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County Government Center, Room 207
San Luis Obispo, CA 93408

Subject: Los Osos Wastewater Project
Draft Environmental Impact Report
State Clearinghouse No. 2007121034

Dear Mr. Hutchinson:

The Department of Fish and Game has reviewed the Draft Environmental Impact Report (DEIR) received by the Department on December 22, 2008, for the County's Los Osos Wastewater Project (LOWWP). The Project consists of construction and operation of a collection and conveyance system; a wastewater treatment process and site; and effluent disposal process and locations, of differing technologies in different configurations. In addition, the DEIR describes some Project components which are identified in the alternatives section which would further the Project's goals and objectives.

The Department supports the construction of a Wastewater Treatment Facility for the community of Los Osos; we believe that the Project is necessary to alleviate groundwater contamination of the aquifer underlying the community and to curtail runoff of pollutants into Morro Bay, including the Morro Bay Wildlife Area, managed by the Department. We do not recommend one combination of required elements of the proposed Project over any other; however, we do have comments on content, as well as procedural issues, as laid out in the document. Our intent in submitting this detailed analysis and comments for your consideration is to continue our constructive support of a robust planning and permitting process, hopefully resulting in the best possible Project.

In general, the DEIR appears to defer surveys and identification of specific mitigation to a later date, which would not be consistent with the intent of the California Environmental Quality Act (CEQA) to disclose to the public and to decision makers, the potential impacts and feasible mitigation measures associated with the Project; nor does it allow the County to determine which potentially significant effects would be mitigated to a level of less than significant. Additionally, the DEIR does not completely characterize the regulatory framework or aspects of the permitting process for the proposed Project. This letter outlines the Department's authorities and provides comments regarding the DEIR, including whether the document has adequately characterized the type, extent and significance of effects; whether proposed mitigation measures would reduce potentially significant effects to less than significant; and if not, what additional measures would be required to do so. Additionally, we have attempted to clarify what subsequent permitting would be needed from the Department and the optimal manner to incorporate those requirements into this process.

CEQA Authority: The Department is a Trustee Agency with the responsibility under CEQA for commenting on projects that could impact botanical and wildlife resources. Pursuant to Fish and Game Code Section 1802, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. As a Trustee Agency for fish and wildlife resources, the Department is responsible for providing, as available, biological expertise to review and comment on environmental documents and impacts arising from project activities, as those terms are used under CEQA. In addition, for those projects which require a subsequent discretionary permit from the Department, we are a Responsible Agency.

Streambed Alteration Notification: Alterations to Los Osos Creek, Warden Creek, or any other lake or streambed, which would be incurred to implement the selected Project, would require notification, pursuant to Section 1600 et seq. of the Fish and Game Code. This includes crossings anticipated to be constructed via micro-tunneling and horizontal directional drilling (HDD) techniques. The Department would likely require a Streambed Alteration Agreement (SAA) prior to the applicant's alteration of these streambeds. Please be advised that issuance of an SAA is considered to be a project under CEQA, and as such, the Department will want to rely on the County's CEQA document to make findings. For additional information on notification requirements, please contact our staff in the Lake and Streambed Alteration Program at (559) 243-4593.

Please note that identification of a creek as a "blue-line" on United States Geological Survey (USGS) topographical maps is not the only determining factor as to whether a creek would come under the jurisdiction of Fish and Game Code Section 1600 et seq. Notification is required by any person, business, state or local government agency, or public utility that proposes an activity that will divert, obstruct, or change the natural flow, or the bed, channel or bank of any river, stream, or lake, use material from a streambed, result in the disposal or deposition of debris, waste, or other material where it can pass into any river, stream, or lake. The notification requirement applies to any work undertaken in or near a river, stream, or lake that flows at least intermittently through a bed or channel. This includes ephemeral streams, desert washes, and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water.

