



August 28, 2015

**Via Electronic and US Mail**

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**RE: Basin Plan for Los Osos Groundwater Basin- ISJ**

I submit these comments on behalf of the Sierra Club and the Los Osos Sustainability Group (“Conservation Groups”) in opposition to the adoption of the Proposed Los Osos Basin Plan being developed as part of a Basin adjudication by the County of San Luis Obispo (County), Los Osos Community Services District (LOCSD), the Golden State Water Company (GSWC), and S & T Mutual Water Company (S&T), hereinafter the “Parties.”

As Conservation Groups have previously explained in detail, the evidence including reports prepared by the Parties’ own retained experts demonstrates that the Basin Plan will have significant adverse impacts and is unlikely to adequately or timely protect the Los Osos Basin from the rapid advancement of seawater. A number of serious technical problems continue to plague the Basin Plan, including a working definition of “sustainable yield” which results in further loss of the Basin, yield targets which will likely result in further overdraft of Basin and advance of seawater intrusion because they fail to adequately factor impacts and modeling uncertainties. As set forth below, the uncertainties are not adequately analyzed, nor are values stated, as recommended in a peer review of the model sponsored by the Parties. Other problematic issues include a failure to maximize the effectiveness of water conservation, one of the main mitigation measures, lack of time-specific and enforceable targets to ensure progress toward achieving Basin Plan goals, inadequate monitoring program, and finally a failure to analyze and identify mitigation measures to address the significant environmental impacts of the Basin Plan.

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Conservation Group comments focus on the County and the LOCSD's failure to comply with the Environmental Quality Act ("CEQA") by conducting an adequate review of the environmental impacts of the Basin Plan. As set forth below, the adoption and implementation of the Basin Plan constitutes a discretionary action that is capable of causing one or more significant environmental impacts. Accordingly, before the County and the LOCSD formally and finally adopt the Basin Plan, the County as the lead agency must undertake meaningful environmental review of the potential impacts of the Basin Plan, including analysis of the feasible mitigation measures and environmentally superior alternatives to address the Project's potentially significant impacts.

### **Background**

According to the Draft Los Osos Basin Plan Executive Summary, The Los Osos Basin Plan ("Plan") is intended to be a comprehensive "physical solution" developed in the context of the Los Osos groundwater adjudication.

According to the Plan Executive Summary, the Basin Plan establishes both short-term and long-term actions and goals for management of the water resources of the Los Osos Basin ("Basin"). The most important stated goals of the Plan are (1) to halt seawater intrusion into the Basin and (2) to provide sustainable water supplies for existing and future residential, commercial, institutional, recreational and agricultural development within Los Osos. BP at 1 .

However, the Basin has experienced seawater intrusion due to overdraft for the past 40 years, and intrusion was found to have accelerated in 2005 by four to five times (BP at 3 & 88). The Basin Plan states that seawater intrusion has rendered several municipal wells "unsuitable for drinking...and threatens to affect many other wells in the community," adding that seawater intrusion "has the potential to irreparably damage the Lower Aquifer as a source of water supplies for Los Osos." It estimates that losing the Lower Aquifer (the main drinking water aquifer) to seawater intrusion would cost the community "in excess of \$100 million for the first 30 years" based on the cost of desalination or imported water (BP at 3). The Basin Plan further states, "Currently, and for the foreseeable future, seawater intrusion is the most serious challenge facing the Basin" (BP-93).

Recognizing this threat, the Basin Plan sets three "Immediate Goals" "1) Halt, or to the extent possible, reverse seawater intrusion into the Basin, 2) Provide sustainable water supplies for the existing residential, commercial, community and agricultural development overlying the Basin, 3) Set water conservation goals and establish mandatory standards and policies that promote water use efficiency and innovation for residential commercial and institutional water users for

both indoor and outdoor usage.” (BP at 21.)

The Basin Plan also states that “bold, decisive, and immediate actions” are needed to protect the Basin and meet these goals, yet the alternatives it recommends and other provisions in the Basin Plan are likely to result in further harm to the Basin from seawater intrusion, and harm to habitat, because the alternatives do not adequately mitigate the urgent problem. Several options that could produce greater benefits sooner, which are also consistent with its “Immediate Goals,” are not implemented and instead rejected without serious analysis (e.g., rainwater harvesting).

The Basin includes four aquifer layers known as First Water, the Upper Aquifer, the Lower Aquifer, and the Alluvial Aquifer underlying Los Osos Creek. The Upper and Lower Aquifers are the main sources of municipal and domestic water supplies in the Basin, while First Water and the Alluvial Aquifer are also used for irrigation water supplies.

