

January 30, 2009

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VIA ELECTRONIC MAIL

Mark Hutchinson
Environmental Programs Manager
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County Government Center, Room 207
San Luis Obispo, CA 93408

**RE: Comments to Draft Environmental Impact Report for the San Luis Obispo County
Los Osos Wastewater Project**

Dear Mr. Hutchinson:

Golden State Water Company (GSWC) has reviewed the Draft Environmental Impact Report for the County of San Luis Obispo Los Osos Wastewater Project, State Clearinghouse No. 2007121034 (DEIR), and provides the following comments. GSWC voices these comments to resolve concerns with the County of San Luis Obispo (County) to ensure proper water management in the Los Osos Groundwater Basin (Basin). GSWC believes that resolution of Basin issues will be in the community's best interest. Specifically, the intent of these comments is to ensure the valuable water resources in the Basin are used in a manner that supports its long-term sustainability and provide a safe, high quality water supply. GSWC welcomes the opportunity to work with the County and other interested parties in an effort to resolve these concerns and to continue moving forward on a basin-wide solution for proper water management in the Los Osos community. These comments are submitted to ensure that agency decision-makers comply with the provisions of the California Environmental Quality Act (Pub. Res. Code §§ 21000, *et seq.*, "CEQA") and its Guidelines (Title 14, CA Code Regs. §§ 15000, *et seq.*, "CEQA Guidelines") and applicable case law.

The Environmental Impact Report (EIR) is the "heart of CEQA." *Laurel Heights Improvements Ass'n v. Regents of University of California* (1988) 47 Cal.3d 376, 392. It is an environmental "alarm bell" whose purpose is to alert the public and its responsible officials to environmental changes before they result in ecological consequences. Because the EIR must be certified or rejected by public officials, it is a document of accountability. *Id.* (citations omitted).

Notwithstanding that the County has made what we believe to be significant, good-faith efforts on the wastewater project, the Los Osos community will face severe water supply impacts if proper water reuse alternatives are not adequately analyzed and implemented. The DEIR

deficiencies set forth in this letter frustrate meaningful public review of the Project to ensure that Los Osos' water supply is protected. The comments below are truly intended to assist the County with remedying the DEIR's deficiencies through the completion of the environmental review process in compliance with CEQA, and we hope that the County will accept our comments in that light.

1. General Concerns with the CEQA Process

(a) Project Definition

CEQA defines an EIR as primarily "an informational document." Pub. Res. Code § 21061. Its main purpose is to "inform public agency decision makers and the public generally of the significant environmental effect of a project, identify possible ways to minimize the significant effect, and describe reasonable alternatives to the project." Guidelines § 15121(a). CEQA Guidelines define "project" as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." *Id.* § 15378(a).

A clear and comprehensive description of the project being proposed for approval is critical for a meaningful public review. A project description that omits integral components of the project may result in an EIR that fails to disclose all of the impacts of the project. *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 829-830; *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1450-1453. While extensive detail is unnecessary, an EIR is required to describe a project with sufficient detail and accuracy to permit informed decision-making. (CEQA Guidelines § 15124.) As explained below, the DEIR does not meet this basic threshold.

The DEIR adopts a project description that permits the County to address certain limited goals to achieve rather than addressing impacts attributable to the actions it is taking. The County defines the primary purpose of the DEIR as being development of infrastructure for wastewater collection, treatment, and disposal to serve Los Osos in the designated Prohibition Zone. The County identifies the Project's two primary *benefits* as: (1) compliance with the Waste Discharge Requirements (WDR) of the Regional Water Quality Control Board (RWQCB); and (2) alleviating groundwater contamination, primarily nitrates, which has occurred by the use of septic systems throughout Los Osos. (DEIR, p. 1-10.) The DEIR then points out that another important consideration of the Project involves water resource issues related to seawater intrusion contaminating the Basin. Specifically, the County states that "while the purpose of the Los Osos Wastewater Project (LOWWP) is to develop a community wastewater system, implementation measures for effluent disposal can enhance the opportunities for the water purveyors to improve the local water resources." (DEIR, p. 1-10.)