The Notification must include a plan to ensure no net loss of wetland and riparian habitat values and acreage. Fish and Game Commission policy states that for every acre of wetland lost, no less than 1 acre of wetland must be created from non-wetland habitat. The policy further describes that the compensatory mitigation must at least duplicate the fish and wildlife habitat values that are lost to project implementation. Mitigation sites should include buffers of sufficient width to eliminate potential disturbance from noise, human activity, feral animal intrusion, and any other potential sources of disturbance. In-kind, on-site mitigation is generally the most acceptable. The Department strongly prefers mitigation which would both expand wetland acreage and enhance wetland habitat values, while avoiding impacts to other classes of sensitive resources. We would work with the County to evaluate potential sites for such mitigation.

California Endangered Species Act (CESA) Compliance: The Department has regulatory authority over projects that could result in the "take" of any species listed by the State as threatened or endangered, pursuant to Fish and Game Code Section 2081. If the Project could result in the "take" of any species listed as threatened or endangered under CESA, the Department may need to issue an Incidental Take Permit (ITP) for the Project. CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species (Sections 21001{c}, 21083, Guidelines Sections 15380, 15064, 15065). Significant impacts of the project must be avoided or mitigated to less than significant levels; CEQA does allow the Lead Agency to make and support a Statement of Overriding Considerations (SOC) for significant and unmitigable impacts.

However, the CEQA Lead Agency's SOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code Section 2081, under which impacts to State-listed threatened and endangered species must be "minimized and fully mitigated". In other words, a SOC cannot apply to impacts to State-listed threatened and endangered species. Compliance with CESA does not automatically occur based on local agency project approvals or CEQA compliance; consultation with the Department is warranted to ensure that a project is identified which will meet CESA's permit issuance criteria, and so that project implementation does not result in unauthorized "take" of a State-listed species.

Incidental "take" authority is required prior to engaging in "take" of any plant or animal species listed under CESA. Plants listed as threatened or endangered under CESA cannot be addressed by methods described in the Native Plant Protection Act. No direct or indirect disturbance, including translocation, may legally occur to State-listed species prior to the applicant obtaining incidental "take" authority in the form of an ITP or equivalent.

This DEIR has incorrectly characterized consultation with the wildlife agencies (both State and Federal) as mitigation which would compensate for impacts to State- and Federally listed species. Additionally, the DEIR has also incorrectly characterized the process for obtaining "take" authorization for species listed under CESA. That authorization can be in the form of an ITP issued pursuant to Section 2081 of CESA, by the Department; or alternatively, we may be able to determine that a Federal biological opinion and Incidental Take Statement (ITS) or ITP issued by the United States Fish and Wildlife Service (Service) is consistent with CESA, pursuant to Section 2080.1, in which case no additional authorization would be needed. If we determine that the requirements of the Federal ITS or ITP do not meet our needs under CESA, the County will need to apply for a permit issued pursuant to Section 2081. The application process is found on the Department's webpage at http://www.dfg.ca.gov/habcon/cesa/.

There are several potential inconsistencies between the State and federal process which would need to be addressed in order to use a Federal ITP or ITS to satisfy CESA. All impacts to State-listed species must be "minimized" and "fully mitigated", and measures to minimize and fully mitigate would have to be included in the ITP or ITS in order for the Department to find it consistent. The species for which the County may wish "take" authorization potentially includes State-listed plant species, which are not typically addressed under a Federal ITP or ITS. Additionally, the Department will require financial assurances to guarantee that all measures

which are identified as mitigating the impacts of the "take" would be implemented. Finally, fully protected species, for which we would not allow any "take," would have to be treated as such in any Federal ITP or ITS in order to be consistent with those sections of the Fish and Game Code.

