

# Cover Story

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## Roger and out

*An eccentric town succeeded at making a newsmaker of a regulatory bureaucrat. Soon after, the water board's Roger Briggs split the Central Coast.*

**BY PATRICK M. KLEMZ**

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On Oct. 6, 2006 Roger Williams Briggs packed his bags at his Avila Beach home and departed California.

In downtown San Luis Obispo, a writ of mandate for deposition awaited Briggs on the desk of Superior Court Judge Barry LaBarbera. The topic of inquiry: alleged duplicity and unscrupulous action by the then and now executive officer of the Regional Water Quality Control Board. Despite repeated requests at the time, officials at the regulatory agency's office refused to disclose his whereabouts or comment on the timing of his disappearance, which they characterized as a long-overdue sabbatical.

Water board officials issued no public announcement of Briggs' stay of absence.

The sudden departure left a rash of itchy questions tickling the minds of residents in the nearby town of Los Osos particularly a group of 45 homeowners under the threat of water board prosecution. It was the legal arm of this group that authored the still-waiting writ and, from November until the coffers ran dry Feb. 26, filed one legal motion after another trying to conjure the missing official.

The crime as charged against the Los Osos 45 was communal. Forty-five mostly low-income households, selected by an algorithm withheld from them, stood to answer for more than 20 years of community water pollution and democratic dysfunction. Since the boundaries of the so-called "prohibition zone" first appeared on a map circa 1983 Los Osos has contorted itself in uncanny ways to fail at constructing a modern sewer.

By 2006, the water board signaled it had had enough. Following the latest sewer holdup, Briggs put in motion an enforcement mechanism previously reserved for corporate polluters. The cease-and-desist orders drafted bear the power to render the recipients' homes financially uninhabitable if a community wastewater system is not in place by 2011.

Six weeks after Briggs took flight, the administrative hearings against many of the Los Osos 45 commenced in a sterile corporate conference room near the airport. The proceedings took little time raising a cavalcade of constitutional quandaries the sort that would normally prick up the ears of civil liberties activists. But with the only man actually able to answer them out of sight and mind, the topic largely died in the mainstream media. Many members of the Los Osos 45 believe that this is exactly what Briggs' bosses at the State Water Resources Control Board had in mind all along.

For his first five years as head of the regional water board, Briggs filled the role of a regulatory paper pusher faceless, the sort of guy who never made the news. Somewhere along the way, Briggs got involved. Over the years, this involvement continually deepened. By the time this Sewerville player left town, his departure proved important enough to set the bedroom community abuzz.

At the core of the controversy and party to the mystery exists the tumultuous tale of the Los Osos sewer wars a saga that's seen countless variables and one constant: water board executive officer and 31-year agency employee Roger Briggs.

### **Tardy to the party**

Despite Briggs' best efforts, Los Osos' ongoing mission to build a community sewer suffered its fifth failure late in 2005.

The most recent construction breakdown arrived on the back of controversy over the treatment plant's selected location: a downtown plot known as Tri-W. A successful recall of the sitting Community Services District board and passage of a project-halting ballot initiative (Measure B) silenced the construction as early as September. However, the sewer plans didn't officially hit the scrap heap until state financial manager Barbara Evoy in Sacramento pulled the project funding on Nov. 23, 2005.

Water board spokesman Bill Rukeyser explained that the terms of the public loan required the exact same project as the one that appeared on the financing application. The state, he said, had no choice but to kill the loan.

With the project dead, Briggs acted on threats and promises disseminated throughout 2005 to enforce the prohibition zone one way or another. The first batch of stipulated cease-and-desist orders ever issued against individual homeowners by a California water board went out literally within a month of the first loan default in agency history. A precedent for a precedent.

"The state really hates this community," Los Osos 45er Chris Allebe commented. "They just can't believe this little podunk town would stand up to them."

"I don't know why it's such a surprise, [Briggs] did exactly what he said he was going to do," former district director Richard LeGros said.

Upon receiving the notices in January of 2006, the targeted residents many self-described as apolitical nevertheless found themselves at a loss to respond.

On top of requiring regular septic tank pumping (at a calculated cost of \$2,500 per year), the cease-and-desist drafts raised the threat of \$5,000-a-day fines for failure to connect to a sewer, one that may not exist by the 2011 deadline. According to California law, a majority of district homeowners must pass an assessment vote to fund the project before any construction can legally begin a still-unaccomplished feat in Los Osos.