Throughout the DEIR the County claims that the Project description is limited by Assembly Bill 2701.¹ See 7-16 of the DEIR where the County states:

Level B alternatives provide project benefits that are not necessary to meet the current project goal, which is to treat the Los Osos community wastewater in order to alleviate groundwater contamination and to mitigate the LOWWP's potential impact on seawater intrusion into the groundwater aquifer. Consequently, Level B alternatives are outside the scope of authority transferred to the County by AB 2701. Although the Level B alternatives were not carried forward into the proposed projects, in the future, other agencies such as the water purveyors, could pursue the Level B alternatives as separate projects.

The proper scope of the County's actions needs to include all the impacts to the Los Osos area from changing the sewage disposal and treatment process in the community. The County claims that flow from the existing individual residential septic tanks currently mitigates seawater intrusion by approximately 90 acre-feet per year (AFY). The DEIR clearly states that diverting these effluent discharges elsewhere could increase seawater intrusion by 90 AFY to a total of 550 AFY. (DEIR, p. 7-59.)

Before the County's actions, under present conditions, 1,267 AFY remains in the Basin from septic tank recharge. (See DEIR, Appendix D, Hopkins Preliminary Hydrogeological Impacts Study, pp. 24-26.) After the County implements the Project, that action will result in the vast majority of the septic tank recharge being exported out of the Basin. The exported water provides no groundwater recharge benefit to the Basin. All four proposed Projects include disposal of 1,290 AFY (estimated) of projected treated effluent based on the wastewater generated by the buildout population and estimated wet weather infiltration into the collection system. This treated effluent flow projection also assumes that the County implements water conservation measures. The operation of the LOWWP will result in removing approximately 842 AFY from the Basin and leaving in the Basin 448 AFY. (DEIR, pp. 2-11-2-12.)

Additionally, the LOWWP will dramatically change the way recharge operations occur within the Basin. Under current conditions, recharge occurs from septic recharge which is relatively dispersed compared to what is planned under the Project. Under the Project, recharge from reclaimed water in the Basin will occur at one location—the Broderon site. There are both

¹ "Assembly Bill (AB) 2701 was proposed to authorize transfer of wastewater authority from the LOCSD to the County of San Luis Obispo to proceed with implementation of a project to build a wastewater collection and treatment system for the Los Osos community. AB 2701 was passed unanimously and signed into law by Governor Arnold Schwarzenegger effective January 1, 2007. In accordance with the project goals and objectives and the limited authority granted by AB 2701, the project team focused on Level 2 effluent disposal alternatives that would achieve the maximum benefits to reduce seawater intrusion without water purveyor participation." (DEIR, pp. 1-8, 1-9, and 7-60.)

water quantity and quality implications from the Broderson site operations which need to be included in the impact analysis of the Project not presently included in the DEIR.

The scope of the County's review should be on the action of building and operating the LOWWP which results in removing water from, and modifying recharge patterns in, the Basin. The replacement of the septic systems with the LOWWP and its operations is the underlying action. However, throughout the DEIR the County elects to address certain limited goals or project *benefits* (e.g., meeting the RWQCB requirements and alleviating certain limited groundwater quality issues). The County treats these two goals as the only requirements that it must fully address in the DEIR. The DEIR does identify impacts to the groundwater levels as a secondary impact. The County identifies that there will be impacts to groundwater levels due to seawater intrusion. However, it then claims that those impacts are mitigated or additional opportunities exist for other agencies, such as water purveyors, to address those impacts. See page 7-16 of the DEIR which states: "Additional treatment would be required in order to reuse the treated effluent for agricultural or urban purposes; however, providing this higher level of treatment is not necessary, and is not part of the Proposed Project. Los Osos area water purveyors may want to pursue this option in the future to enhance the local water supply."

Regardless of the goals that the County and AB 2701 have established or the requirements of the RWQCB, the County must address all impacts of its actions. The DEIR stops short with much of the impact analysis throughout the DEIR by claiming it is outside the goals of the Project either set by AB 2701 or the County in its prescreening process. This is not a proper analysis under CEQA. The lead agency must identify all the impacts caused by its action first, then provide a meaningful analysis of their mitigation.