Unbridled residential and commercial development in Los Osos has resulted in groundwater extractions that exceed the sustainable yield of the Basin. According to the Plan, this is especially true in the Lower Aquifer in the Western Area, where falling groundwater levels induced intrusion of seawater into the Basin. PB at 3.

The Plan assumes that

[t]o halt seawater intrusion, the Purveyors must largely discontinue production of groundwater from the Lower Aquifer in the Western Area. To stop producing groundwater from that portion of the Basin, the Los Osos community will need to decrease its water demands and increase water supplies available from the Upper Aquifer and from the Lower Aquifer in the Central and Eastern Areas. Accessing those supplies requires the construction of new infrastructure, including groundwater production wells, distribution pipelines and a community nitrate removal facility. BP at 4.

The Plan notes that under the current version of the Estero Area Plan (EAP), Basin population at buildout could be as high as 28,700, but “the County is currently in the process of drafting a new Los Osos Community Plan (LOCP) and Los Osos Habitat Conservation Plan (LOHCP), which are expected to limit the future population to no more than 19,850.” Surprisingly, the Plan “does not express a preference for the level of development in Los Osos, but contains actions that would support development at whatever level is deemed appropriate by the County and California Coastal Commission.” This claim is both surprising and confusing because the Basin Plan tacitly supports at least the 19,850 level with a finding that the Basin can support

this level of development basin on modeling which as been inaccurate in predicting sustsinable yields in the past.

The Basin Plan states that it “analyzes seven potential programs of action, each of which focus on a different aspect of Basin management.” Some programs are intended to reduce demand, while others are intended to increase the sustainable yield of the Basin. Some programs, such the “Water Reinvestment Program and Supplemental Water Program” are described as hybrids, with both demand- and supply-side impacts. The Basin Plan expects that implementation of these programs would achieve a sustainable Basin.

As explained below, the County and the CSD must undertake adequate environmental review of these seven programs as their implementation could cause significant environmental effects.

**The Basin Plan is a discretionary “project” within the meaning of CEQA.**

The Basin Plan consists of several programs whose implementation will cause significant environmental impacts.

The **Water Reinvestment Program**, for example, calls for “reinvesting all water collected and treated by the LOWWP in the Basin, either through direct percolation to the aquifers or reuse.” BP at 9.

The Water Reinvestment Program promotes the reuse of all treated wastewater from the LOWWP for the benefit of the Basin, specifically for discharge at the Broderson and Bayridge Estates leach fields, urban reuse at various locations that may include school athletic and playing fields, the Los Osos Valley Cemetery and Sea Pines Golf Course, and agricultural reuse in the Eastern Area. BP at 109.

However, according to Table 2, on BP p. 9, at full buildout, Los Osos would generate approximately an additional 340 AFY wastewater, all of which would be put to agricultural use.

**Basin Infrastructure Programs.** These programs are intended to transfer groundwater production from the Lower Aquifer to the Upper Aquifer and shift some production from the Western Area landward into the Central and Eastern Areas. This shift is intended to increase maximum groundwater production from the Central and Eastern Areas thereby increasing the sustainable yield.

It is clear that the implantation of the above-referenced programs is capable of causing significant impacts on the environment. Pursuant to the Water Reinvestment Program, for

example, implementation of the Basin Plan would result in additional water removed from the aquifer, but reused in agriculture, with unknown return to the aquifer. The net loss of water to the aquifer is capable of causing a significant impact, including increasing the rate of seawater intrusion.

The most critical aspects of the Basin Plan, however, are the Infrastructure Programs, which would relocate the community's drinking water wells and shift the impact of such extraction from the lower aquifer to the upper and more inland. According to the Basin Plan,

In Program D, the Purveyors would construct three new water supply wells east of Los Osos Valley Creek, in locations to be determined based on availability of land and productive characteristics. The three wells are expected to be able to produce 200 AFY each. New pipelines would be required to connect the wells to the existing Los Osos Valley Road main owned and operated by GSWC. For planning purposes, this Basin Plan assumes that three pipelines would be needed for Expansion Wells Nos. 4, 5 and 6, with lengths of approximately 1,500 feet, 2,500 feet and 5,000 feet. The total capital cost for Program D would be \$4,200,000.

The Basin Plan does not discuss the environmental impacts of the construction of new wells, the expansion of existing wells, or the construction of the necessary pipelines contemplated by Program D.

