

October 23, 2007  
County of San Luis Obispo  
Clerk of the Board  
1055 Monterey St.  
Room D-120  
San Luis Obispo, CA 93408.  
Via Facsimile to be hand  
Original to follow via US Mail  
Re: Upcoming Vote on Los Osos Sewer Project

Dear Sirs:

My office represents several property owners whose lots will be affected by the assessment(s) contemplated by the ballot currently being taken in Los Osos.

This letter is meant to comply with the requirement stated in your circulating documents for a written complaint before the ballots are tallied in order to preserve the issues for later complaint.

In my view, there are several significant problems with the ballot action, which render the balloting invalid.

First, the overarching problem with the entire process is that the sewer system contemplated by this assessment is not one that will confer a 'special benefit' within the meaning of Proposition 218 on those parcels within the Los Osos Prohibition Zone, but rather one that will confer a general benefit on all parcels in Los Osos and which is fundamentally designed to confer a benefit on the people of the State of California by way of preventing inappropriate waste discharge to enter groundwater and, by way of interaction between the groundwater and seawater, the estuary and bay waters offshore from Los Osos. To the extent that this project will provide better drinking water, it covers parcels outside the Prohibition Zone who are receiving the benefit at my clients' expense. To the extent that it helps with pollution in the nearby ocean, this is a benefit to the people of California generally and again, represents a benefit to others paid for by this assessment. These benefits to others, which seem to be the main benefit claimed for this system, are general benefits paid for with a special benefit assessment. This is improper.

The proposed sewer system represents merely a replacement for existing sewage systems. I understand that improved properties in the Prohibition Zone are typically served by individual septic systems, or, in some cases, by septic systems which serve multiple properties. In any case, these properties have effective waste systems already. The replacement system contemplated by this assessment adds no special benefit to these properties.

One potential 'benefit' I can see is that these properties are currently the subject of cease and desist letters from state water quality management board which threaten massive fines if the septic systems remain in use. It would be an unconscionable public policy if

one government agency could justify a project as a “special benefit” to avoid action by another public agency.

Thus would be created a “good cop, bad cop” situation where any agency seeking to create an assessment for any project could get another agency to threaten action to justify the assessment. This cannot be tolerated.

It is my view that the alleged benefit in this case is a general benefit to the entire region and, therefore, this should be put to a general election with a requirement for a two-thirds majority vote. In addition to the overarching problem with whether there is any “special benefit” conferred by way of this assessment, there are numerous problems with the ballots and ballot information itself, rendering the vote illegal.

First, many properties were issued multiple ballots, each representing some proportional interest in the property and a proportional fee. I can see no justification for this process - each lot should have one vote. It is my opinion that this unnecessary process was intended to confuse voters. I note that the notice mailed with the ballots speaks of ballots in the singular when instructing homeowners how to prepare and mail in the ballot. See section seven of the notice.

I have anecdotal reports that property owners with multiple ballots were under the impression that they had received too many ballots, rather than two or more ‘partial interest’ ballots. They sent one ballot in. They are, therefore, voting half a vote. In addition, multiple ballots, representing partial assessments will create the impression that the assessment is lower than it actually is on a per-lot basis. This creates likely confusion for the voters of Los Osos.

Second, I understand that property owners of unimproved lots have received ballots showing their assessment at \$0. To the extent that this assessment is, by its own terms, meant only to cover only those improved lots in the district, these ballots for unimproved lots are inappropriate.

They have the effect of soliciting “YES” votes from persons not effected by assessment and thus “stack the deck” against those homeowners whose properties will, in fact, be subject to the massive assessment contemplated by this proposed assessment district.

Third, the ballot and supporting materials’ language is confusing and unclear. The voters of Los Osos cannot reasonably discern the nature and extent of what they are voting on. In particular, there seems to be an open-ended assumption of future costs for the sewer project for which no estimate is even attempted by the County. The ballot language reads as follows:

*Shall the Board of Supervisors of the County of San Luis Obispo establish the proposed San Luis Wastewater Assessment District No. 1, levy an assessment not to exceed the amount set forth above on the parcel identified, issue bonds or incur other debt obligations in the amount of the unpaid assessments, and proceed with the financing for the proposed public wastewater system improvement project.*

The notice gives an estimated total cost for the project, but there appears to be no accounting for interest on the bonds or other debt obligations authorized by this vote. If these figures are included, they are not spelled out and this runs afoul of Article XIID(4)(c) of the California Constitution in that there is no final estimate of the total amount chargeable to the entire district.

Fourth, the question of how the unimproved lots will eventually be assessed is left unanswered in the ballot information. A substantial portion of the overall cost of the project is allocated to these lots. How are these lots ultimately to be covered and assessed? Will a separate vote be held? Will each lot carry a (substantial) development fee to cover the sewer costs? Such a fee would be inappropriate to them as they did not have the opportunity to vote on the project assessment in the first place. So, the problem is that the source of a substantial portion of the assessment is not adequately explained.