Meeting the requirements imposed by the RWQCB and addressing groundwater contamination are requirements of the project, but not the action itself. The County's action of removing the septic tanks will cause significant impacts. See page 27 of Hopkins Preliminary Hydrogeological Impacts Study, Appendix D, which states that removal of the septic system percolation return flows will create a hydrologic imbalance in the groundwater system if not properly mitigated. This impact needs to be fully analyzed in the DEIR and not simply conducted outside the DEIR or passed over as a secondary goal which other parties may fully address at a later date.

CEQA defines a project differently than the approach taken by the County. CEQA, defines "project" broadly, as an *activity*. Public Resources Code section 21065 defines a "project" as "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change." It does not state that a "project" is every single permutation of a development down to the last shrub or window. Thus, courts have opined, based on the breadth of the statutory definition, that a "project" is the "*whole of an action* which has a potential for resulting in a physical change in the environment, directly or ultimately, and includes the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies." *Burbank-Glendale-Pasadena Airport Authority* (1991)

233 Cal.App.3d 577, 592, emphasis added; *County of Orange v. Superior County* (2003) 113 Cal.App.4th 1, 9.

(b) The DEIR Fails to Develop and Maintain a Constant Project Description

Of concern is that the DEIR fails to develop and maintain a constant project description. An accurate, stable, and finite project description is the *sine qua non* of CEQA. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-193.) Under CEQA, a “project” is generally defined as the whole of an action having the potential to result in either a direct or reasonably foreseeable indirect physical change in the environment. (CEQA Guidelines § 15378(a).)

CEQA requires a stable and accurate project description, and the DEIR fails to provide one. “This EIR presents a detailed environmental analysis of four preliminary Proposed Project Alternatives on an equal basis. The preferred LOWWP Alternative selected could be any one of the four alternatives or an alternative combination of project components.” (DEIR, p. 1-10.)

The DEIR does not select a proposed project, opting instead to examine several alternatives. This approach does not provide the public with an opportunity to provide meaningful comment on the Project because the final Project could be a combination of the alternatives that is completely different from that which was circulated in the DEIR:

“The four projects identified in the table above and discussed below represent a discrete combination of treatment plant sites, collection system types, wastewater conveyance system schemes, and effluent storage and disposal techniques. They form the basis for analysis in this Draft EIR. However, it is possible that any combination of these elements may be used for the County’s preferred alternative identified through this Draft EIR process and for the County to make findings that support the final project decision” (DEIR, p. 2-8).

An agency cannot simply release a draft report “that hedges on important environmental issues while deferring a more detailed analysis to the final [EIR] that is insulated from public review.” *Mountain Lion Coalition v. California Fish and Game Comm’n* (1989) 214 Cal.App.3d 1043, 1052.

(c) The DEIR Fails to Properly Address Groundwater Issues That Have Potentially Significant Impacts

The fundamental purpose of an EIR is to provide public agencies and the public with detailed information about the effect a proposed project is likely to have on the environment, to list ways in which the significant effects of a project may be minimized, and to identify alternatives to the project. (Pub. Res. Code § 21061.) These public disclosure requirements require the DEIR to “focus the discussion in the environmental impact report on those potential effects on the

environment of a proposed project which the lead agency has determined are or may be significant.” (Pub. Res. Code § 21002.1(e).) As discussed below, the DEIR does not adequately analyze the potential impacts of the alternatives it identifies and substantial evidence does not support the DEIR’s conclusions about those alternatives.

In the DEIR the County claims there are no potentially significant impacts on groundwater quality and water supply. (DEIR, pp. 1-15, 2-25, and 2-27.) Because of this determination these areas are not fully studied in the DEIR.

Throughout this Draft EIR, only impacts that were found to be Potentially Significant are discussed. Findings of Less Than Significant or No Impacts for each area of study are not studied further (DEIR, p. 2-25.).