**CEQA applies to the adoption and implementation of the Basin Plan.**

CEQA applies to discretionary actions by a public agency to carry out or approve a project that is capable of causing a significant impact on the environment. Pub. Res. Code §21080(a). Both the LOCSD and San Luis Obispo County are public agencies, therefore the ratification and implementation of the Basin Plan by the County and the LOCSD are subject to CEQA if the Basin Plan is a "project" within the meaning of CEQA.

Pub. Res. Code §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 in the environment, and which is any of the following:

- (a) An activity directly undertaken by any public agency.
- (b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.
- (c) An activity that involves the issuance to a person of a lease, permit, license,

certificate, or other entitlement for use by one or more public agencies.

The evidence shows that the new proposed wells in the upper aquifer can cause adverse impacts on sensitive habitat and related species, including the riparian habitat on Willow and Los Osos Creeks. The Basin Plan itself estimates that the implementation of Program D would stop the flow of 220 AFY of groundwater to Willow Creek which supplies Los Osos Creek. Basin Plan, Pages 302-305. Such a substantial loss of groundwater can significantly affect the riparian habitat along these creeks and related species.

Adoption of the Basin Plan is therefore a “project” under CEQA because it will culminate in a physical change in the environment. Fullerton Joint Union High School v. State Brd of Educ. (1982) 32 Cal.3d 779, 795.

In Save Tara v. City of West Hollywood (2008) 45 Cal.4th 116, the California Supreme Court considered and set aside the holding in Stand Tall on Principles v. Shasta Union High School District (1991) 235 Cal.App.3<sup>rd</sup> 772. In Stand Tall “a school district board passed resolutions choosing the site for a new high school from a group of finalists and authorizing the district administration to purchase the property; any offer to purchase “was to be made contingent upon completion of the EIR process and final state approval.” The appellate court had rejected the petitioner’s claim that an EIR should have been prepared before selecting the preferred school site, reasoning that the “Board’s resolutions regarding the site selection did not constitute an ‘approval’ under CEQA because they do not commit the District to a definite course of action since they are expressly made contingent on CEQA compliance.” Save Tara, supra, 45 Cal.4th at 132-33. The Supreme Court rejected this reasoning because “an agency has no discretion to define approval so as to make its commitment to a project precede the required preparation of an environmental impact report (EIR).”

The same reasoning applies here. While the implementation of the Basin Plan will require the County and the LOCS D to make future decisions and take actions that will require more specific CEQA review in the future, these agencies are required to conduct meaningful environmental review now because approval of the Basin Plan will commit the County and the LOCS D to the Programs and policies described in the Basin Plan.

#### Uncertainty and future mitigation

The Basin Plan vaguely admits that the models on which it relies are inherently uncertain, but does not adequately quantify the uncertainty or discuss the potential environmental impacts of the inherent uncertainty. Likewise, the Basin Plan fails to define the type of mitigation measures needed to address the potential uncertainty.

Regarding uncertainty, the Basin Plan states:

the Model assumes that a given set of conditions persists over time, without changing. This obscures potential drought impacts and precludes evaluating seasonal Basin management strategies. Use of the steady state model may also lead to a more limited understanding of the advance or retreat of the seawater-freshwater interface. BP at 112.

....

Depending on the extent to which any of the uncertainties described above are realized and impact Basin supply and demand, additional actions may need to be taken in the future to secure a reliable water supply for the Basin. BP at 114.

The type of rigorous analysis required under CEQA would ensure that the impacts of the uncertainty is better understood and well-defined and predictable mitigation measures are in place to ensure circumstances such as a prolonged drought, climate change and sea level rise are adequately and timely addressed in order to avoid or at least minimize impacts to biological resources or to the Basin itself because of accelerated levels of sea water intrusion.

### **Conclusion**

CEQA was enacted to avoid or reduce environmental harm and to promote informed decision-making by informing the public and governmental decision-makers about the potential significant impacts of proposed projects and disclose the reasons for approving a project before final approval. Pub. Res. C. §§211000-21001; CEQA Guidelines §15002. CEQA, moreover, is “to be interpreted ... to afford the fullest possible protection to the environment . . .” §§211001-21002.

The County and the LOCSD’s approval of the Basin Plan is patently capable of resulting in significant environmental impacts. The Project must therefore be thoroughly vetted and rigorously analyzed before the court is to review and approve it. In addition to analyzing the Project’s potential environmental impacts, the County’s environmental review must also include an analysis of all potentially feasible mitigation measures and alternatives that could achieve most of the Project’s basic objective, which ought to be elimination of the threat of salt water intrusion and nitrate pollution. Pub. Res. Code §§ 21002.1(a), 21100(b)(3), CEQA Guideline §15126(a).

Sincerely,

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