

Sen Maldonado Letter re Jurisdiction over Salt Water Intrusion

Warren Jensen to: Bruce Gibson

03/03/2010 08:57 AM

Cc: Paavo Ogren, Timothy McNulty, jorton, Patrick Foran

ATTORNEY-CLIENT COMMUNICATION
Do Not Forward Without County Counsel's Approval

Bruce,

Here are my thoughts on the letter that Senator Maldonado sent to Frank Ausilio (a copy is attached).



2009-11-11 Sen Maldonado ltr to Ausilio.pdf

1. Senator Maldonado's letter is merely his opinion, based on the opinion of an unidentified DWR official. No statutes, regulations, or case law are cited in support of the opinion. Obviously, a mere letter stating the opinion of a legislator does not establish a binding legal precedent.
2. The subject of salt water intrusion into the Los Osos Groundwater Basin is currently within the sole jurisdiction of the San Luis Obispo Superior Court in *LOCSD v Golden State Water Company et al*. The County is a participant in that litigation and is a signatory to the Court-ordered Interlocutory Stipulated Judgment ("ISJ"), which requires the parties to work cooperatively on developing solutions to the problems within the basin. The parties are in fact working cooperatively pursuant to the ISJ.
3. Given the existence of the ISJ and the pendency of the groundwater litigation, the County is now legally precluded from enacting a groundwater management ordinance or any other similar ordinance directly controlling use of the Los Osos Groundwater Basin.
4. The County retains land use authority within the land overlying the Los Osos Groundwater Basin. Pursuant to its Resource Management System, the County has determined that there is a Level of Severity III for the Los Osos Groundwater Basin. As a result of RWQCB policies, development in the Prohibition Zone is severely curtailed. In addition, the County has adopted ordinances requiring retrofit with water-efficient fixtures whenever existing properties are either (a) sold, or (b) renovated or enlarged.

Let me know if you want to discuss this further

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**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

Frank Quinlan
4-7-2010

(1) DEPARTMENT Planning and Building	(2) MEETING DATE September 29, 2009	(3) CONTACT/PHONE Murry Wilson, Environmental Resource Specialist (805) 788-2352	
(4) SUBJECT Hearing to consider an appeal by Don Bearden, Steven Paige, Vivian & Barry Branin, Bruce Corelitz, Los Osos Valley Memorial Park, J.H. Edwards Company, Piper Reilly, Linde Owen, Los Osos Sustainability Group, Martha Goldin, Elaine Watson, Citizens For Affordable & Safe Environment & Coalition for Low Income Housing, Surfrider Foundation – San Luis Bay Chapter, Los Osos Legal Defense Fund, Sierra Club, and Chuck Cesena of the Planning Commission's approval of a request by the COUNTY OF SAN LUIS OBISPO for a Development Plan / Coastal Development Permit to allow construction and operation of a sewer system to serve the community of Los Osos, which includes a collection system, a sewer treatment facility plant, effluent disposal system, agricultural re-use program, water conservation program, and all associated appurtenant infrastructure in multiple land use categories. The proposed treatment plant site is located at 2198 Los Osos Valley Road, approximately 0.5 miles east of the community of Los Osos (known as the Giacomazzi site) and is located in the Agriculture land use category. The infrastructure for the project is located in the county throughout the community of Los Osos and 0.5 miles east of the community of Los Osos, in the Estero Planning Area. Said project may include an application for USDA Rural Development Funding. (SUPERVISORIAL DISTRICT 2)			
(5) SUMMARY OF REQUEST The Board is being asked to consider the issues raised in sixteen appeal letters associated with a wastewater treatment project for the community of Los Osos which has recently been approved by the Planning Commission. The numerous appeal issues are related to the project description, environmental analysis, mitigation measures, conditions of approval, project costs, analysis of coastal policies, etc. Staff has provided responses to the issues raised in the appeal letters in the attached staff report.			
(6) RECOMMENDED ACTION Adopt the resolution denying the appeals and affirming the decision of the Planning Commission and conditionally approving the application of County of San Luis Obispo – Department of Public Works for a Development Plan / Coastal Development Permit (DRC2008-00103) based on the findings in Exhibit A, the conditions of approval in Exhibit B, and the California Environmental Quality Act (CEQA) findings in Exhibit C.			
(7) FUNDING SOURCE(S) None – Coastal Appeal	(8) CURRENT YEAR COST N/A	(9) ANNUAL COST N/A	(10) BUDGETED? <input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A
(11) OTHER AGENCY/ADVISORY GROUP INVOLVEMENT (LIST): Environmental Health, Agriculture Commissioner, County Parks, Cal Fire, Air Pollution Control District (APCD), California Department of Fish and Game (CDFG), California Coastal Commission, Regional Water Quality Control Board (RWQCB), United States Fish and Wildlife Service (USFWS), Los Osos Community Services District (LOCS), National Marine Fisheries Service (NMFS), Morro Bay Estuary Program, City of Morro Bay, Army Corp of Engineers (ACOE), California State Lands Commission, Los Osos Community Advisory Council, Northern Chumash Tribal Council, Salinan Heritage Consultants, Native American Heritage Commission, and the Office of Historic Preservation.			
(12) WILL REQUEST REQUIRE ADDITIONAL STAFF? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, How Many? _____ <input type="checkbox"/> Permanent _____ <input type="checkbox"/> Limited Term _____ <input type="checkbox"/> Contract _____ <input type="checkbox"/> Temporary Help _____			
(13) SUPERVISOR DISTRICT(S) <input type="checkbox"/> 1st, <input checked="" type="checkbox"/> 2nd, <input type="checkbox"/> 3rd, <input type="checkbox"/> 4th, <input type="checkbox"/> 5th, <input type="checkbox"/> All		(14) LOCATION MAP <input checked="" type="checkbox"/> Attached <input type="checkbox"/> N/A	(15) Maddy Act Appointments Signed-off by Clerk of the Board <input checked="" type="checkbox"/> N/A
(16) AGENDA PLACEMENT <input type="checkbox"/> Consent <input checked="" type="checkbox"/> Hearing (Time Est.) <input type="checkbox"/> Presentation <input type="checkbox"/> Board Business (Time Est. _____)		(17) EXECUTED DOCUMENTS <input checked="" type="checkbox"/> Resolutions (Orig) <input type="checkbox"/> Contracts (Orig + 3 Copies) <input type="checkbox"/> Ordinances (Orig) <input type="checkbox"/> N/A <input type="checkbox"/> Email Resolution and Ordinance to CR_Board_Clerk (in Word)	
(18) NEED EXTRA EXECUTED COPIES? <input type="checkbox"/> Number: _____ <input type="checkbox"/> Attached <input checked="" type="checkbox"/> N/A		(19) BUDGET ADJUSTMENT REQUIRED? <input type="checkbox"/> Submitted <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A	
(20) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(21) W-9 <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	(22) Agenda Item History <input checked="" type="checkbox"/> N/A
(23) ADMINISTRATIVE OFFICE REVIEW <i>Nicholas Schmitt</i>			