The following CEQA Guidelines are to be used in determining whether impacts to water supply and groundwater quality are significant, if the Project:

- (a) substantially depletes groundwater supplies or interferes substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)
- (b) otherwise substantially degrades groundwater quality.

It is unclear from the DEIR if the LOWWP will deplete groundwater supplies or interfere substantially with groundwater recharge. Also, the analysis is insufficient to determine the impacts to groundwater quality. These matters are unclear as the analysis is not fully conducted in the DEIR; however, based on the information provided in the DEIR it is apparent that there are potential substantial impacts to both groundwater supply and quality.

The conclusions in the DEIR are contradictory to the facts provided; the DEIR does not support that there are potentially no impacts to groundwater resources, and shields from the public the needed analysis to determine if the mitigation measures really can protect Los Osos’ water supply. It is clearly acknowledged by the County that the removal of the septic tank return flows will cause an imbalance in the Basin. (DEIR, pp. 2-11, 2-12; DEIR, Appendix, pp. D 5.2-26-27; DEIR, Appendix D, Hopkins Preliminary Hydrogeological Impacts Study, pp. 27, 30-33.) The County does make efforts to mitigate impacts to groundwater levels caused by the removal of the vast majority of the septic return flows from the Basin. However, since the County determines these mitigation measures solve the problem of significant impacts to groundwater resources, these impacts are not analyzed in the DEIR. Essentially the County removes one of the most critical areas of analysis from the DEIR by claiming the impacts are already adequately addressed by mitigation measures. Once the County identifies that there will be potentially significant impacts from the Project, it must address those impacts fully in the DEIR so the

public can determine if the mitigation measures the County claims are sufficient to offset those impacts truly are sufficient. The problem with the DEIR as written is not that the County does not plan to mitigate the impacts, because it does plan to do so, but that the DEIR does not include sufficient analysis for the public and decision makers to determine whether those mitigation measures will be sufficient regardless of the County's intent.

Additionally, the County's findings that there are no potential significant impacts to groundwater resources are based on assumptions not properly examined. Three assumptions are provided below as an example. These concern the County's attempt to address the impact from seawater intrusion from the removal of the septic tank return flows and the reuse component of the Project.

First, the County assumes that 160 AFY of conservation measures can be achieved. A fundamental assumption throughout the DEIR is that conservation will occur and the County will be able to achieve 160 AFY (DEIR, p. 2-13). This amount is based on a 10% reduction; no analysis has gone into whether this is possible or what the current rate of conservation is. Additionally, the County claims the conservation will result in roughly 90 AFY of seawater intrusion mitigation. This, however, does not account for where in the Basin the conservation is taking place; rather, the County applies a uniform mitigation factor to this conservation. This assumption is not realistic because mitigation associated with conservation is highly contingent on the location of the reduction of the pumping. If the majority of the conservation occurs in wells in the eastern part of the Basin, this would result in a much lower seawater intrusion factor than if the conservation occurred in the western part of the Basin. Lastly, it is also unclear how the conservation measures will be generated and implemented.

A second critical assumption is made in the DEIR regarding impacts to groundwater resources and the change in recharge operations in the Basin. Under the Project, the source of recharge is shifted from several individual septic tanks to one location at the Broderson site. There is no analysis of impacts to groundwater production quality due to this shift in recharge operations. The DEIR clearly identifies the need to monitor impacts from the operation at the Broderson site (DEIR, Appendix D, Preliminary Hydrogeological Impacts Study, pp. 30-33), but there is no clear plan implementing these procedures to ensure water quality around the Broderson site. The DEIR is devoid of any analysis on production impacts to potable water wells in the area.

There are many questions to be addressed by the Broderson site operation. The impacts of concentrating the recharge at Broderson must be more thoroughly examined. Also, there needs to be a discussion of the operations plan at Broderson, so that the public can understand exactly how much water would be recharged and exported and under what circumstances. A better analysis needs to be conducted on the possible "asymmetrical disposal approach" at Broderson, which creates the ability of exporting much more water in the dry months. The possible impacts of concentrating nonregulated contaminants at Broderson needs to be explored. A possible solution for many of these concerns would be to plan for an incremental pilot project with monitoring oversight, rather than simply implementing full discharges immediately. However, if

a pilot project is selected, then a detailed analysis is needed to ensure this will not impact seawater intrusion.