The DEIR has proposed to defer the identification of impacts to listed species until "pre-construction surveys" are completed; that is inappropriate and inconsistent with both CESA and CEQA. Additionally, the DEIR proposes to leave the identification of mitigation measures to the Department, to be determined at a later date, after the Project has already been approved, an approach which is not recommended for either the Department or the Project proponent. We prefer to address this issue up front and can assist you with identification of what level of information, such as appropriate surveys, impact/"take" assessment, and proposed conservation areas to mitigate for losses incurred by the Project, would be needed to support an application for an ITP. Once the appropriate surveys have been completed, we are available to work with the County and the Service to identify measures which could be included in a Federal ITP or ITS; or alternatively, in an application in support of a Section 2081 permit, which would meet CESA permit issuance criteria. Those measures should be identified prior to adoption of the final Environmental Impact Report (EIR), and made conditions of Project approval. *This sequence is important to preparing a sound Section 2081 permit, because issuance of a permit is considered to be a "project" under CEQA. Thus, the Department will need to make CEQA findings for our permit issuance; we will want to utilize the County's CEQA document to make CEQA findings, and our findings will need to be supported by information in the CEQA document.*

Fully Protected Species: The Fish and Game Code identifies several categories of species which are "fully protected", that is, no "take" of these species is authorized, except for necessary scientific research including efforts to recover species. Please note that "scientific research" does not include any actions taken as part of specified mitigation for a project, as defined in Section 21065 of the Public Resources Code.

Please be advised that Morro Bay kangaroo rat is designated as fully protected under Fish and Game Code Section 4700; and American peregrine falcon, brown pelican, California black rail, and white-tailed kite are designated as fully protected under Fish and Game Code Section 3511. All these species have the potential to occur on the proposed Project site, and the County will want to work with the Department to identify measures which would be implemented to preclude "take" from occurring. We recommend that such measures be identified prior to certification of the EIR, be required as Project conditions, and included in a Memorandum of Understanding between the County and the Department.

Clarification of Other Authorities: The DEIR incorrectly identifies the Department in section 3.4.2 as having authority over Environmentally Sensitive Habitat Area (ESHA), a designation of the California Coastal Act. The California Coastal Commission has responsibility for implementation of this act and delegates permitting authority to the County via a certified Local Coastal Plan. Additionally, the DEIR lacks consistency between the text regarding the Coastal Zone Land Use Ordinance regarding Terrestrial Habitat Protection and Exhibit 5.5-3, which depicts ESHA lands.

Also in section 3.4.2, the DEIR incorrectly characterizes the distinction between species listed as threatened or endangered under CESA, those which are fully protected under other sections of the Fish and Game Code, and those species which are identified as Species of Special Concern, as well as the Department's authorities in regard to those classes of resources.

Biological Surveys: This document relies heavily on information gathered for previous projects, none of which addresses the Cemetary, Giacomazzi, Branin, or Tonini sites, or proposed pipelines to access these sites. Appendix G mentions six days spent in the field, in April and May of 2008, for the purposes of "habitat assessment", the usefulness of which is questionable. The Department regards the use of a habitat assessment for impact assessment as predictive in nature and speculative; a habitat assessment is merely a tool to determine the need for subsequent surveys. The surveys themselves are intended to determine not only presence/absence, but also abundance, species distribution, and other information which is useful in the identification of ways in which impacts to significant resources could be avoided or minimized. We do not consider the information provided adequate for impact assessment for the proposed project sites nor does it provide information which could guide project siting alternatives. We cannot, therefore, concur that all potential significant Project impacts have been identified or will be mitigated to a level of less than significant.

Surveys for both plants and animals will need to be completed to adequately determine how this Project would impact sensitive resources, the significance of those effects, and to better identify measures which could serve to avoid, minimize, and otherwise fully mitigate for Project impacts. Conducting pre-construction surveys, as proposed, does not allow for timely identification of Project impacts and mitigation measures, and would not meet the intent of CEQA to address Project impacts in a fully transparent fashion.