state permits. All pertinent information on these uses (including water conservation opportunities and impacts on in-stream beneficial uses) will be incorporated into the data base for the Resource Management System and shall be supplemented by all available private and public water resources studies available. Groundwater levels and surface flows shall be maintained to ensure that the quality of coastal waters, wetlands and streams is sufficient to provide for optimum populations of marine organisms, and for the protection of human health." (Public works projects are discussed separately)

The proposed wastewater treatment project is consistent with this policy because the project does not include the development of any additional water resources.

Coastal Plan Policies – Chapter 9, Policy 3: Monitoring of Resources states, *"In basins where extractions are approaching groundwater limitations, the county shall require applicants to install monitoring devices and participate in water monitoring management programs."*

The proposed wastewater treatment project is consistent with this policy because this policy is implemented pursuant to Section 8.40.065 of the County Code – Water Well Regulations which states, *"All water well permit applications within the coastal zone shall be reviewed by the county engineer to determine if participation in a water monitoring program is necessary to assure records are available for use in the resource management system. The manner in which a permit applicant shall participate in the monitoring program, including the frequency and type of reporting shall be determined by the county engineer."* To date, the County Engineer has not determined that a water monitoring program is necessary to assure records are available for use in the resource management system.

Coastal Plan Policies – Chapter 9, Policy 5: Los Osos Groundwater Management states, *"The county Planning and Engineering Departments should work with communities, property owners and the Regional Water Quality Control Board to develop and implement a basin-wide water management program for the Los Osos groundwater basin which addresses:*

- Existing and potential agricultural demand,*
- Urban expansion in relation to water availability,*
- Groundwater quality,*
- Possible need for alternative liquid waste disposal,*
- Protection of aquatic habitats including coastal waters, streams and wetlands.*

The Resource Management System provides a framework for implementing this policy. The Los Osos Groundwater basin has previously been identified as having a Level III severity related to groundwater resources. The Department of Planning and Building issued a moratorium for development within the community of Los Osos resulting in a halt of urban expansion within the moratorium area. The proposed project seeks to resolve groundwater issues within the Los Osos basin by protecting and enhancing groundwater quality, providing a means of alternative waste disposal (proposed wastewater project), not authorizing additional development until a secure water source is verified; and will consequently protect agriculture by providing reclaimed water for irrigation, and protect aquatic habitats including coastal waters, streams, and wetlands through project design and mitigation measures incorporated into the project. The project is consistent with this policy.

