCB appear to have purposely and recklessly assisted the ousted board members(Taxpayers Watch) whose intent was to make the recall election a mute point, and thus effect the outcome of that election process. It is contended that such interference is unethical and illegal for a State agency.

There is ample evidence that the SWRCB and RWQCB were communicating with the contractors selected for the project before and after the election. The contractors who were effectively selected without competition and the additional funding available from the SWRCB approval raised the project price nearly \$50 million without voter's approval. Contractors knew of the recall and measure B before bidding and certainly at the award, and voluntarily accepted such risk. Partly because SWRCB/RWQCB staff continually assured them that the project would go forward regardless of the election. The contractors who now stood to gain financially from the SWRCB irresponsible conduct. (The irresponsible conduct was to participate in the expedited award of the construction contracts in advance of the recall election, and passage of a Measure B which would prohibit the construction of the wastewater treatment plant within the Los Osos community, and therefore would require the LOCSO to terminate the construction contracts)

The expedited construction contract awards process was facilitated by the District's engineering consultant, Montgomery Watson Harza (MWH) who had a fiduciary obligation to represent the District's best interest. MWH first recommended against the award and for a re-bid. Based on the time required and the upcoming election, they changed their recommendation for the expedited construction contracts be awarded even though the bids ranged from 25% to 45% over the engineer's estimate (MWH was the engineer whom had prepared the estimate), where there was not competition on two of the contracts, and very limited competition on the third. MWH financially benefited from their action because they were then awarded a sole source award for construction management services contract in excess of \$7 Million. One might consider this a conflict of interest.

Even the District management appears to have colluded with the construction contractors, the consulting engineer, and the SWRCB/RWQCB by allowing the District to incur a contract liability without the necessary funds and appropriate contracting authority being in place, using an illegal "limited" notice to proceed. The amount of funds expended prior to the receiving the required Coastal Commission permit and the SWRCB obligation of SRF Loan funds needed to issue a formal Notice to Proceed was approximately \$2 million dollars.

Then, when the voters spoke through the election process and shut down the project, the SWRCB and RWQCB de-obligated these SRF loan funds which had served as the District's authority to enter into the construction contracts, leaving the LOCSO with a contract obligation, yet no funds to satisfy this liability. Clearly this action was intended to be punitive, and we are of the opinion that it was illegal.

More Efforts to "bankrupt" and dissolve the CSD through SWRCB/RWQCB Enforcement: If this were not enough, the SWRCB/RWQCB prepared Administrative Civil Liability (ACL-\$11 million fines) requested by recalled board members and the newly formed "Taxpayer watch" even before the election was certified. The RWQCB promised that they would initiate enforcement actions before the new board was even sworn in, and also RWQCB staff was preparing actions against individual citizens. Correspondence indicates the executive director was influenced, based upon requests from leaders and supporters who lost the election.

These fines do not appear to be based on an investigation to determine whether discharges by fined property owners are in violation of the discharge standards. In fact, this costly wastewater project appears to be based on a basin plan amendment in 1983 to assist in obtaining project funding for a project to allow building (1150 homes allowed, with a build-out population of 27,000 that is no longer valid). The amendment to the basin plan was expressly a zoning act requiring a treatment plant based on anticipated density projections, rather than a pure water quality issue.

The assumption today by the state boards that the nitrate contamination is coming from the residential septic systems, AND that a centralized treatment plant will protect and improve the quality of the drinking water supply has shown mixed results. In fact, individual septic systems with 30-50 feet of soil separation exist. None of the systems was surveyed for site specific analysis, and there is no scientific proof to support individual enforcement and fines for individual properties. The Cease and Desist Orders against 45 of the 4300 randomly selected property owners are still in process and will be heard May 11 and 12, 2006. The District is appealing the January 5th RWQCB enforcement actions.

Efforts by the RWQCB and state attorneys to assist Taxpayers Watch in litigation against the LOCSD, publicly advising the attorneys for group, and passing notes during hearings to assist in their arguments demonstrates the depth of local political involvement by the SWRCB/RWQCB.

Contractors/SWRCB-RWQCB

The situation has been made more critical by the action of two of the construction contractors. These two contractors filed an injunctive action, and received a court issued injunction prohibiting the LOCSD from spending funds. This injunctive relief was granted in spite of the evidence that the contractors acted in concert with the SWRCB/RWQCB and the prior LOCSD directors and management to circumvent the will of the voters and property owners. These contractors stand to gain a substantial profit from this illegal set of transactions which caused the LOCSD to enter the contracts with these contractors, and now by the SWRCB refusal to allow a negotiated settlement, the profits these contractors will realize is likely to increase substantially. Furthermore, we have evidence that the SWRCB/RWQCB staff and the contractors are communicating, and it is our suspicion that once the LOCSD is eliminated (a likely consequence of the injunctive action taken to prevent the LOCSD for being able to act), the SWRCB will likely negotiate a settlement with the construction contractors which will be far more costly to the community /taxpayers than the settlement LOCSD has proposed.

Result of This Unlawful Action by the SWRCB/RWQCB:

Because of this abuse of power by the SWRCB/RWQCB, a low-to-middle income community will suffer significant financial damage, when these costs could have been avoided. And now we contend that these boards have acted illegally by withholding the obligated SRL funds which are needed to minimize the construction contract closeout costs, which could have been avoided altogether if the boards had not acted illegally and in concert with the industry profiteers by accelerating the construction contract awards.

These out-of-control costs were caused by prior District mismanagement and encouraged and supported by the actions of the SWRCB/RWQCB who forced its preferred technical solution on the community without concern for the community's interests or approval for repayment. This outcome was facilitated by the industry profiteers who are now positioned to realize a substantial financial gain at the expense of a community that does not have the financial resources to cover these costs.

Requested Action

It is requested that these actions by the SWRCB/RWQCB be reviewed to determine if:

- The SWRCB/RWQCB acted illegally by withdrawing funds obligated to the Los Osos project and to the construction contracts they entered into
- The SWRCB/RWQCB acted inappropriately (and perhaps in violation of state law not to interfere with the election process) by knowingly and recklessly accelerating the funding of

the project, which facilitated a quick start construction contract award (days before the election) to the detriment of the taxpayer of Los Osos

- The SWRCB/RWQCB had a conflict of interest when it colluded with the other interests to thwart the desires of the voters and property owners of Los Osos and make their recall vote moot.
- The SWRCB/RWQCB by acting in this irresponsible manner can be held to have wasted public funds deliberately and with intent
- The SWRCB/RWQCB action resulted in financial gain to others (MWH, Monterey Mechanical, Barnard, and Whitaker Contractors) at the expense of Los Osos community property owners and the taxpayers of California

If it is found that SWRCB/RWQCB actions are properly characterized, it is requested that

At a minimum,

- the injunction should be lifted because of the contractors' actions, and the SWRCB should be included in any legal action as the key liable party
- the SWRCB should be directed to release the SRL funds immediately to LOCSD for administration, and oversight over these funds be assigned to another state agency.
- the SWRCB be held financially liable for the increased cost incurred by the Los Osos property owners due to their deliberate actions to accelerate the construction contract award in advance of the September 27, 2005 recall special election in an attempt to affect the election outcome and/or make the voters' desires moot.

Sincerely,

Los Osos Technical Task Force (LOTTF)

In conjunction with:

Citizens for Voice Vision and Choice (CVVC)

And

Prohibition Zone Legal Defense Fund(PZLDF)