Botanical surveys should follow guidelines developed by the Department (DFG, 2000, available on line at http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/guideplt.pdf) and the Service (USFWS, 2000, available on line at http://www.fws.gov/ventura/sppinfo/protocols/botanicalinventories.pdf). Botanical surveys should cover the entire property and should be timed appropriately to detect all species which may occur on the property before impact analysis occurs. Use of reference sites is recommended for species which are known to occur in the vicinity or which otherwise have a high potential of occurring on-site. Of particular note is that recommended protocols require a floristic survey of the Project sites be conducted; we do not recommend focused surveys which target only specific plants, as suggested in the DEIR. We can, in coordination with the Service, provide specific advice to the County as to the level of surveys, and suggested protocols, for listed and other sensitive animal species.

The Department submits the following additional comments on specific biological resources and issues discussed in the DEIR:

Sensitive Natural Communities: The DEIR lacks a meaningful discussion of impacts to sensitive natural communities, including those which would be considered as ESHA under the Coastal Act. Natural communities which would be considered as sensitive by the Department include (but are not limited to) central maritime chaparral; coastal dune scrub; wetlands,

including woody riparian habitat and freshwater emergent wetlands; additionally, there are significant non-native grasslands which could be affected by the proposed project which provide foraging habitat for a number of sensitive species including American badger, burrowing owl, and various raptors, including the fully protected white-tailed kite. There are scattered references to impacts to sensitive natural communities as being addressed in the section on Impact 5.5-F, which we were unable to locate in the text.

Central maritime chaparral, dominated by the Federally threatened Morro manzanita *(Arctostaphylos morroensis)* is considered a rare natural community by the Natural Diversity Database, and as such, impacts to this resource should be addressed. It is mentioned in the Biological Assessment, but not in the DEIR; there is no impact assessment and no proposed mitigation, except that which are specific to individuals of Morro manzanita.

Freshwater emergent wetland has the potential to be impacted by this Project, as do various other wetland and riparian communities. Please be advised that these wetland features are considered to be sensitive and regulated under the Coastal Act. The text (and mapping) should be amended to address State Regulated Wetlands, in addition to those which the DEIR refers to as Federally Protected Wetlands, but which are more appropriately called Federally Regulated Wetlands, and which would be a sub-set of the State wetlands. Additionally, mitigation measure 5.5-C should be expanded to address those State wetlands which would be impacted by the Project.

Morro Bay Kangaroo Rat: This species (*Dipodomys heermanni morroensis*) is listed by the State of California as endangered, in addition to its Federal status as endangered. Additionally, as noted above, it is fully protected. The species is extremely imperiled, and we would not approve of a mitigation strategy, as outlined in the DEIR in mitigation measure 5.5-A5, which consists of trapping the sites, and retention of trapped individuals "for consideration of captive breeding". As a fully protected species, trapping, or any other form of "take," is not permitted.

Furthermore, this species is so endangered that recovery efforts have had very strict protocols, under very close guidance by the Recovery Team of experts convened for that purpose. There is currently no captive breeding program established, no funds for supporting such an effort, and thus no place to "retain" captured individuals without an immense level of preparation. Any decision to trap for this species is not taken lightly, and the decision matrix for what to do with any captured individuals is a subject which the Recovery Team will need to address, far in advance of that moment when one may be caught in a trap.

We would not agree with the DEIR's assertion that impacts to this species are less than significant, even after implementation of the proposed mitigation measures; in fact, we view the proposed mitigation measures to increase the potential impacts to the species.

Indian Knob Mountainbalm: This species *(Eriodictyon altissimum)* is listed by the State of California as endangered, in addition to its Federal status as endangered. This species is also extremely rare, throughout its range as well as in the vicinity of the project site. We do not consider the mitigation proposed in the DEIR mitigation measure 5.5-A13 (deferred surveys,

avoidance only if possible, "transplantation and relocation of salvaged specimens" and other measures to be determined through future wildlife agency consultation) to be adequate to address this species. Additionally, the DEIR proposes no plan to address this species (and other listed plant species), no success criteria to be met, and no contingency if the proposed translocations are not successful; the only requirement offered by the DEIR is to report on the number of plants relocated, the locations, and the number of dead and damaged, along with any other problems encountered in implementing mitigation measures.