Frank Ausubio
4-7-2010

Paavo Ogren - 3/9/10 County Supervisors' Meeting - Public Comments

“Also, the ISJ efforts, I know there were some questions last month for your board, as well as it came up last week at the Water Resources Advisory Commission Committee that I responded to, which were the issue of Senator’s Maldonado’s letter, or, you know, the statement from the Department of Water Resources, that the county has the jurisdiction over the ground water issue in Los Osos. And I think that the clarification that I provided to WRAC and some of the other (unintelligible). It is clear that that letter was really speaking to the idea that DWR does not have jurisdiction over the ground water basin; it’s really a local issue. But we also know it’s not the County of San Luis Obispo, specifically. That’s why we’re in the ground water litigation. It’s the jurisdiction of the court, the purveyors, the shared jurisdiction, like many things in local government. And working through the ISJ and the court process is what we need to continue to do there.”

12:50
FA.

Frank Amato
4-7-2010

FINAL

FILED

AUG 05 2008

SAN LUIS OBISPO SUPERIOR COURT
BY *Pat Holmes*
Pat Holmes, Deputy Clerk

1 ROBERT J. SAPERSTEIN (State Bar No. 166051);
2 C. WESLEY STRICKLAND (State Bar No. 223897)
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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF SAN LUIS OBISPO
17

18 LOS OSOS COMMUNITY SERVICES
19 DISTRICT,

20 Plaintiff,

21 vs.

22 GOLDEN STATE WATER COMPANY, S&T
23 MUTUAL WATER COMPANY, COUNTY
24 OF SAN LUIS OBISPO, SEA PINES GOLF
COURSE, DOES 1 THROUGH 500,
INCLUSIVE,

25 Defendants.
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27
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CASE NO. GIN 040126

[Assigned for All Purposes to the Honorable
Teresa Estrada-Mullaney]

INTERLOCUTORY STIPULATED
JUDGMENT

[COMPLAINT FILED 02/13/04]

Interlocutory Stipulated Judgment

FINAL

FILED

AUG 05 2000

SAN LUIS OBISPO SUPERIOR COURT

BY Patt Holmes
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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 16 FOR THE COUNTY OF SAN LUIS OBISPO

18 LOS OSOS COMMUNITY SERVICES)
19 DISTRICT,)

20 Plaintiff,)

21 vs.)

22 GOLDEN STATE WATER COMPANY, S&T)
 23 MUTUAL WATER COMPANY, COUNTY)
 OF SAN LUIS OBISPO, SEA PINES GOLF)
 24 COURSE, DOES 1 THROUGH 500,)
 INCLUSIVE,)

25 Defendants.)

CASE NO. GIN 040126

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Teresa Estrada-Mullaney]

INTERLOCUTORY STIPULATED
JUDGMENT

[COMPLAINT FILED 02/13/04]

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27
28 Interlocutory Stipulated Judgment

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1 PRELIMINARY FINDINGS

2 A. Complaint

3 On or about February 13, 2004, Los Osos Community Services District ("LOCSD") filed a
4 complaint in the San Luis Obispo County Superior Court, Case No. GIN 040126 ("Complaint"),
5 against Golden State Water Company ("GSWC"), formerly known as Cal Cities Water Company,
6 S&T Mutual Water Company ("S&T"), Sea Pines Golf Course ("Sea Pines"), the County of San
7 Luis Obispo ("County"), and others, seeking a declaration of the Parties' relative rights to use water
8 resources of the Los Osos Valley Groundwater Basin ("Basin") located in San Luis Obispo County,
9 California. The Parties entered into a Stipulation of Parties As to Standstill Agreement, which was
10 approved by the Court on May 25, 2004 and stayed all pleadings in the litigation to allow the Parties
11 to hold settlement discussions. No defendant has filed with the Court a responsive pleading pursuant
12 to California Code of Civil Procedure section 430.10. GSWC filed a Motion to Transfer Action to a
13 Neutral County or for Assignment of a Disinterested Judge from a Neutral County on March 26,
14 2004. That motion was not heard by the Court, but was subject to the stipulation described above.
15 The Court held several Case Management Conferences at which the Court extended the
16 effectiveness of the standstill period under the Stipulation of Parties As to Standstill Agreement
17 through the effective date of this Interlocutory Stipulated Judgment ("ISJ"). On or about December
18 19, 2006, Sea Pines was dismissed as a defendant to the Complaint.