In the same vein, how will the county cover the costs associated with that portion of the project allocated to the unimproved lots in the event those lots are never improved? Given the regulatory difficulties generally associated with any building in the coastal zone, it is not unreasonable to assume that many of these lots will remain unimproved.

Their assessments, which are calculated as part of the overall cost of the project, will be uncovered. That, by definition, increases the financial responsibility for those lots which are improved. There is no accounting for this amount, and the voters are not provided with any estimate what those increased costs could be in the future.

Fifth, it appears to many opponents of the measure that the County is using out-of-date assessor's parcel information for the ballots. Anecdotal evidence says that recent purchasers are not receiving ballots, while former owners are. This is not a large set of owners – the ballot information says that less than 5,000 owners are subject to the assessment. Even a small percentage of inaccurate records will skew the result of the election. It will, thus, become important to understand how exactly the data has been collected and how recent the data base is which was used to generate the list of owners subject to this assessment.

I note there is an issue with the proposal which may be subject both to a challenge under Proposition 218 as well as additional challenge under various state and federal regulatory rules. I understand that competing technologies are available which could achieve the same result – lower or eliminated waste water discharge - for vastly less money. To that extent, the amount of the assessment may be out of proportion to the expected benefit – if it can be done for less, with the same result, then the amount of the assessments is too

high. This, of course, assumes that the lessening of wastewater discharge can be demonstrated to be a “special benefit” to these properties in the first place.

In addition to issues with the propriety of the vote method that has been chosen, and the mechanics of the vote, my clients have identified numerous substantive issues with the proposal.

Some of these may represent state regulatory issues, state law issues, federal regulatory issues and federal legal issues. As a result of the wide variety of possible actions, I foresee the possibility of state and federal actions in the event the sewer assessment passes. These additional issues are:

1. The assumption that apartments and other multiple dwelling units would have only 3/4 the wastewater effluent than single family homes is unsupportable. Many homes have one resident, and many apartments have more than one. Apartments and other units can produce as much waste water as a single family house, so this provision for a 3/4 assessment on apartments is unreasonable.
2. Improper compliance with a variety of regulatory requirements including oversight by various state agencies, compliance with regulations regarding “environmental justice,” and the like.
3. The proposed system is not the most cost effective way to achieve the goal of lower or zero waste water emissions. Competing systems, with costs tens of millions of dollars below the system proposed in this assessment, are available and it is a violation of the rights of the property owners in the assessment district to not pursue the most costeffective system available.
4. A significant problem is the speculative nature of the science behind the project. There has been no satisfactory demonstration that the houses of the Prohibition Zone are, in fact, the true source of the pollution which is the underlying problem to be addressed by this system. There are credible allegations that farming in the region, but outside the Prohibition Zone, is the true source of the pollution – this goes directly to the question of whether those properties in the Prohibition Zone are receiving a special benefit.
5. Moreover, the lines describing the Prohibition Zone are arbitrary and not supported by scientific evidence. To the extent that the entire basin sits atop the groundwater table, then the entire basin, or at least a greater area, should be in the Prohibition Zone.
6. Inadequate environmental impact reports have been prepared for sewer project, and sewer leakage has been ignored as a significant source of groundwater infiltration of pollutants. Consequently, this project may not provide a solution that is ultimately sufficient to meet the requirements of the Regional Water Quality Control Board, leading to continued possibility of enforcement actions as well as increased long-term costs for repair and remediation of this leakage.

7. Section 12842 of the Public Utilities Code<sup>2</sup> limits public utility districts, which is presumably what is to be created by the measure in question, to incurring indebtedness of more than 20% of the assessed value of all real and personal property in the district. In the event that few or any property owners in the new district pay the assessment immediately, and the district has to issue bonds or take on other indebtedness, it is possible that the amount of said bonds may approach or exceed that 20% limit. In particular, the open-ended nature of the project financing gives real pause that this might happen. The District would be obliged to perform the research to determine what percentage of the district's assessed value would be represented by the cost estimates of the project.

The County will bear the burden of demonstrating that the parcels covered by this assessment district will be receiving a "special benefit" over and above those benefits they already have and new benefits which are general to the community and not merely to the assessed parcels.

Further, the County will bear the burden of demonstrating that the balloting procedure, including multiple ballots per lot, unclear and incomplete ballot notices, etc., used for this ballot is correct.

I specifically request advance notice of the time and place where the ballots will be counted. This information is likely available now, so please contact my office immediately upon receipt of this letter with information on the counting process. I will look forward to hearing from your office.

Sincerely,

Timothy J. Morgan