This is a woody chaparral species, and salvage and relocation is not a feasible mitigation measure for this species. In the absence of specific surveys, and without specific information regarding the abundance and distribution of this species on the Project site, our recommendation would be to avoid any impacts to this species, including establishing setbacks from any leach fields which would be sufficient to preclude damage to or decline of plants found on the project site.

We do not agree with the DEIR's assertion that impacts to the Indian Knob mountainbalm (or other listed plant species) have been fully mitigated, nor would the proposed mitigations mitigate potential impacts to a level of less than significant; and additionally, these measures would not meet issuance criteria for an ITP under CESA.

Morro Bay Blue Butterfly: This is a species of limited distribution, associated with a species of bush lupine *(Lupinus chamissonis)* in the dune scrub community. The mitigation measure 5.5-A10 in the DEIR recommends multiple capture and transport of adults during the adult flight season. We recommend that you confer with experts on this species, as there may be a much simpler and cost effective method to mitigate impacts to this species that would focus on avoidance where feasible, and where not, replanting of the host species of lupine, and perhaps relocating parts of the host lupine which contain the eggs or pupae.

Nesting Birds and Nesting Raptors: The DEIR indicates in mitigation measures 5.5-A11 and 5.5-A12 that grading, vegetation removal, and other construction shall be preferentially scheduled during the non-nesting season for all birds. We recommend that season be designated as February 1 through August 31 for all nesting birds, including raptors. In addition, mitigation measures 5.5-A11 and 5.5-A12 both stipulate that if work is planned during the nesting season, a pre-construction survey shall be done, and if a nest is identified, no construction activity shall take place within 250 feet of a non-raptor nest or 500 feet of a raptor nest, until the young have fledged and/or the nest is no longer determined to be active.

It further states that "Construction activity in the vicinity of any active nest shall be conducted at the discretion of a qualified monitoring biologist." We consider the latter statement to contradict the previous requirement, and counter to Fish and Game Code Section 3503, which prohibits "take" or destruction of birds' eggs or nests; and Section 3503.5, which prohibits "take" or destruction of raptor eggs or nests. We recommend the following language for both mitigation measures: "A minimum no-disturbance buffer of (250 or 500) feet should be delineated around active nests until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival."

Compensatory Mitigation: Mitigation measure 5.5-A15 stipulates that compensatory mitigation will be provided for loss of habitat including "coastal sage scrub habitat and/or other habitat", which should be amended to address those habitats which would actually be impacted. The designation of the Broderson site as coastal sage scrub in Exhibit 5 of Appendix G-2 and the text of the DEIR is incorrect; it is unclear how that designation came to be applied since that is one of the areas in the Project site which has been previously sampled and mapped. The document should be amended to address the natural communities which are actually going to be impacted by the Project in all locations, including but perhaps not limited to coastal dune scrub, central maritime chaparral, non-native grassland, riparian habitats, and freshwater emergent wetlands; and compensatory mitigation identified which would result in full mitigation for loss of those communities, including set aside of extant habitat, and for sensitive natural communities, restoration of degraded habitat such that there is a no net loss of acreage, function and value. There is an issue regarding the Broderson site as to previous commitments for compensatory mitigation (see below); in addition, it is not clear that all compensatory mitigation for all affected species and natural communities would be able to be accommodated at the Broderson site.

Broderson Site: The DEIR identifies the Broderson site in mitigation measure 5.5-A15 as a potential site for mitigating losses to coastal sage scrub (we believe this should be coastal dune scrub, see above), Morro shoulderband snail, Morro Bay kangaroo rat, and other sensitive species. It should be noted that this site has already been designated as mitigation for the previously approved iteration of the LOWWP, for impacts which have already been incurred on the treatment facility (the so-called Tri-W or Mid-town) site, as well as portions of the collection system, during the brief period of construction in 2005. The Broderson site was committed by the Community Services District (CSD) as mitigation for project impacts; the DEIR should include this previous history, and honor that commitment when the parcel is transferred from the CSD to the County. The DEIR could separate impacts from this Project which will be incurred at the Mid-town site, the leach field at the Broderson site, and various parts of the collection system which are identical to those of the previously approved project, from those impacts which will be in areas which are newly a part of the Project. Those impacts from the Mid-town site and the collection system would have been previously mitigated via compensatory set-aside of the Broderson site. Those impacts which are not a part of the previously approved project would have to be identified, along with another site at which to compensate residual impacts (if any) without "double dipping".