19 B. Assembly Bill 2701

20 On September 20, 2006, the Governor of the State of California signed Assembly Bill 2701.
21 AB 2701 added, *inter alia*, section 25825.5 to the Government Code, subsection (c) of which
22 provides that:

23 The [County] may undertake any efforts necessary to construct and
24 operate a community wastewater collection and treatment system to
25 meet the wastewater collection and treatment needs within [LOCSD].
26 These efforts may include programs and projects for recharging
27 aquifers, preventing saltwater intrusion, and managing groundwater

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1 resources to the extent that they are related to the construction and
2 operation of the community wastewater collection and treatment
3 system. These efforts shall include any services that the [County]
4 deems necessary, including, but not be limited to, any planning,
5 design, engineering, financial analysis, pursuit of grants to mitigate
6 affordability issues, administrative support, project management, and
7 environmental review and compliance services. The [County] shall
8 not exercise any powers authorized by this section outside [LOCSD].

9 Pursuant to that statutory authorization, the County is proceeding with efforts necessary to construct
10 and operate a community wastewater collection and treatment system in the Los Osos area.

11 **C. Resource Management System**

12 On March 27, 2007, the County certified a Severity Level III for water resources of the Basin
13 pursuant to the County's Resource Management System. Under that County system, Level III
14 indicates an "Unavoidable Resource Deficiency," defined as follows: "This is the most critical level
15 of concern. Level III occurs when the capacity (maximum safe yield) of a resource has been met or
16 exceeded. At Level III there is a deficiency of sufficient magnitude that drastic actions may be
17 needed to protect public health and safety."

18 **D. Jurisdiction**

19 This Court has jurisdiction to enter this ISJ declaring the Plaintiff's and Defendants' ("the
20 Parties") agreement for resource preservation and management of the Basin pursuant to the
21 California Constitution, Article X, Section 2.

22 **E. Parties**

23 1. LOCSD is a public agency organized under the Community Services District
24 Law, codified at California Government Code sections 61000 *et seq.*, that provides water to its water
25 customers for municipal and industrial uses within its water service area in the unincorporated
26 community of Los Osos.

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1 H. Additional components as added by the mutual consent of the Parties and other
2 parties within the BMP who rely on Basin water resources; and

3 I. Consideration of Purveyor contributions toward funding of County-executed
4 programs and projects for recharging aquifers, preventing or mitigating saltwater intrusion and
5 managing groundwater resources to the extent that they are related to the County's construction and
6 operation of the community wastewater collection and treatment system pursuant to AB 2701.

7 **III. INITIAL STUDIES**

8 A. Basin Model. Through efforts pre-dating the Complaint, LOCSD, GSWC and S&T
9 have developed a preliminary computer groundwater flow model of the Basin (the "Model"). The
10 Parties agree that the Model requires further development, including, but not limited to, calibration
11 and peer review. Further improvement of the Model may also include the development of solute
12 transport modeling capability, refinement of the Basin boundaries, quantification of the Basin's
13 operational safe yield and confirmation of the total consumptive water demands within the Basin.

14 B. Seawater Intrusion and Lower Aquifer Studies. LOCSD received a \$220,000
15 grant from the State of California to fund a study assessing the threat to the Basin of seawater
16 intrusion and the origination of water that recharges the lower portions of the Basin (the "Aquifer
17 Studies"). The results of the Aquifer Studies final report shall be integrated by the Parties into their
18 overall data assessment, the Model and the BMP, to the extent appropriate. LOCSD has made the
19 data and analysis from the Aquifer Studies available for use in the development of the Model and
20 BMP.

21 C. Additional Studies. The Parties agree to consider developing and funding additional
22 studies that may be necessary to characterize the Basin sufficiently to support development of the
23 BMP. The decision to participate in and fund any particular additional study shall be at the sole
24 discretion of each Party. The scope of any additional studies and the consultant(s) retained to
25 complete any additional studies shall be determined by the agreement of the Parties. The Parties
26 agree to participate in any additional study in good faith.

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1 D. Peer Review. The Parties agree that they will collectively retain an additional
2 hydrogeologic expert to conduct a peer review of the Model. The scope of the peer review will be
3 defined by mutual agreement of the Parties.