Briggs' cease-and-desist drafts evolved slightly over the course of 2006. Water board officials loosened the pumping requirements over the summer after their air-quality counterparts complained about the projected emission impacts from all the needed service trucks. The penalty hammer, however, remained raised over the Los Osos 45 straight through the adoption of the orders. The fervor only escalated as the hearings approached.

"They've got me tied up, and I'm not into bondage," defendant Cinthea Coleman railed during the drafting process. "I can't even afford to hire a lawyer."

When the hearings began, water board staff provided no direct proof of septic pollution on behalf of the charged households the water code requires none. The burden of proof incumbent on prosecutors Matt Thompson, Harvey Packard, and Reed Sato merely involved establishing that the defendants lived in the prohibition zone, where something other than a sewer must be treating

their wastewater. Furthermore, any septic tank operating in this area must also discharge nitrates, so the argument goes.

Before the ink on the first cease-and-desist orders had dried, advocates of the Los Osos 45 formed the Prohibition Zone Legal Defense Fund (PZLDF) to appeal the proceedings on alleged Fifth Amendment violations.

PZLDF mounted several attempts to bring in Briggs during the hearings. Leaders of the group characterized the man's disappearance as a ploy by state regulators to shine light away from an emerging scandal in their ranks.

"This is one case we have thousands of them," acting regional board manager Michael Thomas retorted. "We have an 11,000-square-mile territory. You could look at any one of hundreds of cases that are ongoing right now and say that he left during these cases."

"That's an insult to our collective intelligence they're playing a cat-and-mouse game," Los Osos 45 leader Alan Martyn responded. "He is the architect of this whole fiasco."

According to Thomas, water board staff recently pushed back the final batch of Los Osos 45 hearings to a May agenda, to allow Briggs to participate if he so chooses. Colleagues expect his return April 9.

"That doesn't stop us from wondering, though, how the outcome could have been different in December," PZLDF coordinator Gail McPherson said.

### **Hints and allegations**

In the midst of the water board's administrative hearings, a handful of the Los Osos 45 sat around the kitchen table in a townhouse at the north end of the prohibition zone. Jovial at first, the conversation shifted to a theoretical exercise: what each would ask Roger Briggs if they could pose just one question. This report identifies the participants as the water board did during the proceedings.

"Why my house?" cease-and-desist order recipient R3-1019 began bluntly, pouring a lukewarm near-beer over ice and taking a drink.

"I would like to ask him how they decided on the prohibition zone," soft-spoken recipient R3-1034 timidly responded.

"Would he really have to answer it, like with truth serum?" R3-1041 clarified with pensive pause. "I would ask him, 'What lies have you told to the people of Los Osos?'"

Formal and informal complaints into Briggs' conduct reach back as far as 1999, but the most audible gripes deal with the water board's last real play in the sewer wars the recall election of 2005. In the summer leading up to the recall vote, many Ososites charge, Briggs overstepped his bounds by colluding with the then-sitting board in an attempt to prevent a coup that would ultimately delay the sewer.

One such detractor, Los Osos resident Budd Sanford, compiled a lengthy list of charges in late 2005.

Sanford said he sent a packet of allegations and evidence he'd collected to the **California Bureau of State Audits in January of 2006**. Donna Neville, legal advisor to the watchdog group, said in early March of 2007 that she wouldn't confirm receipt of the papers and couldn't disclose

details of any ongoing investigations, in compliance with the Whistleblower Act. The water board's Thomas said the agency received the packet when PZLDF submitted it as evidence for its defense case prior to the hearings. Among Sanford's claims:

During the summer before the recall, several anti-coup flyers attributed project-backing statements to the water board that the water board lacked the authority to issue namely, that it mandated the existing project. Whether or not Briggs authorized the message propagated by the campaign, he seems to have never publicly corrected it.

Government code dictates that, since politicians appoint regulators, it's problematic to have an agency stick its nose in the democratic process. California Water Code Section 13360 further forbids the regional boards from demanding specific solutions.

Thomas maintained that the board committed no foul.

"We sometimes say that discharges are prohibited and it's up to the community to do something else. **That 'something else' is usually a community treatment plant,**" he explained. (***What a load of crap! That's not what the law states.***)

"It's easy for people to make that leap, to say, "What they're requiring us to do is a wastewater treatment plant."