Habitat Restoration: The DEIR proposes in mitigation measure 5.5-A16 to compensate for impacts to coastal sage scrub (probably coastal dune scrub, see comments above) by development and implementation of variously, a Restoration Plan and/or a Habitat Mitigation and Monitoring Plan, which is intended to be prepared at a later date, the implementation of which would continue for five years, or until "requisite success criteria" are met. We do not believe that this approach is appropriate, as it defers development of the mitigation, the details of which are critical to understanding whether this proposed mitigation will be successful (i.e., mitigated to a level of less than significant, as claimed in the DEIR).

We recommend that a Management Plan be prepared for all the compensatory mitigation lands, including the Broderson site. It should address all habitats which would be affected by the Project, and for which compensatory mitigation is required. Long-term management, including restoration and maintenance of habitat and species, shall continue in perpetuity. Monitoring shall be done to determine that restoration success criteria have been met and that the mitigation lands are successfully supporting and maintaining those habitats and species for which they were established as compensatory mitigation areas. The County will need to establish a non-wasting endowment to fund the long-term management which is identified in the Plan. This Plan should be prepared prior to adoption of the EIR, so that it can be reviewed and determined that it is sufficient to mitigate Project impacts to a level of less than significant.

Avoidable Wildlife Impacts from Erosion Control Mesh Products: Due to this Project site's extensive interface with native wildlife habitat, the Department requests that erosion control and landscaping specifications allow only natural-fiber, biodegradable meshes and coir rolls. "Photodegradable" and other plastic mesh products have been found to persist in the environment, ensnaring and killing terrestrial wildlife. Plastic mesh erosion control products would likely cause unanticipated, avoidable impacts and potential "take" of listed species.

Deferred Mitigation: CEQA Guidelines (Section 15126.4 (a)(1)(B)) stipulates that it is not appropriate to defer feasible mitigation measures to a future date. Additionally, the courts have repeatedly not supported conclusions that impacts are mitigable when essential studies, and therefore impact assessments, are incomplete (*Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d. 296; *Gentry v. City of Murrietta* (1995) 36 Cal. App. 4th 1359; *Endangered Habitat League, Inc. v. County of Orange*(2005) 131 Cal. App. 4th 777). The DEIR does not demonstrate that the Project's potential impacts to rare plants and animals can be mitigated to less than significant levels.

The studies performed thus far are incomplete, and therefore identification of impacts is predictive or, in some cases, deferred. Surveys, impact assessment, and identification of mitigation measures are deferred until after CEQA determinations and Project approval, and prior to construction, thereby circumventing sufficient review by the public, by Trustee and potential Responsible Agencies, and by the decision makers. Besides deferring mitigation, this approach precludes opportunities to avoid impacts through design of the Project, in a way that avoids and minimizes impacts as CEQA dictates. Additionally, the sensitivity of some of the resources which are potentially found in the Project area could require Project redesign in order to fully mitigate potential Project effects, that is, Project impacts may not be mitigable by way of translocation or compensation, the two types of mitigation that are consistently identified for most classes of resources in the DEIR. Determination of impacts and appropriate mitigation at the eleventh hour is an approach we do not recommend, as it adds a high level of uncertainty to the Project. Finally, the County can neither find that impacts have been mitigated to a level of less than significant nor adopt a Statement of Overriding Considerations, in regards to impacts which have not been characterized and for which mitigation has been deferred to a later date.