4 E. Access to the Model. The Parties agree that each of them will have full and
5 complete access to the Model data and all associated computer codes, including any modifications
6 made during the term of this ISJ, and that none of the Parties may claim the Model that is developed
7 through this ISJ is protected as confidential or proprietary relative to the other Parties, whether
8 through the attorney-client privilege or otherwise. Further, if the Parties collectively retain an expert
9 consultant or consultants to assist in developing or reviewing the Model, the Parties agree that each
10 Party will have full and complete access to all collectively retained consultants performing any and
11 all work on the Model during the term of this ISJ, and no Party may claim any communication with a
12 consultant regarding the Model is protected as confidential or proprietary relative to the other
13 Parties, whether through the attorney-client privilege or otherwise. The preceding sentence shall not
14 apply to any consultants retained by one or more Parties separate from this ISJ, including any
15 consultants retained to review the work of the consultants retained by the Parties collectively.

16 **IV. BASIN PLAN DEVELOPMENT**

17 A. The LOCSD has approved a consultant-prepared basin management plan ("LOCSD
18 Plan"). The Parties intend to use the LOCSD Plan as the starting point in developing the BMP.
19 Each of the Parties will have full and complete access to persons performing any and all work on the
20 LOCSD Plan at the Working Group meetings referenced in Section IX below. The Parties' goal is to
21 have a fully executed BMP within twelve (12) months of the effective date of this ISJ.

22 B. The objective is to develop a BMP that contains the elements described in Section II
23 above, which will (potentially in conjunction with a County groundwater management ordinance)
24 serve as a physical solution for the management of Basin water resources, resolving all issues raised
25 in the Complaint. In addition to the purposes listed in Section II above, the BMP may function as
26 the basis for a final stipulated judgment in this lawsuit, including provisions for a watermaster whose
27 responsibility is to oversee the ongoing implementation of and compliance with the BMP.

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1 **V. COUNTY GROUNDWATER MANAGEMENT**

2 A. The other Parties agree to work cooperatively with the County to implement its
3 Resource Management System with respect to the Basin. The County agrees to consult the other
4 Parties prior to taking any action related to its Resource Management System. For purposes of this
5 agreement, such consultation shall, at a minimum, consist of reasonable advance notice by the
6 County of any such proposed actions; reasonable consideration by the County of the viewpoints of
7 the other Parties with respect to any such proposed actions; and a reasonable opportunity for the
8 other Parties to provide comments, objections and suggested alternative courses of action to the
9 County prior to final action by the County. Except as otherwise provided in this ISJ, or as otherwise
10 provided in agreements executed pursuant to this ISJ, nothing in this ISJ shall diminish the County's
11 authority to regulate land use and development within the lands that overlie the Basin.

12 B. The other Parties agree that this ISJ shall not preclude the County from adopting and
13 enforcing a groundwater management ordinance with respect to the area overlying the Basin, to the
14 extent that such ordinance is consistent with the BMP. To the extent such County ordinance may be
15 inconsistent with the BMP, the other Parties retain the ability to object to the ordinance by all
16 applicable methods. Prior to adopting an ordinance, the County shall consult the other Parties, with
17 consultation to include the measures described in Section V.A. above.

18 **VI. INTERCONNECTION PLAN**

19 The Purveyors agree that they will promptly develop plans to improve existing
20 interconnections and install additional interconnections between the GSWC, LOCSD and/or S&T
21 water distribution systems so that in the event GSWC, LOCSD or S&T experience water quality
22 problems or loss of groundwater production capacity in the Basin, the other Purveyors, to the extent
23 practical, shall provide mutual assistance as necessary in responding to water quality or water
24 quantity constraints impacting any individual system ("Interconnection Plan"). The Purveyors shall
25 develop an agreement on the cost allocation associated with implementing the Interconnection Plan.
26 The Purveyors shall also establish a mutually acceptable wholesale water rate for water provided
27 through the interconnections, subject to the approvals of Section VIII below. The Purveyors shall

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1 employ their reasonable best efforts to develop the Interconnection Plan within 4 months of the
2 Effective Date.

3 **VII. COST SHARING FOR ADDITIONAL STUDIES**

4 A. For each additional study and peer review undertaken pursuant to sections III.C and
5 III.D above, each Party shall bear a portion of the associated costs that are not funded through grants.
6 As of the Effective Date, the cost allocation percentages shall be twenty (20) percent for the County,
7 thirty-nine (39) percent for LOCSD, thirty-seven (37) percent for GSWC and four (4) percent for
8 S&T. The percentage of such costs borne by LOCSD, GSWC and S&T shall total eighty (80)
9 percent, and shall be redetermined once every three years, beginning three years from the Effective
10 Date, and will be based upon the percentage of groundwater production by each of those respective
11 Parties relative to the total groundwater production by those three Parties in the prior three years.
12 The Parties acknowledge and agree that the County's twenty (20) percent share of such costs is a
13 County contribution toward programs and projects for recharging aquifers, preventing saltwater
14 intrusion, and managing groundwater resources in relation to the construction and operation of a
15 community wastewater collection and treatment system, as authorized by AB 2701.
16 Notwithstanding any other provision of this ISJ, if there is a majority protest to the upcoming
17 Proposition 218 process initiated by the County regarding wastewater assessments in the Los Osos
18 Prohibition Zone, the County shall have the option of terminating its participation in this ISJ without
19 the need for compliance with the dispute resolution process defined in this ISJ.