Several ex-directors and CSD employees responded that the leap Thomas referred to was a guided one.

Briggs' stand-in couldn't comment on why the leader apparently didn't challenge the erroneous statement.

While stumping for a sewer system to remedy the reported nitrate contamination problem in 2002, the agency quoted EPA hydrologist Dr. James Kreissel as saying a septic tank maintenance program could never work in Los Osos.

"[Briggs'] statement appears to support a sewer system for the entire community," Kreissel wrote to basin activist Al Barrow. "I was distressed to see the misinterpretation of my 1994 report."

The water board declined to comment.

A communication between Briggs and former CSD manager Bruce Buel also shows Briggs suggested the removal of language from sewer literature that might "reduce public confidence and support" in the project namely a line citing vegetation decay as a possible nitrate source. "Hearsay," the water board official dubbed the deleted statement, which was based on a 1994 nitrate study that the water board largely ignored.

Prosecution team analyst Packard said agency staff determined the research conducted by Kansas hydrology firm Black and Veatch to be inconclusive.

"Our response is unchanged regarding the accuracy and value of the information contained in [that study]," Packard wrote to New Times. Still, he couldn't explain why Briggs was apparently editing CSD literature.

Buel didn't respond to requests for comment.

A series of correspondence between Briggs and anti-coup campaign leaders over post-election tactics show the executive officer plotting with one political faction against the pending actions of another. In one such chain of e-mails dated Sept. 28, 2005 Briggs and former director Pandora Nash-Karner traded thoughts on how to challenge the voter-approved bid to halt construction on the sewer.

"Is there any way to salvage the project?" Nash-Karner asked, suggesting that water board staff move the issue up to the nearest meeting agenda.

"We're rolling," Briggs answered. He went on to mention the Administrative Civil Liability complaint that would later successfully invalidate Measure B. "I'm shooting for getting an ACL to the district next week, even before the new [board] can meet. I want them to understand what they will be stepping into before they can vote on any motion to delay."

Nash-Karner later explained to New Times that she decided to take initiative out of fear the water board would eventually take action against individual Los Osos homeowners. The former director expressed that she felt Briggs could have acted more forcefully to save the project.

Two days after the conversation with Nash-Karner, and just before the new board was sworn in, records indicate Briggs asked CSD manager Buel for a list of all district water customers. This document would be required to set up an algorithm to select the Los Osos cease-and-desist-order recipients.

The water board declined to comment.

All of this occurred several months after Briggs helped author a declaration of water board support to try to litigate Measure B off the upcoming ballot. The executive officer later admitted under oath while supplying a deposition for one of many pre-recall lawsuits that he never read the proposed initiative.

The water board declined to comment.

### **Might as well**

"I don't know about that, partner," Sea Pines Golf Course greenskeeper Clark Pewitt initially grumbled when asked about a monitoring well out on the links. "Wait, you mean the well over by four? I'll take you over there."

Hopping into an all-terrain John Deere turf-rumbler, Pewitt revved through a narrow gate and rolled along the side of a short fairway. Pulling a dogleg to avoid a hole in play, the proud greenskeeper began jawing about the eco-friendly features of the Sea Pines course.

"We're irrigated with about 35 percent reclaimed water," he suddenly commented, readjusting the brim of a worn Raiders cap.

What might seem a banal disclosure outside of Los Osos is relevant in this case. Reclaimed water is naturally high in nitrates and only the expensive procedure of reverse osmosis can effectively remove them. No such facility exists in the basin. Why would the water board accept groundwater samples taken below a water-recycling golf course?

This prompted another question: "Hey Clark, what keeps your grass so green?"

"Oh, we use a 16-5-5," Pewitt said.

Another blase fact with major implications. The golf course above one of the scientific monitoring sites uses a fertilizer compound containing 16 percent nitrates heavy by any standard. The prosecution team included data from the monitoring well at Sea Pines in its case against the Los Osos 45.

In his early days with the water board, Briggs wrote a memo to his then-superior Bill Leonard referencing "poorly-constructed monitoring wells," many of which remain in use to this day. The document was time stamped 1984, predating the CSD by 15 years. With codebooks in hand, Sanford cited lines requiring regulators to plug or significantly repair any taps that could be providing specious data.