Alternatives: The DEIR identified alternatives which consist of various collection, conveyance, treatment and disposal alternatives, in various combinations, with several treatment and disposal sites considered. In addition, the alternatives identify Project components which would

help to meet the Project's goals and objectives. Several of these additional Project components would be considered measures which would reduce one or more Project impacts, and as such, we recommend that they be included as mitigation measures and become required conditions of the Project. As approved Project components, they would be considered entitlements which may be constructed, but are not necessarily "required" to be constructed or completed; as a condition of Project approval, implementation would be required.

Examples of Project components which should be required as conditions of approval of the proposed Project include water conservation measures, and other measures to mitigate seawater intrusion to achieve a balanced basin at buildout; these two are interrelated. The water conservation elements proposed are: mandate that property owners' retrofit all low-flow fixtures; conduct public education to increase awareness of water conservation practices, and promote utility-sponsored water-saving appliance programs. In addition, we recommend that the County also pursue specific measures, such as a rate schedule that would encourage conservation of water and encourage or require through appropriate ordinances grey water management and recycling, to reduce demand on the aquifer as well as effluent going to the LOWW treatment facility.

Seawater intrusion is a direct impact of Project implementation, as septic systems are retired and wastewater is redirected for off-site treatment and disposal. In addition, seawater intrusion is an additional impact which results from the growth inducing nature of the Project, which is cumulative in nature and a foreseeable result of buildout. We consider this impact to be significant and mitigable, and should be addressed in this document. The alternatives analysis indicates that successful mitigation of seawater intrusion is a combination of reducing water production from the lower aquifer and increase recharge to the lower aquifer. While we recognize that Level 3 and 4 mitigation of seawater intrusion would be difficult to complete without participation by the water purveyors, we do not agree that this is beyond the scope of this Project or beyond the ability of County to pursue.

Seawater intrusion is a Project-related impact, and as such, the County should pursue programs that would include working with the purveyors to provide incentives and disincentives to the end user to effect water conservation through mechanisms such as retrofitting, water-use rate structures and grey-water recycling. The County can take the lead on such programs by framing the problem, funding programs, and developing local ordinances to require specific measures such as retrofitting and/or grey water recycling. The Lead Agency has the responsibility and authority to require mitigation measures which would reduce project impacts (CEQA Guidelines Section 15051), and must identify feasible alternatives which would eliminate or substantially lessen the significant environmental effects of the project (Section 15091), or make a finding as to what specific considerations (which considerations are enumerated in CEQA, and do not include unwillingness on the part of the project proponent) would make infeasible the mitigation measures or project alternatives which would reduce impacts to a level of less than significant.

Summary: The Department has reviewed the DEIR for the LOWWP and believes that there are deficiencies in the information, especially surveys, regarding fish and wildlife resources; that the information is critical to assessing impacts to such resources; and that the DEIR has not

adequately characterized impacts to fish and wildlife resources, particularly to listed species. As such, development of feasible mitigation measures which would avoid, minimize and fully mitigate Project impacts is not possible; and we do not support a number of the mitigation measures proposed in the DEIR for biological resources. In particular, there are a number of measures which would apply to species which are listed under CESA, and for which the County will need to secure authorization for "take." Additionally, the document fails to address Project impacts to wetlands and stream and riparian resources for which the County will need to notify the Department under Section 1600 et seq. Measures which would avoid, minimize, and mitigate Project impacts to fish and wildlife resources will need to be identified and included in the final environmental document. My staff remains available to work with you to develop feasible mitigation measures based on the most appropriate level of information.

I reiterate that the Department views this Project as a potential benefit to natural resources because of its potential to alleviate groundwater contamination and to curtail runoff of pollutants into Morro Bay. We appreciate the ongoing positive working relationship with the County and are prepared to continue to work with the County to help develop a Project that has minimal impacts and still meets the community's needs.

Thank you for the opportunity to comment. Should you have questions regarding our comments or wish to schedule a meeting to discuss, please contact Deborah Hillyard, Staff Environmental Scientist, at (805) 772-4318 or via email at dhillyard@dfg.ca.gov.

Sincerely,

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