20 B. Prior to expenditure of any non-grant funds, the Parties contributing such funds shall
21 develop and unanimously agree upon a budget for the activities contemplated in this ISJ, including
22 the development and implementation of the BMP (a "Budget"). Only those expenditures anticipated
23 in the relevant Budget shall be incurred and allocated subject to the cost-sharing provisions in this
24 ISJ. The contributing Parties may amend the Budget from time to time based upon unanimous
25 written consent.

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1 C. Prior to the establishment of the Budget, the Parties agree to fund an interim budget
2 of \$20,000.00, in accordance with the formula referenced in subparagraph A, above, to pay
3 administrative costs and for such other expenditures as the Parties deem necessary.

4 D. One Party shall be selected as Treasurer for the Parties for each additional study.
5 Within thirty (30) days of the adoption of a Budget, all Parties shall deposit their percentage share of
6 the Budget with the Treasurer as advance payment toward the Budget expenses, unless otherwise
7 agreed upon by the Parties. All invoices for Budget expenses shall be submitted to the Treasurer
8 every thirty (30) days. The non-Treasurer Parties shall be provided full access to all documentation
9 associated with the Budget, costs incurred and the associated invoices, upon request. All
10 uncontested invoice amounts shall be paid within thirty (30) days. The Parties shall meet and confer
11 as promptly as reasonably possible to resolve any contested invoice amounts. The Treasurer may, at
12 its full discretion, suspend any further activities associated with the contested costs until the
13 reimbursement obligation is resolved.

14 E. The Parties acknowledge and agree that it may be in their best interests to seek
15 funding from non-Parties for development and implementation of the BMP. Each Party agrees that
16 it will use its best efforts to seek outside funding and cooperate in good faith to assist the other
17 Parties in seeking outside funding.

18 **VIII. REQUIRED APPROVALS**

19 A. The Parties acknowledge that GSWC may need to obtain approval from the
20 California Public Utilities Commission ("CPUC") for funding or implementation of this ISJ, the
21 BMP or portions thereof. GSWC agrees that it will use reasonable best efforts to obtain the approval
22 of the CPUC when required, and the other Parties agree to cooperate in good faith to assist GSWC in
23 seeking CPUC approval. The Parties agree that in the event GSWC is unable to obtain approval
24 from the CPUC for any funding or implementation related to this ISJ or the BMP, GSWC shall not
25 be required to fund or implement that task, and the failure of GSWC to fund or implement that task
26 shall not be deemed to constitute a breach of this ISJ.

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1 B. The Parties acknowledge that there may be additional third-party approvals required
2 for funding or implementation of this ISJ or portions thereof, including LOCSD's compliance with
3 article XIID, section 6 of the California Constitution in approving water rate increases. The Parties
4 agree that the Party needing such an approval will use reasonable best efforts to obtain the approval
5 when required, and the other Parties agree to cooperate in good faith to assist the Party seeking
6 approval. The Parties agree that in the event the Party needing approval is unable to obtain approval
7 for any funding or implementation related to this ISJ, that Party shall not be required to fund or
8 implement that task, and the failure of that Party to fund or implement that task shall not be deemed
9 to constitute a breach of this ISJ.

10 **IX. WORKING GROUP**

11 A. The Parties shall establish a working group ("Working Group") that shall meet as
12 often as necessary to fulfill the purposes of this ISJ. Each Party shall assign its representatives, as
13 they each deem appropriate, with the goal of maintaining continuity and committing adequate
14 resources and expertise so that the purposes of this ISJ may be achieved.

15 B. The Parties acknowledge that each of them individually has a different required
16 approval process that may be necessary to amend this ISJ, adjust a Budget or otherwise commit to
17 some type of performance. The Working Group shall have no authority to commit or adjust the
18 obligations of any individual Party.