A third example of the County's flawed assumptions of no significant impacts to groundwater resources is the sprayfield disposal site at Tonini. See DEIR, Appendix D, p. 5.2-26, which states that during the operation of the proposed sprayfields, potential impacts to groundwater from sprayfield irrigation will include a potential increase in total dissolved solids (TDS) concentration, and nitrate loading of surface soils which can eventually percolate to groundwater. The DEIR cites that the aquifer is an open system and outflow is observed downgradient as seeps and springs on the land surface, and contributes to underflow into the channel alluvium along the Warden Lake drainage and into the Los Osos Creek Valley aquifer. Because the system is open, the DEIR states that, with outflow, the increase in salt concentrations in the groundwater from irrigation practices will reach equilibrium and not continue to increase over time. (DEIR, Appendix D, pp. 5.2-26 -5.2- 27.) The DEIR fails to address what happens to the TDS, and how it will impact the groundwater quality in the area. The DEIR cites that the TDS concentration of treated effluent that would be used for sprayfield disposal at the Tonini Ranch is estimated at approximately 620 milligrams per liter (mg/l) and is comparable to the groundwater that underlies the Tonini site, which was measured and averaged at 606 mg/l. The County claims that because of the similar TDS concentrations, the effects on groundwater from using the LOWWP effluent as an irrigation source versus pumping groundwater for crop irrigation are the same. (*Id.*) This analysis does not address the buildup in salts in the receiving water, and also the likelihood that reclaimed water tends to increase in TDS mg/l over time as the water that is being sent to the LOWWP will increase over time. The 14 mg/l difference will increase as buildout is reached.

There is a failure to make a connection between the facts presented and the conclusions reached in the DEIR. Although DEIR identifies potentially significant impacts, it relies on unsupported assumptions in an effort to mitigate these impacts to levels that are not significant. Most troubling is the fact that since the County claims these mitigation efforts have resolved the impacts, the impacts to groundwater resources are never analyzed in the DEIR process where the public can participate to ensure their water supply is being protected. The above examples and questions raised illustrate that the County does not rely on substantial evidence to conclude that there are no potential significant impacts to groundwater resources. Argument, speculation, or evidence that is inaccurate or not credible does not constitute substantial evidence. See *Topanga Ass'n for Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 512-517.

(d) The DEIR Fails to Consider a Reasonable Range of Alternatives

Section 15126.6(a) of the CEQA Guidelines states that the range of alternatives that must be analyzed in an EIR is generally governed by a rule of reason, under which the EIR is required to set forth only the alternatives necessary to analytically evaluate the environmental impacts of the proposed project. An EIR is not required to consider alternatives which are infeasible in relation to the purpose of the proposed project. (CEQA Guidelines, § 15126.6(c).)

Rather, an EIR need examine in detail only those alternatives the lead agency determines could feasibly attain most of the basic objectives of the project. (*Id.*) The reasoning for selecting those alternatives must be publicly disclosed by the lead agency in order to foster informed decision-making and public participation. (CEQA Guidelines § 15126.6(a).) The discussion of alternatives should include sufficient information about each alternative to allow evaluation, analysis, and comparison with the proposed project. (CEQA Guidelines § 15126.6(d).)

The failure to consider a reasonable range of alternatives is problematic and mainly supported by two general observations in the DEIR. First, as described above, since the scope of the DEIR is not accurately defined to properly address the project impacts, this causes another problem in that there can be no true determination of what should be a reasonable range of alternatives to the project. Second, the DEIR does not provide enough analysis on why only one reuse option was selected and others were not examined, specifically those using tertiary treatment.