"Considerable research, evaluation, repair, and replacement of monitoring wells in Los Osos has occurred since [that reference]," Packard wrote in the water board's official response.

Even in Los Osos, many view the 30-year-old nitrate debate as pedantic. Common sense indicates that a high-density cluster of septic systems would prove damaging to water quality, so why talk about nitrates? But the case of the Los Osos 45 isn't another political battle. It's a legal one, and one based on specifics. As community patience for the nitrate topic continued to erode, water board chairman Jeff Young struck many of these specific reports from the evidence binder of the recent administrative hearings, calling them "irrelevant."

"It's not a sexy issue anymore," cease-and-desist order recipient Beverly DeWitt-Moylan said. "My neighbors aren't thinking about nitrates. Really, PZLDF has almost become a pejorative.

"I would never begrudge someone for not being active. My husband and I weren't active and then we got [an order]."

"What [PZLDF] doesn't realize is that the whole issue was litigated over in the '90s," added former CSD director LeGros, referring to an unsuccessful legal challenge by the now-defunct Citizens for Affordable Wastewater Solutions. "They don't have a prayer."

Either way, as the questions pile up, the absence of Briggs architect and constant becomes more and more pronounced. This confusing situation is only compounded by the fact that Briggs wasn't the only deck chair shuffled.

Many of the water board names scattered across recall-era correspondences have shifted positions, resigned, or otherwise left the scene. Regional wastewater analyst Gearhart Hubner: retired. State financial planner Darrin Polhemus: promoted out of the department. Regional CDO drafter and agency counselor Lori Okun: reassigned due to a conflict of interest. State board member Richard Katz: reassigned by the governor. State executive officer Celeste Cantu: resigned. State board member Gerry Secundy: returned to the private sector after the rest of the board reversed his controversial decision to stay fines against an avionics corporation early in 2006.

Regional executive officer Roger Briggs: on sabbatical, in a sailing boat off the western coast of Mexico, friends and colleagues believe. Nobody knows exactly where.

"If anyone seriously believes that any of these people were sent away because of [Los Osos], they're smoking something," water board personnel counselor Ted Cobb said. "Briggs had been dreaming about this trip for years. Los Osos might have delayed it, but it didn't cause it."

### **Awaiting a return**

As to Briggs' motives and the timing of his departure, Los Osos continues to speculate since its residents can do little else and they do it so well.

Mysterious even when present, Roger Briggs' sudden disappearance fueled conjecture in the nitrate-crazed bedroom community. Retired photographer Ben DiFatta who spent a career shooting top-secret aircraft projects for Boeing said he was practically ejected from the room while trying to snap a picture of Briggs at a rare public appearance. New Times spent the better part of a month trying to track down a high-resolution photo of the elusive bureaucrat.

Without a face or a trend or a saying or a moniker, Briggs instead became characterized by the strange concoction he left brewing when he recently departed these parts.

"One woman said, 'Why would you come after me while allowing my neighbors to expand (on their homes)?" CSD director Lisa Schicker recounted from the December hearings. "Instead of understanding what she was saying, they asked her to turn in her neighbor. The whole thing is very chilling to me."

All of this begs the question of what's really at stake. In the vast dialogue of ecological politics, conservationists apply asterisks to places of heightened concern places so florally or faunally unique that their loss would tear at global diversity. Los Osos is both.

One taking the time to break from the harried flow along Los Osos Valley Road can pull over and, with a keen eye, actually see the spot where the soil changes from rocky earth to Los Osos' fertile silt. From that patch of ground, on a spring morning, it's possible, even likely, to witness raptors dancing on a seaborne zephyr to smell the flowering manzanita and lupine. To the north, the rocky face of Hollister punctuates a geographic coliseum that plays host to one of the most spectacular atmospheric theaters in the American West.

It seems that everyone living in or involved with Los Osos harbors an opinion over what this canvas is or could be. Roger Williams Briggs is no exception, but his brush is simply bigger than those of all other Sewerville players. By the time the Los Osos 45 made the scene, Briggs' trail of paint appeared so long, not all the water in the Pacific Ocean could wash it clean.

Staff Writer Patrick M. Klemz admits to being the second plumber on the grassy knoll. To call him a polluter, e-mail [pklemz@newtimeslo.com](mailto:pklemz@newtimeslo.com).