19 C. Other parties may be added to the Working Group by mutual consent of the Parties.

20 **X. FAILURE TO REACH AGREEMENT ON THE BMP**

21 A. Prior to reaching agreement on the BMP, and except as provided herein, any Party
22 may terminate this ISJ, and reinitiate the underlying litigation as may be amended from time to time;
23 provided, however, that this ISJ may not be terminated by any Party unless and until that Party has
24 completed the dispute resolution process provided in Section XI. Any Party desiring to terminate
25 this ISJ after completion of the dispute resolution process may do so by giving thirty (30) days
26 advance written notice of termination of the ISJ to the other Parties, and filing said notice with the
27 Court. Thirty days after giving such notice, the terminating Party shall have no further duties, rights

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1 or liabilities except for fulfilling those duties, rights or liabilities related to additional studies
2 commenced prior to withdrawal and those obligations, duties, rights or liabilities related to the
3 Interconnection Plan.

4 B. The effect of the filing of a notice of termination shall be as follows: (a) this ISJ shall
5 be of no further force or effect, other than those provisions within Section XI providing for
6 reinitiation of the underlying litigation; (b) responsive pleadings shall be filed on or before the thirty-
7 first (31st) day following the date of filing with the court the notice of termination; (c) no Party shall
8 have waived any rights, claims or counter-claims provided under California Code of Civil Procedure
9 sections 430.10; (d) no Party shall be deemed to have waived any basis for objection to the
10 Complaint, including any basis for dismissal, demurrer or motion to strike, any counter-claim, any
11 defense or any affirmative defense; and (e) no Party shall be deemed to waive any rights, claims,
12 counter-claims or defenses provided under California Code of Civil Procedure section 394.

13 **XI. RETAINED JURISDICTION AND DISPUTE RESOLUTION**

14 A. Jurisdiction, power and authority are retained by and reserved to the Court solely to
15 enforce the terms of this ISJ. Nothing in the Court's reserved jurisdiction shall authorize it to modify
16 or amend the ISJ, except with the unanimous consent of all Parties.

17 B. In the event a dispute arises between the Parties regarding the implementation of this
18 ISJ or the acceptable terms of the BMP prior to its completion, the Parties agree to submit such
19 disputes to mediation before an impartial mediator selected by the mutual agreement of the parties.
20 Any Party may initiate the mediation process by providing written notice of dispute to all other
21 Parties, setting forth the nature of the dispute and a proposed resolution. Within fifteen (15) days of
22 receiving the notice of dispute, the Parties shall either mutually agree to a mediator, or else refer the
23 selection of a mediator to the Court. Mediation of disputes shall commence within thirty (30) days
24 of the selection of a mediator. If necessary, the Parties will pay for the services of the mediator in
25 accordance with the proportions described in section VII.A above. The Parties shall make a good
26 faith effort to resolve all disputes informally, or through mediation. Any Party participating in good
27 faith in the mediation shall be deemed to have satisfied the requirements of the dispute resolution

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1 process, if the dispute has not been resolved within thirty (30) days after commencement of
2 mediation.

3 C. If the Parties are unable to agree on the Court which will retain reserved jurisdiction,
4 the Parties agree to have the San Luis Obispo County Superior Court make a determination on the
5 GSWC motion filed on March 26, 2004. The result of that determination shall be final and binding
6 and determine the venue for the court which shall retain jurisdiction under the BMP. The Parties
7 agree that no appeal on that issue shall be taken.

8 D. Once a BMP is agreed to and approved by the court as determined in Section XI.C,
9 that court shall maintain jurisdiction to enforce the BMP in accordance with its terms.

10 **XII. GENERAL PROVISIONS**

11 A. **Successors and Assigns.** This ISJ shall be binding upon and inure to the benefit of
12 the Parties' respective successors and assigns.

13 B. **Authority.** Each Party to this ISJ represents and warrants to the other Parties that it
14 has the authority to enter into this ISJ and perform all acts required by this ISJ.

15 C. **Applicable Law.** This ISJ shall be governed by and interpreted in accordance with
16 the laws of the State of California. Nothing herein shall be construed to abridge the rights and
17 obligations of the CPUC to review any action by GSWC.

18 D. **Good Faith.** The Parties agree to exercise their reasonable best efforts and good faith
19 to effectuate all the terms and conditions of this ISJ and to execute such further instruments and
20 documents, as necessary or appropriate, to effectuate all of the terms and conditions of this ISJ.

21 E. **Further Documents.** The Parties agree that they shall cooperate fully in negotiating
22 and executing additional instruments as may be needed to implement this ISJ, or to define and
23 delineate the responsibilities of any Party under any other agreement among the Parties in
24 furtherance of their common interest. The Parties also agree that concurrent with the execution of
25 this ISJ, they shall execute a confidentiality agreement, consistent with the provisions of the federal
26 Bioterrorism Act of 2002.