First, because the County fails to set forth an accurate project description, a meaningful alternatives analysis is impossible. Because the DEIR does not provide a stable project description to which alternatives can be compared (DEIR, p. 1-10.), the “alternatives” presented in the DEIR are more akin to a *series* of proposed projects, rather than the means to compare the worth and value of alternatives to a proposed project. The ability of the County to move the “goal posts” of the Project enables it to invalidate any other reasonable alternative it deems appropriate. One of the many illustrative examples from the DEIR states as follows:

“The additional treatment required to meet tertiary treatment standards, and the associated capital and operations and maintenance cost increases, is not required for the County to satisfy RWQCB requirements. Additional treatment would be required in order to reuse the treated effluent for agricultural or urban purposes; however providing this higher level of treatment is not necessary and is not part of the Proposed Projects. Los Osos area water purveyors may want to pursue this option in the future to enhance the local water supply. Unless the selected wastewater treatment plant site is limited in size, sufficient space would be available for any facility upgrades necessary to upgrade the plant to tertiary level treatment in the future.” (DEIR, p. 7-43.)

The rationale for elimination of possible project alternatives as not meeting “project objectives” is inappropriate without supporting evidence. (CEQA Guidelines § 15126.6(c).) Here, the County selects objectives that will guide its ultimate decision that do not address the Project Impacts. A proper statement of objectives required by CEQA is intended to assist with making these determinations, and the improper scope of the objectives in the DEIR, as discussed above, renders the alternatives analysis suspect. *Save San Francisco Bay Ass’n v. San Francisco Bay Conserv. & Dev. Comm’n* (1992) 10 Cal.App.4th 908. The requirement that an EIR identify alternatives to the proposed project stems from CEQA’s fundamental policy that public agencies

should not approve a proposed project if a feasible alternative or feasible mitigation measures is available that would reduce the significant environmental impacts of the project. (Pub. Res. Code § 21002.)

Secondly, assuming there was a properly scoped Project description and impact analysis which the public can use as a baseline for comparison to other alternatives, the DEIR improperly screened out other reasonable alternatives. When a lead agency screens out certain alternatives from review in the DEIR certain parameters must be followed. CEQA Guidelines section 15126.6 (c) sets forth the parameters for an alternatives screening process, and states that:

“The EIR should briefly describe the rationale for selecting the alternatives to be discussed. The EIR should also identify any alternatives that were considered by the lead agency, but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the lead agency’s determination. Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are: (i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental impacts.” (CEQA Guidelines § 15126.6 (c).)

All four Project alternatives export the majority of the recycled water out of the Basin, and there is no recharge benefit from that loss. All the Project alternatives include the Broderson site and the export out of the Basin, so there is no meaningful comparison for the community to review and evaluate. None of the alternatives consider urban and agriculture reuse. Total seawater intrusion mitigation is 238 AFY versus 187 AFY without urban and agriculture reuse. (DEIR, pp. 7-60, 7-61.) At least analyzing the urban and agriculture reuse alternative is within the reasonable range of feasible alternatives that will foster informed decision-making and public participation.

The Supplemental Notice of Preparation mentioned two other potential effluent disposal and reuse locations: urban reuse and agricultural reuse. However, after analysis performed outside of the DEIR, these types of locations were eliminated from further consideration for the current LOWWP project. (DEIR, pp. 7-8, 7-9.) There is no documentation of the analysis of why alternative reuse projects were not carried forward to the DEIR. The County does cite to prior analysis being conducted in Rough and Fine Project Screening Reports; however, those prior reports laid the foundation for the alternatives, but did not provide needed analysis and public involvement under CEQA to decide which alternatives to carry forward.

“[T]he County has been examining a wide range of alternatives on a co-equal basis. Technical Appendices B-1: Alternatives Development and Descriptions and B-2: Systems Component Evaluation, and the Fine Screening Report (Carollo Engineers

2007a) and Rough Screening Report (Carollo Engineers 2007b) summarize the process followed to identify the four Proposed Projects discussed in this Draft EIR and to set aside other alternatives from further consideration.” (DEIR, p. 7-5.)