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1 F. Opinions and Determinations. Where the terms of this ISJ provide for action to be
2 based upon opinion, judgment, approval, review or determination of any party hereto, such terms are
3 not intended to and shall never be construed to permit such opinion, judgment, approval, review or
4 determination to be arbitrary, capricious or unreasonable.

5 G. Parties Independent. This ISJ does not modify the authority of the Parties under
6 their respective enabling legislation so long as the exercise of such authority does not frustrate the
7 purpose of this ISJ or contradict the terms and conditions of a Court-approved BMP.

8 H. Notices. All notices, requests, demands and other communications under this ISJ
9 shall be in writing and served in accordance with Code of Civil Procedure sections 1011 or 1013.
10 Service shall be made upon the following Parties. Any Party may change its mailing address or
11 contact person for purposes of this paragraph by giving the other Parties written notice of the new
12 address in the manner set forth above.

13 LOCSD: General Manager
14 Los Osos Community Services District
P.O. Box 6064
Los Osos, California 93412

15
16 Jon Seitz, Special Counsel
Shipsey & Seitz, Inc.
1066 Palm Street
San Luis Obispo, California 93401

17
18 GSWC: Patrick Scanlon
19 Vice President of Operations
Golden State Water Company
20 1920 W. Corporate Way
Anaheim, California 92801

21 C. Wesley Strickland
22 Hatch & Parent
21 E. Carrillo Street
23 Santa Barbara, California 93101

24 S&T: David Tolley, President
25 Board of Directors
S&T Mutual Water Company
26 P.O. Box 6391
Los Osos, California 93412

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31 East Cerrillo Street
San Jose, California, CA 95101

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P. Terence Schubert
1254 Marsh Street
San Luis Obispo, CA 93401

County:

Director
County of San Luis Obispo Public Works Department
County Government Center
1055 Monterey Street
San Luis Obispo, California 93408

Warren Jensen, Chief Deputy County Counsel
Office of County Counsel
County Government Center
1055 Monterey Street, Room D320
San Luis Obispo, California 93408

I. Modification. This ISJ may be altered, amended or modified only by a writing executed by all Parties and approved by the Court. Each Party waives its right to claim or assert that this ISJ was modified, canceled, superseded or changed by any oral argument, course of conduct, waiver or estoppel.

DATED: 8-30, 2007

LOS OSOS COMMUNITY SERVICES DISTRICT

By: Chuck Cesena
Chuck Cesena, President
Los Osos Community Services District
Board of Directors

DATED: 8-30, 2007

Approved as to Form:
SHIPSEY & SEITZ, INC.

By: Jon E. Seitz
Jon E. Seitz, Special Counsel
Attorneys for Plaintiff, Los Osos Community Services District

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DATED: May 6, 2008

GOLDEN STATE WATER COMPANY

By: Denise L. Kruger
Denise L. Kruger, Senior Vice President

DATED: May 8, 2008

HATCH & PARENT

By: C. Wesley Strickland
C. Wesley Strickland
Attorneys for Defendant, Golden State
Water Company

DATED: _____, 2007

S&T MUTUAL WATER COMPANY

By: _____
David Tolley, President

DATED: _____, 2007

By: _____
P. Terence Schubert
Attorney for Defendant, S&T Mutual Water
Company

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San Francisco, CA 94101

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DATED: _____, 2007

Approved as to Form:
GOLDEN STATE WATER COMPANY

By: _____
Denise L. Kruger, Senior Vice President


DATED: _____, 2007

Approved as to Form:
HATCH & PARENT


By: _____
C. Wesley Strickland
Attorneys for Defendant, Golden State
Water Company

DATED: 8-30, ²⁰⁰⁸~~2007~~

Approved as to Form:
S&T MUTUAL WATER COMPANY

By: 
David Tolley, President

DATED: 8-30, ²⁰⁰⁸~~2007~~

Approved as To Form:
By: 
P. Terence Schaubert
Attorney for Defendant, S&T Mutual Water
Company

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DATED: June 2, 2008

COUNTY OF SAN LUIS OBISPO

By: James R. Patterson
Chairman of the Board of Supervisors

Authorized by Board Action on _____

DATED: June 2, 2008

APPROVED AS TO FORM
AND LEGAL EFFECT:

JAMES B. LINDHOLM, JR.
County Counsel

By: Warren R. Jensen
Warren R. Jensen
Asst. Chief Deputy County Counsel
Attorneys for Defendant, County of
San Luis Obispo

The Court hereby approves and enters this Interlocutory Stipulated Judgment.

DATED: AUG 05 2008

/s/ MARTIN J. TANGEMAN
Hon. Teresa Estrada-Mullaney