The County has decided to carry forward only one reuse option in the DEIR. As cited above at DEIR, p. 7-43, the reasons the County does not carry forward other reuse alternatives that implement more reuse in the Basin are: (1) the additional treatment capital and operations and maintenance costs associated with the alternative are not required to meet the RWQCB requirements; (2) providing this higher level of treatment is not necessary and is not part of the Proposed Project; and (3) Los Osos area water purveyors may want to pursue this option in the future to enhance the local water supply. The County does not use the above identified CEQA factors to screen out other reuse options. It appears the main reason for the County’s exclusion of other reuse options is cost.

(e) Failure to Identify a Proper Environmental Baseline

The baseline for assessing impacts of a proposed project will normally be the environmental setting for the project at the time the Notice of Preparation is published. (CEQA Guidelines § 15125(a).) As a general rule, the baseline determination is the first step rather than the last step in the environmental review process. (*Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 124-125; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal. App.4th 931, 955 [description of environmental setting includes analysis sufficient to allow informed comparison of pre-project and post-project conditions].) Failure to use current and available data that are highly relevant (indeed determinative) to an impact analysis in an EIR violates CEQA. (*See Berkeley Keep Jets Over the Bay Committee v. Port of Oakland* (2001) 91 Cal.App.4th 1344.)

The environmental baseline provided in the DEIR is inadequate in several ways. There is an inadequate identification of potable well locations, production and quality. Also missing from the DEIR is the location of current potable water utility infrastructure, and how the LOWWP might interfere or impact those facilities. There is no proper baseline of how current septic recharge impacts the salt-water intrusion.² An inadequate amount of water quality data is analyzed in the DEIR—data critical in developing a proper monitoring plan for potential impacts from the Broderson site. There is no discussion about the current rates or methods of water conservation in the community. The DEIR needs to more thoroughly identify the currently

² See, specifically, DEIR Appendix D, pp. 5.2-18, 5.2-19:

Implementation of the proposed project would reduce septic effluent discharge into the perched aquifer (Zone A). Therefore, the project would reduce the quantity of groundwater within the perched aquifer. However, the exact quantity of reduction within the perched aquifer is unknown and the potential impact on groundwater flow to surrounding surface water features is speculative given that the amount of perched groundwater currently flowing to surface water features is not known.

regulatory requirements of the RWQCB for the LOWWP. The assumptions with the current groundwater budget need to be more thoroughly examined to ensure accuracy.

2. Other Specific Concerns

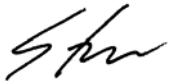
In addition to the above examples illustrating the concerns with the CEQA process, GSWC provides the following additional concerns with the DEIR.

- (a) WDR. Has there been an effort to work with the RWQCB to identify what the requirements will likely be for a WDR for the LOWWP, rather than the requirements of previously planned projects?
- (b) Project Flexibility. The Project needs to provide flexibility and avoid facilities that make it more difficult to implement tertiary treatment in the future. Specifically, the County's use of facultative ponds in Alternative Four will produce an effluent that is more difficult to refine into high quality recycled water.
- (c) Tertiary Treatment. If the water purveyors were to install tertiary treatment and look for recycled water users, how would they integrate with the County, e.g., get effluent and access to the Tonini site?
- (d) Other Possible Water Supply Mitigation Measures. Has the County considered suggestions such as TAC Member John Brady's suggestion about using groundwater from existing agricultural wells at the Tonini site to recharge and/or blend with effluent to be recharged or as a source of water during startup? (Email communication from John Brady to Paavo Ogren, dated 12/10/08).
- (e) Impacts to Infrastructure. How will impacts to water purveyors' infrastructure from construction activities be avoided or mitigated?

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An EIR that addresses these concerns is in the best interest of the community to ensure its water supply is being properly managed and protected. GSWC welcomes questions or responses to these comments, and looks forward to resolution of these issues.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Strickland', written in a cursive style.

C. Wesley Strickland

CWS/gml

cc: Paavo Ogren, County of San Luis Obispo, Dept. of Public Works
John Waddell, County of San Luis Obispo, Dept. of Public Works
John Schempf, Los Osos Community Services District
David Tolley, S&T Mutual Water Company
Toby Moore, Golden State Water Company